

**TABLE OF CONTENTS
OF THE OFFICIAL RULES OF
THE NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS**

<u>RULE</u>	<u>RULES OF PRACTICE AND PROCEDURE</u>	<u>PAGE</u>
1.	Docketing the Case	1.1
	A. Perfecting the Appeal	1.1
	B. Forwarding to Supreme Court	1.1
	C. Method of Docketing Case; Multiple Appeals From Same Case Prohibited	1.2
	D. Appeal from Special Tribunals.....	1.2
	E. Cross-Appeal	1.2
	F. Attorneys of Record and Pro Se Litigants	1.2
	G. Costs and Security for Costs	1.2
2.	Court of Appeals	1.3
	A. Nebraska Supreme Court Rules to Apply	1.3
	B. Petition to Bypass.....	1.3
	C. Removal of Case from Court of Appeals	1.3
	D. Briefs	1.3
	E. Opinions	1.4
	F. Petition for Further Review by Supreme Court	1.4
	G. Briefs on Further Review by Supreme Court.....	1.5
	H. Briefs and Oral Argument on Further Review by Supreme Court.....	1.5
3.	Court-Appointed Counsel in Criminal Cases.....	1.5
	A. Representation on Appeal	1.5
	B. Motion to Withdraw	1.5
4.	Transcript	1.6
	A. How Ordered; Contents.....	1.6
	B. Form	1.6
	C. Supplemental Transcript.....	1.7
	D. Cases Previously Before the Court	1.7
5.	Bill of Exceptions	1.7
	A. Making and Preserving Record	1.7
	B. Transcribing and Delivery of Record	1.7
6.	Motions Generally	1.13
	A. Motions Not Covered	1.13
	B. Form	1.13
	C. Content	1.13
	D. Filing and Service of Motions.....	1.13
	E. Oral Argument	1.14
	F. Motions for Extension of Brief Date	1.14
	G. Waiver Acceptable	1.14
	H. Briefs	1.14
7.	Summary Dispositions	1.14
	A. Summary Disposition on Supreme Court's Own Motion	1.14
	B. Motions for Summary Dismissal or Affirmance	1.15
	C. Stipulation of Parties for Summary Reversal	1.15
	D. Suggestion of Mootness in Prison Disciplinary and Postconviction Relief Appeals ...	1.15

TABLE OF CONTENTS

<u>RULE</u>	<u>RULES OF PRACTICE AND PROCEDURE</u>	<u>PAGE</u>
8.	Dismissal of Appeal	1.16
	A. Parties	1.16
	B. Form	1.16
	C. Service	1.16
	D. Time for Response of Appellees	1.16
	E. Dismissal by Agreement	1.16
9.	Briefs	1.17
	A. Time for Filing	1.17
	B. Form	1.17
	C. General Rules for Preparation of Briefs	1.18
	D. Content of Briefs	1.19
	E. Cases Involving Constitutional Questions	1.21
	F. Claiming Attorney Fees	1.21
10.	Default in Filing Briefs	1.21
	A. Appellant in Default	1.21
	B. Appellee in Default.....	1.21
	C. Hearing not Delayed.....	1.22
11.	Scheduling, Argument, and Submission	1.22
	A. General	1.22
	B. Methods of Submission on the Merits	1.22
	C. Proposed Call.....	1.23
	D. Call	1.23
	E. Oral Argument	1.23
	F. Court of Appeals Oral Argument.....	1.23
	G. Bankruptcy	1.24
12.	Opinions	1.25
	A. Release of Written Opinions	1.25
	B. Copies Mailed.....	1.25
	C. Official Version	1.25
13.	Motions for Rehearing	1.25
	A. Time	1.25
	B. Form of Motion	1.25
	C. Contents of Motion.....	1.25
	D. Contents of Brief	1.25
	E. Form of Brief	1.25
	F. Response	1.26
	G. Filing and Service.....	1.26
	H. Submission	1.26
	I. Mandate	1.26
	J. Penalty of Delay	1.26
	K. Original Actions	1.26
	L. Briefs on Reargument	1.26
14.	Mandates and Taxation of Costs	1.26
	A. Mandates	1.26
	B. Costs	1.27
15.	Original Actions	1.27
	A. How Commenced.....	1.27
	B. Docketing the Case.....	1.28

TABLE OF CONTENTS

RULES OF PRACTICE AND PROCEDURE

<u>RULE</u>		<u>PAGE</u>
16.	Records	1.28
	A. Records Checked Out.....	1.28
	B. Presentence Report	1.29
	C. Return of Records to District Court.....	1.29
	D. Records as Exhibits	1.29
	E. Microfilm Records	1.29
17.	Media Coverage of Proceedings Before the Nebraska Supreme Court and Court of Appeals ...	1.29
	A. Definitions	1.29
	B. General	1.29
	C. Preservation of Rights	1.30
	D. Objections	1.30
	E. Technical	1.30
18.	Media Coverage of Proceedings Before Any Court Other than the Nebraska Supreme Court or Court of Appeals.....	1.31
19.	Waiver of Time Requirements	1.32
APPENDIX 1	Motion and Proof of Service	1.33
APPENDIX 2	Stipulation	1.34
APPENDIX 3	Motion to Dismiss by Appellee	1.35
APPENDIX 4	Application for Leave to File Appeal by County Attorney	1.36
APPENDIX 5	Sample Clerk's Certificate (Civil)	1.37
APPENDIX 6	Sample Clerk's Certificate (Criminal)	1.38
Index	.....	1.39

ADMISSION OF ATTORNEYS

<u>RULE</u>		<u>PAGE</u>
1.	Admission of Attorneys; Time of Examination; Filing of Application	2.1
2.	Application and Showing; Character Affidavits	2.1
3.	Standard of Character and Fitness	2.1
4.	Other Proof of Character; Qualifications of Applicant; Report of Committee on Inquiry	2.2
5.	Admission Qualifications.....	2.2
	A. Classification of Applicants	2.2
	B. Applications.....	2.3
	C. Education Qualifications	2.4
	D. Policy on Handicapped Applicants	2.4
	E. Oath of Admission	2.4
6.	Admission, Pro Hac Vice, of Lawyers Admitted to Practice in Another State	2.4
7.	Fees; Payment and Disbursement; Per Diem of Bar Commission	2.4
8.	Bar Examination; Subjects	2.4
9.	Bar Commission; Appointment; Duties	2.5
10.	Review by Commission	2.5
11.	Bar Commission; Reports	2.5
12.	Bar Commission; Rules and Regulations	2.6
13.	Bar Commission; Administration of Oaths; Power of Subpoena	2.6
14.	Resigning Membership	2.6
15.	Appeal to Supreme Court; Procedure	2.6
16.	Passing Standard	2.6

TABLE OF CONTENTS

ADMISSION OF ATTORNEYS

<u>RULE</u>		<u>PAGE</u>
17.	Examination Costs	2.6
18.	Communications in Official Confidence; Immunity.....	2.6
19.	Fingerprint Record Checks	2.7
APPENDIX A	Character and Fitness Standards.....	2.8
APPENDIX B	Reserved for Future Use.....	2.10
APPENDIX C	Policy on Applicants With a Disability	2.11

DISCIPLINARY RULES

<u>RULE</u>		<u>PAGE</u>
	Preface	3.1
	Definitions	3.2
1.	Jurisdiction	3.4
2.	Jurisdiction of Disciplinary Districts	3.4
3.	Grounds for Discipline	3.4
4.	Types of Discipline	3.5
5.	The Advisory Committee	3.5
6.	The Disciplinary Review Board	3.6
7.	District Committee on Inquiry	3.7
8.	Counsel for Discipline	3.8
9.	Procedure - Committee on Inquiry - Counsel for Discipline - Disciplinary Review Board	3.9
10.	Procedure - Nebraska Supreme Court	3.11
11.	Disability Inactive Status - Incompetency or Incapacity	3.14
12.	Temporary Suspension - Continuing Damage to the Public and Members or Conviction of a Crime.....	3.15
13.	Conditional Admission of Grievance, Complaint, or Formal Charge	3.15
14.	Right of Appeal	3.16
15.	Voluntary Surrender of License	3.16
16.	Notification Requirements by Disbarred or Suspended Member	3.17
17.	Subpoena Power	3.17
18.	Publicity of Disciplinary Proceedings and Sequestration of Witnesses	3.18
19.	Termination of Disciplinary Proceedings	3.19
20.	Related Civil or Criminal Litigation	3.19
21.	Reciprocal Discipline	3.20
22.	Immunity and Privileges	3.20
23.	Expenses	3.20
24.	Rules are Cumulative	3.21
25.	Eligibility to Serve on Board or Committee	3.21
26.	Lawyers Convicted of a Crime	3.21
27.	Effective Date	3.21
28.	Appointment of a Trustee	3.21

TABLE OF CONTENTS

BANKRUPTCY RULES FOR DISTRICT AND COUNTY COURTS

<u>RULE</u>	<u>PAGE</u>
1. Civil Cases	4.1
2. Request for Disbursement of Funds	4.1

CASE PROGRESSION STANDARDS

<u>RULE</u>	<u>PAGE</u>
District Court	5.1
County Court	5.1
Juvenile Court	5.1

NEBRASKA CHILD SUPPORT GUIDELINES

<u>RULE</u>	<u>PAGE</u>
A. Introduction	6.1
B. Temporary and Permanent Support	6.1
C. Rebuttable Presumption	6.1
D. Total Monthly Income	6.1
E. Deductions	6.2
F. Monthly Support	6.3
G. Parent's Monthly Share	6.3
H. More Than One Child	6.3
I. Minimum Support	6.3
J. Visitation Adjustments.....	6.3
K. Split Custody	6.4
L. Joint Physical Custody.....	6.4
M. Alimony	6.4
N. Child-Care Expenses.....	6.4
O. Health Care	6.4
P. Review	6.4
Q. Modification	6.4
R. Basic Subsistence Limitation.....	6.5
S. Limitation on Increase	6.5
T. Limitation on Decrease	6.5
WORKSHEET 1 Basic Net Income and Support Calculation	6.6
WORKSHEET 2 Split Custody Calculation.....	6.7
WORKSHEET 3 Calculation for Joint Physical Custody	6.8
WORKSHEET 4 Number of Children Calculation	6.9
WORKSHEET 5 Deviations to Child Support Guidelines.....	6.10
TABLE 1 Income Shares Formula.....	6.11

TABLE OF CONTENTS

CHILD SUPPORT GOALS AND RULES

<u>RULE</u>	<u>PAGE</u>
Goals	7.1
Rules	7.1
I. Expedited Process	7.1
II. Requirements and Time Limits	7.1
Rules Relating to Statewide Child Support Referees	7.3
I. Intent	7.3
II. Appointment	7.3
III. Duties	7.3
IV. Safeguards	7.3
V. Hearings	7.4
VI. Findings and Recommendations	7.4
VII. Judicial Review	7.4
VIII. Case Progression	7.4

RULES RELATING TO OFFICIAL COURT REPORTERS

Table of Contents	8.i
1. Appointment of Reporter	8.1
2. Oath of Office	8.1
3. Duties of Reporter	8.1
4. General Qualifications	8.2
5. Place of Residence of Reporter	8.2
6. Principal Office Location of Judge and Reporter	8.2
7. Assignment of Reporter	8.2
8. Reporter Acting When Another Judge Presides	8.3
9. Reimbursement for Travel Expenses	8.3
10. Custody of Trial Records and Documents	8.3
11. Freelance Activities	8.3
12. Employment of Substitute Reporter	8.5
13. Leave	8.5
14. Overtime	8.5
15. Nebraska Official Court Reporters Association	8.6
16. Preparation and Delivery of Bill of Exceptions or Transcription by Another Reporter	8.6
17. Other Related Policies	8.7
18. Per-Page Compensation	8.7
APPENDIX 1: Court Reporter Monthly Time Sheet	8.8
Index to Rules Relating to Official Court Reporters	8.10

NEBRASKA DISCOVERY RULES FOR ALL CIVIL CASES

<u>RULE</u>	<u>PAGE</u>
Promulgating Order	9.1
Comment on Civil Discovery Rules	9.1
Table of Contents	9.2

TABLE OF CONTENTS

NEBRASKA DISCOVERY RULES FOR ALL CIVIL CASES

<u>RULE</u>	<u>PAGE</u>
26. General Provisions	9.3
27. Depositions Before Action or Pending Appeal	9.6
28. Persons Before Whom Depositions May Be Taken	9.8
29. Stipulations Regarding Discovery Procedure	9.9
30. Depositions Upon Oral Examination	9.9
31. Depositions Upon Written Questions	9.13
32. Use of Depositions in Court Proceedings	9.14
33. Interrogatories to Parties	9.16
34. Production of Documents and Things and Entry Upon Land For Inspection and Other Purposes	9.17
34A. Discovery from a Nonparty without a Deposition	9.17
35. Physical and Mental Examination of Persons	9.20
36. Requests for Admission	9.20
37. Failure to Make Discovery: Sanctions	9.22

RULES RELATED TO COURT INTERPRETERS

<u>RULE</u>	<u>PAGE</u>
Scope and Effective Date	10.1
1. Interpreter Register 10.1	10.1
2. Appointment of Interpreters	10.1
3. Certified Court Interpreter Requirements	10.2
4. Examination for Interpreter Certification	10.2
APPENDIX 1	10.4

GRANDPARENTS VISITATION

<u>RULE</u>	<u>PAGE</u>
Grandparents Visitation	11.1

DISTRICT COURT PRETRIAL PROCEDURE

<u>RULE</u>	<u>PAGE</u>
Pretrial Procedure: Formulating Issues	12.1

COUNTY COURT GENERAL RULES

<u>RULE</u>	<u>PAGE</u>
1. Conduct in the Courtroom	13.1
2. Attorneys and Courtroom Decorum: Attendance	13.1
3. Attire	13.1
4. Stipulations	13.1
5. (Reserved for future use)	13.1
6. Withdrawal of Counsel	13.2

TABLE OF CONTENTS

COUNTY COURT GENERAL RULES

<u>RULE</u>		<u>PAGE</u>
7.	Application for Fees	13.2
8.	Pleadings	13.2
9.	Identification of Pleadings	13.2
10.	Copies of Pleadings	13.2
11.	Identification of Attorney.....	13.3
12.	Amendments	13.3
13.	Public Records	13.3
14.	Costs	13.3
15.	Waiver of Preliminary Hearings	13.4
16.	Bail	13.4
17.	Motions	13.4
18.	Submission	13.4
19.	Dismissal Docket	13.4
20.	Interrogatories	13.5
21.	Pretrial Conferences.....	13.5
22.	Criminal Complaints	13.5
23.	Demand for Jury Trials	13.5
24.	Instructions	13.5
25.	Arguments to Jury	13.5
26.	Identification of Exhibits	13.5
27.	Exhibit Procedure	13.6
28.	Withdrawal or Destruction.....	13.6
29.	Return of Exhibits	13.6
30.	Record of Withdrawal or Destruction.....	13.6
31.	Duties of Prosecuting Attorneys	13.6
32.	Default Judgments	13.7
33.	Notice of Interested Person Duty	13.7
34.	Other Children	13.7
35.	Creditor-Debtor Information.....	13.7
36.	Continuances	13.8
37.	Claims of Personal Representatives, Guardians, and Conservators	13.8
38.	Report of Fees to Personal Representative	13.8
39.	Time for Increase in Bonds.....	13.8
40.	Surety Requirements on Bonds.....	13.9
41.	Bonds in Guardianship/Conservatorship Cases	13.9
42.	Conservator/Guardian Inventory and Accounts.....	13.9
43.	Conservator/Guardian Letters	13.10
44.	Rules Not Jurisdictional.....	13.10
45.	Filing Requirements.....	13.10
46.	Personal Representative's Failure to Qualify	13.11
47.	Dismissal for Failure to Act.....	13.11
48.	Local Rules	13.11
49.	Certificate of Proof of Possession.....	13.12
50.	Provisions for Deposit and Investment of Funds Received by the Clerk of the County Court.....	13.13
	I. Public Moneys Paid to County Court Officials	13.13
	II. Investment of Moneys Not Otherwise Provided for by Law.....	13.13
	III. Distribution of Earned Interest.....	13.13

TABLE OF CONTENTS

COUNTY COURT GENERAL RULES

<u>RULE</u>		<u>PAGE</u>
51.	County Court Records.....	13.14
	I. Minimum Requirements	13.14
	II. Media Used	13.14
	III. Paper Size.....	13.14
	IV. Standard Forms	13.14
	V. Transcript and Bill of Exceptions Checkout	13.14
52.	Appeals Taken From the County Courts.....	13.15
	I. Appeals from County Court to District Court.....	13.15
	II. Bills of Exceptions	13.17
	III. Direct Appeals from County Court to the Court of Appeals or Supreme Court	13.19
53.	Preliminary Hearings in Felony Cases.....	13.20
	I. Transcript of Pleadings	13.20
	II. Transcript of Testimony	13.20
	III. Cover Sheet.....	13.20
54.	Criminal Proceedings Before Clerk Magistrates	13.21
	I. Waivers	13.21
	II. Arraignments	13.21
	III. Bond Setting	13.21
	IV. Other Duties	13.21
55.	Uniform Waiver System	13.21
	I. Uniform Waiver System	13.21
	II. Guidelines for Use of Waiver System	13.22
	III. Fine Schedule.....	13.22
	IV. Other Violations	13.22
56.	Juvenile Review Panels	13.22
57.	City or Village Ordinance Guidelines.....	13.24
	I. Initial Filing of City of Village Ordinances	13.24
	II. Filing of New or Amended Ordinances.....	13.24
	III. Need for Record	13.24
58.	Petty Cash Funds	13.25
59.	Presiding Judges	13.25
60.	Domestic Relations	13.26
61.	Modification of Rules	13.27
62.	County Court and Small Claims Court Jurisdictional Limits	13.27
63.	Rule Relating to Uniform Traffic Citation and Complaint And Citation in Lieu of Arrest	13.27
	I. Traffic Complaint and Notice to Appear; Form.....	13.27
	II. Uniform Citation in Lieu of Arrest.....	13.28
APPENDIX 1	County Court Appeal to District Court Certificate of Transcript.....	13.29
APPENDIX 2	Civil Cases Appeal to Supreme Court or Court of Appeals	13.30
APPENDIX 3	Certification of Transcript to Supreme Court or Court of Appeals	13.31
APPENDIX 4	Plaintiff's Claim and Notice to Defendant (Small Claims Court)	13.32
APPENDIX 5	Manual & Electronic Uniform Citation and Complaint Forms.....	13.34

NEBRASKA RULES OF PLEADING IN CIVIL ACTIONS

<u>RULE</u>		<u>PAGE</u>
1.	Scope and Purpose of Rule	14.1

TABLE OF CONTENTS

NEBRASKA RULES OF PLEADING IN CIVIL ACTIONS

<u>RULE</u>		<u>PAGE</u>
2.	One Form of Action	14.1
3.	Commencement of Action	14.1
4.	Summons	14.1
5.	Serving and Filing Pleadings and Other Papers	14.1
6.	Time	14.2
7.	Pleadings Allowed; Form of Motions	14.3
8.	General Rules of Pleading	14.3
9.	Pleading Special Matters	14.4
10.	Form of Pleadings	14.5
11.	Signing of Pleadings	14.5
12.	Defenses and Objections – When and How Presented – by Pleading or Motion - Motion for Judgment on the Pleadings	14.6
13.	Counterclaim and Cross-Claim	14.8
14.	Third-Party Practice	14.9
15.	Amended and Supplemental Pleadings	14.9
16.	Pretrial Conferences; Scheduling; Management	14.9

GUIDELINES CONCERNING THE ADOPTION OF
THE SUPREME COURT RULES

<u>RULE</u>		<u>PAGE</u>
I.	Statement of Purpose	15.1
II.	Definitions	15.1
III.	Rules Consideration	15.1
IV.	Rules Publication and Distribution	15.2
V.	Contents	15.3
VI.	Limitations	15.3

RULES OF LEGAL PRACTICE BY APPROVED
SENIOR LAW STUDENTS

<u>RULE</u>		<u>PAGE</u>
I.	Purpose	16.1
II.	Activities	16.1
III.	Requirements and Limitations	16.2
IV.	Supervision	16.2
V.	Certification	16.2
VI.	Miscellaneous	16.3

GUIDELINES FOR USE IN DETERMINING WHEN
A HEARING MAY BE CLOSED

<u>RULE</u>		<u>PAGE</u>
	Guidelines for Use by Nebraska Courts in Determining When and Under What Conditions a Hearing Before Such Court May be May be Closed in Whole or in Part to the Public	17.1

TABLE OF CONTENTS

RULES FOR RELEASE, SUBSTITUTION, AND DISPOSAL OF EXHIBITS

<u>RULE</u>	<u>PAGE</u>
Nebraska Supreme Court Rules for Release, Substitution, and Disposal of Exhibits.....	18.1

RULES RELATING TO USE OF NEBRASKA STATE LIBRARY

<u>RULE</u>	<u>PAGE</u>
1. General Use	19.1
2. Special Use	19.1
3. Checkout Procedures.....	19.2
4. Renewals	19.2
5. Timely Return in Good Condition	19.2
6. Public Computers and Internet Access	19.2

PROFESSIONAL SERVICE CORPORATIONS

<u>RULE</u>	<u>PAGE</u>
Professional Service Corporations	20.1

RULE REQUIRING FILING OF RULES OF PRACTICE

<u>RULE</u>	<u>PAGE</u>
Rule Requiring Filing of Rules of Practice in Certain Nebraska Courts with the Supreme Court.....	21.1

TRUST ACCOUNTS AND BLANKET BONDS RULES

<u>RULE</u>	<u>PAGE</u>
Trust Accounts and Blanket Bonds Rules.....	22.1
1. Definitions	22.1
2. General Provisions	22.1
3. Interest-Bearing Trust Accounts	22.1
4. Trust Account Overdraft Notification Rules	22.2
5. Trust Account Affidavit Rules	22.3
6. Trust Account Audit Rules	22.4
7. Purpose of Rules	22.4
APPENDIX - Affidavit	22.5

RULE REGARDING NEBRASKA JURY INSTRUCTIONS

<u>RULE</u>	<u>PAGE</u>
Rule Regarding Nebraska Jury Instructions.....	23.1

TABLE OF CONTENTS

RULES FOR NEBRASKA JUDICIAL NOMINATING COMMISSIONS

<u>RULE</u>	<u>PAGE</u>
A. Application Process	24.1
B. Disqualification Process.....	24.1
C. Commission Deliberation	24.2
EXHIBIT A - Statement of Understanding of Ethical Considerations	24.3

RULES RELATING TO THE NEBRASKA
DISPUTE RESOLUTION ACT 1992

<u>RULE</u>	<u>PAGE</u>
1. Appointment of Advisory Council.....	25.1
2. Meetings of the Advisory Council	25.1
3. Responsibilities of the Director of the Office of Dispute Resolution	25.1
4. Application for Center Approval of Funding.....	25.1
5. Procedures for Approved Centers	25.1
6. Center Reports to the Office of Dispute Resolution	25.1
7. Grievance Procedures	25.1

DISTRICT COURT RECORDS MODEL

<u>RULE</u>	<u>PAGE</u>
I. Appearance Docket	26.1
II. Trial Docket	26.1
III. Journal	26.2
IV. Complete Record	26.2
V. Execution Docket	26.3
VI. Fee Book	26.3
VII. General Index	26.3
VIII. Judgment Record	26.3
IX. Case File	26.4

RULES FOR THE USE OF FAX MACHINES IN STATE COURTS

<u>RULE</u>	<u>PAGE</u>
Definition	27.1
1. Equipment	27.1
2. Dedicated Use	27.1
3. Cover Sheet	27.1
4. Original Transmission	27.1
5. Limit of Pages Transmitted	27.1
6. Multiple Copies	27.1
7. Fees and Credit Card.....	27.2
8. Collected Fees	27.2
9. Risk Assumed by Sender	27.2

TABLE OF CONTENTS

RULES FOR THE USE OF FAX MACHINES IN STATE COURTS

<u>RULE</u>		<u>PAGE</u>
10.	Signature	27.2
11.	Orders and Warrants	27.2
12.	Time of Filing	27.3
13.	Consent to Service	27.3
14.	Appellate Briefs	27.3
	Fax Cover Sheet for Use in Nebraska Courts	27.4

UNIFORM DISTRICT COURT RULES OF
PRACTICE AND PROCEDURE

<u>RULE</u>		<u>PAGE</u>
	Scope and Effective Date	28.1
1.	Local Rules	28.1
2.	Organization of the Court	28.1
3.	Pleadings	28.1
4.	Domestic Relations Cases	28.2
5.	Briefs	28.3
6.	Bankruptcy	28.3
7.	Registration of Foreign Judgments	28.4
8.	Default Judgments	28.4
9.	Dismissals and Settlements	28.4
10.	Withdrawal of Counsel	28.5
11.	Courtroom Decorum	28.5
12.	Duties of Court Personnel	28.6
13.	Release of Information by Court Personnel	28.7
14.	Release of Information by Attorneys	28.7
15.	Judicial Sales	28.8
16.	Jury Trials	28.8
17.	Procedure for Filing of Criminal Homicide Reports.....	28.9
18.	Statement of Errors	28.9
19.	Modification of Rules	28.9
20.	Transcript and Bill of Exceptions Checkout	28.9
APPENDIX 1	Criminal Homicide Report Form	28.11
APPENDIX 2	Mandate: District Court to County Court.....	28.12

RULE REQUIRING FILING OF NSBA RULES
WITH SUPREME COURT

<u>RULE</u>		<u>PAGE</u>
	Rule Requiring Filing of Nebraska State Bar Association Rules with Supreme Court	29.1

TABLE OF CONTENTS

NEBRASKA CODE OF JUDICIAL CONDUCT

<u>RULE</u>		<u>PAGE</u>
	PREFACE	30.iv
	PREAMBLE	30.v
	TERMINOLOGY	30.vi - 30.viii
1	CANON 1 - A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY	30.1
	A. Judge's Duty Concerning Standards of Conduct	30.1
2	CANON 2 - A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES	30.1 - 30.2
	A. Rules of General Conduct	30.1
	B. Relational Influences; Use of Prestige of Office to Aid Private Interests; Character Witness	30.1 - 30.2
	C. Memberships in Discriminatory Organizations	30.2
3	CANON 3 - A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY	30.3 - 30.8
	A. Judicial Duties in General	30.3
	B. Adjudicative Responsibilities	30.3 - 30.5
	1. Duty to sit	30.3
	2. Fidelity to the law, professional competence, partisan interests, public clamor, fear of criticism	30.3
	3. Require order and decorum	30.3
	4. Patience, dignity, courtesy in court	30.3
	5. Perform duties without bias or prejudice; manifestations of bias or prejudice	30.3
	6. Prevent lawyers from manifesting bias or prejudice in proceedings; exception	30.3
	7. The right to be heard and ex parte communications; exceptions	30.3 - 30.4
	8. Promptness, efficiency, fairness	30.5
	9. Public comment	30.5
	10. Commending, criticizing juries	30.5
	11. Disclosure, use of nonpublic information	30.5
	C. Administrative Responsibilities	30.5 - 30.6
	1. Diligence, competence and cooperation with others; no bias or prejudice	30.5
	2. Fidelity and diligence of staff; judge to require no manifestations of bias or prejudice by staff	30.5
	3. Judges with supervisory authority over other judges	30.5
	4. Appointments, merit, nepotism, favoritism and compensation	30.6
	D. Disciplinary Responsibilities	30.6
	1. Misconduct of other judges	30.6
	2. Misconduct of lawyers	30.6
	3. Disciplinary duties part of judicial duties; privilege	30.6
	4. Ethics committee exception	30.6
	E. Disqualification	30.6 - 30.7
	1. General standard; impartiality	30.6
	2. Duty to keep informed of interests	30.7
	3. Additional duty of disclosure	30.7
	F. Remittal of Disqualification; Procedure	30.7 - 30.8

TABLE OF CONTENTS

NEBRASKA CODE OF JUDICIAL CONDUCT

<u>RULE</u>		<u>PAGE</u>
4	CANON 4 - A JUDGE SHALL SO CONDUCT ALL EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS	30.8 - 30.14
	A. General Limitations	30.8
	1. Protection of impartiality	30.8
	2. Protecting judicial office	30.8
	3. Interference with performance of judicial duties.....	30.8
	B. Avocational Activities; Speaking, Writing, Lecturing, Teaching, Other Extrajudicial Activities Relating to Legal and Nonlegal Subjects	30.8
	C. Governmental, Civic, or Charitable Activities	30.9 - 30.10
	1. Appearance at public hearing; consultation with executive and legislative	30.9
	2. Extrajudicial appointments	30.9
	3. Services on behalf of organizations devoted to quasi-judicial functions and educational, religious, charitable, fraternal or civic organizations not conducted for profit.....	30.9 - 30.10
	D. Financial Activities	30.10 - 30.12
	1. General limitation.....	30.10 - 30.11
	2. Investment management and other remunerative activity	30.11
	3. General prohibition on business activity; exceptions	30.11
	4. Minimize need for recusal; divestment	30.11
	5. Gifts, bequests, favors and loans	30.11 - 30.12
	E. Fiduciary Activities	30.12
	1. General rule	30.12
	2. No fiduciary service if likely to come before judge's court	30.13
	3. Personal financial restrictions apply to fiduciary activities.....	30.13
	F. Mediation and Arbitration	30.13
	G. Practice of Law.....	30.13
	H. Reimbursement or Waiver of Charges for Travel-Related Expenses of the Judge or the Judge's Spouse or Guest.....	30.13 - 30.14
	1. Reimbursement or waiver	30.13
	2. Reimbursement of Expenses	30.13 - 30.14
	I. Compensation of Extrajudicial Activities	30.14
	1. Acceptance of compensation.....	30.14
	2. Reasonable amount of compensation	30.14
	J. Reporting of Compensation, Reimbursement of Expenses, and Waiver of Charges.....	30.14
	I. Disclosure of Judges' Income, Debts, Investments, Assets.....	30.15
5	CANON 5 - A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY	30.15 - 30.19
	A. Standards of Political Conduct in General	30.15 - 30.16
	1. Prohibited conduct for judge or candidate	30.16
	2. Resign judicial office to run for nonjudicial office; exception.....	30.16
	3. Duties of all candidates for judicial office	30.16
	B. Candidates Seeking Appointive Judicial or Other Governmental Office	30.17
	1. Fund raising and accepting donations prohibited	30.17
	2. Political activity to secure appointment generally prohibited; exceptions	30.17

TABLE OF CONTENTS

NEBRASKA CODE OF JUDICIAL CONDUCT

<u>RULE</u>	<u>PAGE</u>
C. Judges Subject to Retention Election	30.17
1. Limited political activity permissible when candidacy has drawn active opposition	30.17 - 30.18
2. No personal fund raising, but may use campaign committee; time restrictions; no personal use of campaign funds.....	30.18
D. Permissible Political Activity for Incumbent Judges	30.18
E. Applicability	30.19
APPLICATION OF THE CODE OF JUDICIAL CONDUCT	30.20
A. Part-Time Judges	30.20
B. Retired judges.....	30.20
C. Time for Compliance.....	30.20
APPENDIX A: Judicial Ethics Committee	30.21
APPENDIX B: Case Progression Standards	30.23
APPENDIX C: Judicial Financial Interest Statement	30.29
Subject Index	30.35

CODE OF PROFESSIONAL RESPONSIBILITY
(Effective for conduct occurring prior to September 1, 2005.)

<u>RULE</u>	<u>PAGE</u>
1 CANON 1 - A LAWYER SHOULD ASSIST IN MAINTAINING THE INTEGRITY AND COMPETENCE OF THE LEGAL PROFESSION.....	31.1
Ethical Considerations	31.1
Disciplinary Rules.....	31.1
2 CANON 2 - A LAWYER SHOULD ASSIST THE LEGAL PROFESSION IN FULFILLING ITS DUTY TO MAKE LEGAL COUNSEL AVAILABLE	31.2
Ethical Considerations	31.2
Recognition of Legal Problems	31.3
Selection of a Lawyer: Generally	31.3
Selection of a Lawyer: Lawyer Advertising	31.4
Financial Ability to Employ Counsel: Generally	31.5
Financial Ability to Employ Counsel: Persons Able to Pay Reasonable Fees	31.5
Financial Ability to Employ Counsel: Persons Unable to Pay Reasonable Fees	31.6
Acceptance and Retention of Employment	31.7
Disciplinary Rules.....	31.8
3 CANON 3 - A LAWYER SHOULD ASSIST IN PREVENTING THE UNAUTHORIZED PRACTICE OF LAW	31.13
Ethical Considerations	31.13
Disciplinary Rules.....	31.14
4 A LAWYER SHOULD PRESERVE THE CONFIDENCES AND SECRETS OF A CLIENT	31.15
Ethical Considerations	31.15
Disciplinary Rules.....	31.16

TABLE OF CONTENTS

CODE OF PROFESSIONAL RESPONSIBILITY
(Effective for conduct occurring prior to September 1, 2005.)

<u>RULE</u>		<u>PAGE</u>
5	A LAWYER SHOULD EXERCISE INDEPENDENT PROFESSIONAL JUDGMENT ON BEHALF OF A CLIENT	31.17
	Ethical Considerations	31.17
	Interests of a Lawyer That May Affect His or Her Judgment	31.17
	Interests of Multiple Clients	31.19
	Desires of Third Persons	31.20
	Disciplinary Rules	31.21
6	CANON 6 - A LAWYER SHOULD REPRESENT A CLIENT COMPETENTLY	31.24
	Ethical Considerations	31.24
	Disciplinary Rules	31.25
7	CANON 7 - A LAWYER SHOULD REPRESENT A CLIENT ZEALOUSLY WITHIN THE BOUNDS OF THE LAW	31.25
	Ethical Considerations	31.25
	Duty of the Lawyer to a Client	31.25
	Duty of the Lawyer to the Adversary System of Justice	31.28
	Disciplinary Rules	31.31
8	CANON 8 - A LAWYER SHOULD ASSIST IN IMPROVING THE LEGAL SYSTEM	31.38
	Ethical Considerations	31.38
	Disciplinary Rules	31.39
9	CANON 9 - A LAWYER SHOULD AVOID EVEN THE APPEARANCE OF PROFESSIONAL IMPROPRIETY	31.40
	Ethical Considerations	31.40
	Disciplinary Rules	31.41

RULES CREATING, CONTROLLING, AND REGULATING
NEBRASKA STATE BAR ASSOCIATION

<u>RULE</u>		<u>PAGE</u>
I	ARTICLE I - NAME	32.1
II	ARTICLE II - PURPOSE AND AUTHORITY	32.1
	1. Purpose	32.1
	2. Government	32.1
III	ARTICLE III - MEMBERSHIP	32.1
	1. Requirements	32.1
	2. Classes	32.1
	3. Registration	32.2
	4. Dues	32.3
	5. Delinquency and Reinstatement	32.4
	6. Suspension or Disbarment	32.4
	7. Fees	32.4
	8. Resignation	32.4
	9. Reinstatement Following Resignation	32.5
IV	ARTICLE IV - OFFICERS	32.5
	1. Titles	32.5
	2. Eligibility	32.5
	3. Nomination and Election	32.5

TABLE OF CONTENTS

RULES CREATING, CONTROLLING, AND REGULATING
NEBRASKA STATE BAR ASSOCIATION

<u>RULE</u>		<u>PAGE</u>
	4. Appointive Officers	32.5
	5. Combining of Offices.....	32.5
	6. Removal of Appointive Officers	32.6
	7. Duties and Powers	32.6
	8. Term of Office.....	32.7
V	ARTICLE V - HOUSE OF DELEGATES	32.7
	1. Duties and Powers	32.7
	2. Membership.....	32.7
	3. Nomination and Election	32.8
	4. Term of Office.....	32.9
	5. Vacancies	32.9
	6. Voting	32.9
	7. Officers	32.9
	8. Personnel and Publications.....	32.9
	9. Referendum	32.9
	10. Ex Officio Members.....	32.9
	11. ABA Delegates	32.9
VI	ARTICLE VI - EXECUTIVE COUNCIL	32.9
	1. Duties and Powers	32.9
	2. Membership.....	32.9
	3. District Representatives	32.10
	4. Nomination and Election	32.10
	5. Term of Office.....	32.10
	6. Voting	32.10
VII	ARTICLE VII - COMMITTEES AND SECTIONS	32.10
	1. Budget and Audit Committee	32.10
	2. Other Committees	32.10
	3. Sections	32.10
VIII	ARTICLE VIII - MEETINGS	32.10
	1. Annual Meeting	32.10
	2. House of Delegates	32.11
	3. Executive Council	32.11
	4. Emergency Meetings.....	32.11
IX	ARTICLE IX - BUDGET AND AUDIT	32.11
	1. Budget Preparation and Approval	32.11
	2. Authorization of Expenditures	32.11
	3. Appropriation and Disbursement	32.12
	4. Accounting and Auditing	32.12
	5. Circulation of Budget and Audit	32.12
	6. Fiscal Year	32.12
X	ARTICLE X - ETHICAL STANDARDS	32.12
XI	ARTICLE XI - BYLAWS	32.12
XII	ARTICLE XII - AMENDMENT	32.12
XIII	ARTICLE XIII - ENABLING RULES	32.13
	1. Bylaws	32.13
	2. Effective Date	32.13
	3. Terms of House of Delegates and Executive Council Members	32.13
	4. Terms of Officers	32.13

TABLE OF CONTENTS

LIMITED LIABILITY PROFESSIONAL ORGANIZATIONS

<u>RULE</u>	<u>PAGE</u>
Nebraska Supreme Court Rule for Limited Liability Professional Organizations.....	33.1

NEBRASKA RULES OF PROFESSIONAL CONDUCT
(Effective for conduct occurring on or after September 1, 2005.)

<u>RULE</u>	<u>PAGE</u>
Table of Contents	34.i
Preamble	34.1
Scope	34.2
1.0 Terminology	34.3
ARTICLE 1 - CLIENT-LAWYER RELATIONSHIP	34.6
1.1 Competence	34.6
1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer.....	34.7
1.3 Diligence	34.9
1.4 Communications	34.10
1.5 Fees	34.11
1.6 Confidentiality of Information	34.14
1.7 Conflict of Interest: Current Clients.....	34.17
1.8 Conflict of Interest: Current Clients: Specific Rules	34.24
1.9 Duties to Former Clients	34.29
1.10 Imputation of Conflicts of Interest: General Rule.....	34.32
1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees	34.33
1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral	34.35
1.13 Organization as Client.....	34.37
1.14 Client With Diminished Capacity	34.40
1.15 Safekeeping Property	34.42
1.16 Declining or Terminating Representation	34.43
1.17 Sale of Law Practice Rule	34.45
1.18 Duties to Prospective Client.....	34.46
ARTICLE 2 – COUNSELOR	34.48
2.1 Advisor	34.48
2.2 Evaluation for Use by Third Persons	34.49
2.3 Lawyer Serving as Third-Party Neutral	34.50
ARTICLE 3 – ADVOCATE	34.51
3.1 Meritorious Claims and Contentions	34.51
3.2 Expediting Litigation	34.52
3.3 Candor Toward the Tribunal.....	34.52
3.4 Fairness to Opposing Party and Counsel	34.55
3.5 Impartiality and Decorum of the Tribunal	34.56
3.6 Trial Publicity	34.57
3.7 Lawyer as Witness	34.59
3.8 Special Responsibilities of a Prosecutor	34.60
3.9 Advocate in Nonadjudicative Proceedings	34.62

TABLE OF CONTENTS

NEBRASKA RULES OF PROFESSIONAL CONDUCT
(Effective for conduct occurring on or after September 1, 2005.)

<u>RULE</u>		<u>PAGE</u>
	ARTICLE 4 - TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS.....	34.62
4.1	Truthfulness in Statements to Others	34.62
4.2	Communication With Person Represented by Counsel.....	34.63
4.3	Dealing With Unrepresented Person	34.64
4.4	Respect for Rights of Third Persons.....	34.65
	ARTICLE 5 - LAW FIRMS AND ASSOCIATIONS	34.66
5.1	Responsibilities of a Partner or Supervisory Lawyer.....	34.66
5.2	Responsibilities of a Subordinate Lawyer.....	34.67
5.3	Responsibilities Regarding Nonlawyer Assistants.....	34.67
5.4	Professional Independence of a Lawyer.....	34.68
5.5	Unauthorized Practice of Law; Multijurisdictional Practice of Law.....	34.69
5.6	Restrictions on Rights to Practice	34.72
5.7	Responsibilities Regarding Law-Related Services.....	34.73
	ARTICLE 6 - PUBLIC SERVICE	34.74
6.1	Voluntary Pro Bono Service	34.74
6.2	Accepting Appointments.....	34.76
6.3	Membership in Legal Services Organization	34.76
6.4	Law Reform Activities Affecting Client Interests.....	34.77
6.5	Nonprofit and Court Annexed Limited Legal Services Programs	34.77
	ARTICLE 7 - INFORMATION ABOUT LEGAL SERVICES	34.78
7.1	Communications Concerning a Lawyer's Services	34.78
7.2	Advertising	34.79
7.3	Direct Contact With Prospective Clients.....	34.81
7.4	Communication of Fields of Practice.....	34.83
7.5	Firm Names and Letterheads.....	34.83
	ARTICLE 8 - MAINTAINING THE INTEGRITY OF THE PROFESSION.....	34.84
8.1	Bar Admission and Disciplinary Matters	34.84
8.2	Judicial and Legal Officials.....	34.85
8.3	Reporting Professional Misconduct	34.85
8.4	Misconduct	34.86
8.5	Disciplinary Authority; Choice of Law.....	34.87

RULE REGARDING USE OF STANDARDIZED MODEL FOR
DELIVERY OF SUBSTANCE ABUSE SERVICES

<u>RULE</u>		<u>PAGE</u>
	Nebraska Supreme Court Rule Regarding Use of Standardized Model For Delivery of Substance Abuse Services	35.1
APPENDIX A	.....	35.2
I.	Policy	35.2
II.	Definitions	35.2

TABLE OF CONTENTS

RULE REGARDING USE OF STANDARDIZED MODEL FOR
DELIVERY OF SUBSTANCE ABUSE SERVICES

<u>RULE</u>		<u>PAGE</u>
III.	Procedures	35.3
A.	Screening Assessment	35.3
B.	Risk Assessment	35.4
C.	Evaluation Referral and Confidentiality	35.5
D.	Evaluations	35.5
E.	Treatment	35.5
F.	Registered Providers	35.6
G.	Special Considerations	35.6
H.	Data Collection	35.7
I.	Training	35.7

Attachments:

- Attachment 1 — Simple Screening Instrument (SSI)
- Attachment 2 — Standardized Risk Assessment Reporting Format for Substance Abusing Offenders (SRARF)
- Attachment 3 — Referral for Substance Abuser Evaluation Form — General Letter to Providers
- Attachment 4 — Nebraska Standardized Reporting Format for Substance Abuse Evaluations for all Justice Referrals
- Attachment 5 — Substance Abuse Services for Adult Criminal Justice Clients Continuum of Care
- Attachment 6 — Substance Abuse Services for Juvenile Justice Clients Continuum of Care

RULE REGARDING THE USE OF NEBRASKA JUROR QUALIFICATION FORM

<u>RULE</u>		<u>PAGE</u>
	Rule Regarding the Use of Nebraska Juror Qualification Form	36.1
	Appendix A — Nebraska Juror Qualification Form	

RULE REGARDING GUARDIAN AD LITEM TRAINING FOR ATTORNEYS

<u>RULE</u>		<u>PAGE</u>
	Rule Regarding Guardian Ad Litem Training for Attorneys	37.1
	Appendix A	

RULE GOVERNING USE OF DIGITAL SIGNATURES BY
AUTHORIZED COURT PERSONNEL

<u>RULE</u>		<u>PAGE</u>
1	Statutory Authority	38.1
2	Purpose	38.1
3	Scope	38.1
4	Authorized Court Personnel	38.1
5	Acceptable Technology and Practices.....	38.1

TABLE OF CONTENTS

RULE GOVERNING USE OF DIGITAL SIGNATURES BY
AUTHORIZED COURT PERSONNEL

<u>RULE</u>		<u>PAGE</u>
6	Terms of Use	38.1
7	Authority	38.2
8	Local Rules	38.2

INTERIM RULE FOR ELECTRONIC FILING AND
SERVICE SYSTEM (PILOT PROJECT)

<u>RULE</u>		<u>PAGE</u>
	Interim Rule for Electronic Filing and Service System (Pilot Project)	39.1

**QUICK REFERENCE INDEX TO
RULES AND GUIDELINES**

	<u>PAGE</u>
DISTRICT COURT RULES	
Bankruptcy	4.1
Case Progression Standards	5.1
Child Support Guidelines	6.1
Calculation Worksheets	6.5 - 6.9
Income Shares Formula Table	6.10
Child Support Referees	7.3
Child Support Rules	7.1
Closed Courts	17.1
Court Reporter Rules	8.1
Discovery Rules for all Civil Cases	9.1
Dispute Resolution Act	25.1
Exhibits, Rules re Release, Substitution and Disposal	18.1
Forms	
Nebraska County Attorney Criminal Homicide Report	28.11
Mandate: District Court to County Court	28.12
Grandparents' Visitation	11.1
Nebraska Jury Instructions Rule	23.1
Pretrial Procedure	12.1
Records Model	26.1
Rule Requiring Filing of Rules of Practice in Nebraska	
Trial Courts with Supreme Court	21.1
Rules Relating to Court Interpreters	10.1
Uniform District Court Rules of Practice and Procedure	28.1
COUNTY COURT RULES	
Bankruptcy	4.1
Case Progression Standards	5.1
Closed Courts	17.1
Discovery Rules for all Civil Cases	9.1
Dispute Resolution Act	25.1
Exhibits, Rules re Release, Substitution and Disposal	18.1
Forms	14.1
Certificate–Civil Cases–Appeals to SC and CA.....	13.27
Certificate of Transcript–Appeals to District Court	13.26
Certificate of Transcript–Appeals to SC and CA	13.28
Plaintiff's Claim and Notice to Defendant (Small Claims Court)	13.29
General	13.1
Nebraska Jury Instructions Rule	23.1
Rule Requiring Filing of Rules of Practice in	
Nebraska Trial Courts with Supreme Court	21.1
Rules Relating to Court Interpreters	10.1

TABLE OF CONTENTS

<u>RULES</u>	<u>PAGE</u>
Admission of Attorneys	2.1
Adoption of Supreme Court Rules	15.1
Bankruptcy Rules	4.1
Case Progression Standards	5.1
Child Support Guidelines	6.1
Child Support Referees	7.3
Child Support Goals and Rules	7.1
Closed Hearing Guidelines.....	17.1
Code of Judicial Conduct	30.1
Code of Professional Responsibility ¹	31.1
County Court General Rules	13.1
Court Interpreter Rules.....	10.1
Court Reporter Rules	8.1
Disciplinary Rules	3.1
Discovery Rules for all Civil Cases	9.1
Dispute Resolution Act	25.1
Distribution of Supreme Court Rules	15.2
District Court Pretrial Procedure.....	12.1
District Court Records Model	26.1
Exhibits, Rules re Release, Substitution and Disposal	18.1
FAX Rules	27.1
Grandparents Visitation.....	11.1
Guidelines Concerning Adoption of Supreme Court Rules	15.1
Interim Rule for Electronic Filing and Service System (Pilot Project).....	39.1
Judicial Nominating Commission Rules	24.1
Library, Rules Relating to Use of	19.1
Limited Liability Professional Organizations	33.1
Mandate Form – District to County Court	28.12
Nebraska Jury Instructions Rule.....	23.1
Nebraska Rules of Pleadings in Civil Actions	14.1
Nebraska Rules of Professional Conduct	34.1
Pretrial Procedure	12.1
Professional Service Corporations	20.1
Release, Substitution, and Disposal of Exhibits.....	18.1
Rule Governing Use of Digital Signatures by Authorized Court Personnel	38.1
Rule Regarding Guardian Ad Litem Training for Attorneys	37.1
Rule Regarding the Use of Nebraska Juror Qualification Form	36.1
Rule Regarding Use of Standardized Model for Delivery of Substance Abuse Services	35.1
Rule Requiring Filing of Nebraska State Bar Association Rules with Supreme Court.....	29.1
Rule Requiring Filing of Rules of Practice in Nebraska Trial Courts with Supreme Court	21.1
Rules Creating, Controlling, and Regulating Nebraska State Bar Association	32.1
Rules of Practice and Procedure	1.1
Rules of Professional Conduct ²	34.1
Senior Law Students, Legal Practice	16.1
State Law Library Rules.....	19.1
Trust Accounts and Blanket Bonds	22.1
Uniform District Court Rules of Practice and Procedure	28.1

¹ Effective for conduct occurring prior to September 1, 2005.

² Effective for conduct occurring on or after September 1, 2005.

RULES OF PRACTICE AND PROCEDURE
IN THE SUPREME COURT AND COURT OF APPEALS

EXPLANATION OF COMMENTS

Throughout these rules are various "comments" which are intended to be helpful information only and are not intended to be, nor are they, a part of the official rules of this court.

1. DOCKETING THE CASE.

A. Perfecting the Appeal. Every appeal shall be deemed perfected when the notice of appeal as provided in Rule 1B(1) and the docket fee required by Neb. Rev. Stat. § 33-103 or an application to proceed in forma pauperis and a poverty affidavit pursuant to Neb. Rev. Stat. § 29-2306 or Neb. Rev. Stat. § 25-2301 et seq. have been filed in the office of the clerk of the trial court and such application has been granted by that court.

B. Forwarding to Supreme Court. The clerk of the district court shall within 2 business days of receipt of a notice of appeal send the following items to the Clerk of the Supreme Court:

(1)(a) Notice of appeal. The notice of appeal shall be deemed made to the Court of Appeals unless the notice contains language specifically requesting appeal to the Supreme Court along with citation to the statutory authority allowing such appeal to the Supreme Court.

(b) If a notice of appeal filed in a case involving termination of parental rights is not signed by the parent whose parental rights were terminated, the appeal shall be subject to summary affirmance pursuant to Rule 7A unless, following issuance of an order to show cause and a 15-day response time, the before-mentioned parent files an affidavit with the appellate court stating his or her intention to proceed with the appeal or other good cause is shown. This subsection shall not apply to a child's guardian ad litem taking an appeal in such cases.

(2) Request for transcript; see Rule 4A;

(3) Request for bill of exceptions; see Rule 5B;

(4) Check of the clerk of the district court for docket fee, or a copy of the application to proceed in forma pauperis and accompanying poverty affidavit which has been executed no more than 45 days prior to the filing of notice of appeal; and

(5) A certificate, which shall contain the following information:

a. The caption of the case, including the names and adversary relationship of all the parties, as the case was filed in the district court;

b. The name, address, city, state, zip code, telephone number, and Nebraska attorney identification number of each principal Nebraska attorney, and the name of the party or parties the attorney represents, or, if a party or parties represent themselves, the above information except for the identification number;

c. Whether the case is a civil case or a criminal case; if a civil case, whether the case is law (general) or equity, if applicable; if a criminal case, whether there was a trial to a jury or judge, or whether a guilty or nolo contendere plea was accepted by the court, whether a plea in bar was entered, and whether the case is a felony, misdemeanor, or postconviction; and

d. If the notice of appeal is to the Supreme Court, whether the appeal involves a sentence of death or life imprisonment, constitutionality of a statute, or other statutory authorization therefor.

e. The date the notice of appeal was filed in the district court and the date the docket fee was paid to the clerk of the district court.

f. Whether the requirements of Neb. Rev. Stat. § 25-1914 with regard to cost bond, cash in lieu of cost bond, or supersedeas bond or poverty affidavit have been met and the date filed.

g. Indicate if a motion for new trial was filed in the trial court and the date of disposition.

See appendices 5 and 6.

C. Method of Docketing Case; Multiple Appeals from Same Case Prohibited. Upon receipt of the material required by Rule 1B, the Clerk of the Supreme Court shall thereupon docket the case designating the party or parties first having filed the notice of appeal in the district court as appellant or appellants. All other parties shall be designated as appellees, and any attempt to appeal thereafter made by any party to the action shall be filed in the existing case and not separately docketed.

D. Appeal from Special Tribunals. In an appeal from an order of the Nebraska Public Service Commission or other tribunal from which an appeal can be taken directly to this court, the procedure shall be that provided for in appeals from the district court, except as otherwise provided by statute.

E. Cross-Appeal. The proper filing of an appeal shall vest in an appellee the right to a cross-appeal against any other party to the appeal. The cross-appeal need only be asserted in the appellee's brief as provided by Rule 9D(4).

F. Attorneys of Record and Pro Se Litigants.

(1) The attorneys of record and guardians ad litem of the respective parties in the court below shall be deemed the attorneys and guardians ad litem of the same parties in this court, until a withdrawal of appearance has been filed together with an affidavit that a copy of such withdrawal has been sent to counsel's client by certified mail to the client's last-known address and by regular mail to the adverse party or that party's attorney of record. Counsel in any criminal case pending in this court may withdraw only after obtaining permission of this court. The method for the withdrawal of court-appointed counsel is specified by Rule 3B.

(2) All attorneys of record and pro se litigants are required to keep the Clerk of the Supreme Court advised in writing of their current address during the pendency of an appeal in the Supreme Court or Court of Appeals for use in notification of all court orders. See Rule 10.

G. Costs and Security for Costs.

(1) Docket fees shall be paid in advance as required by Neb. Rev. Stat. § 33-103, except in the following categories of cases:

a. Docket fees are waived in cases brought under the Nebraska Workers' Compensation Act and the employment security law.

b. Where an application to proceed in forma pauperis and a timely affidavit of poverty has been filed pursuant to Neb. Rev. Stat. § 29-2306 or Neb. Rev. Stat. § 25-2301 et seq., advance payment of docket fees is not required.

c. Docket fees in habeas corpus proceedings and disciplinary actions against members of the Nebraska bar are not required in advance. Fees in these cases will be collected at the conclusion of the proceeding.

(2) All cases must comply with Neb. Rev. Stat. § 25-1914, unless specific statutory exceptions exist. A case will be dismissed for failure to comply with § 25-1914 if a motion is filed in accordance with Rule 6. Additional time for compliance with the statute may be requested by motion and a showing of good cause.

Rules 1A, 1B(1), 1B(4), 1B(5)c - 1B(5)g, 1C, 1E, 1F(2), 1G(1)b and 1G(2) amended May 28, 1992; Rule 1F(1) amended March 31, 1993; Rule 1A amended May 29, 1997; Rules 1A, 1B, 1B(4), and 1G(1)a and b amended October 14, 1999; Rule 1F(2) amended October 16, 2003; Rule 1B(1) amended September 13, 2006.

2. COURT OF APPEALS

A. Nebraska Supreme Court Rules to Apply. Unless otherwise specified, the Nebraska Supreme Court Rules of Practice and Procedure shall apply to the Nebraska Court of Appeals.

B. Petition to Bypass. Any party to a case appealed to the Court of Appeals may file with the Supreme Court a petition to transfer the appeal to the Supreme Court and to bypass review by the Court of Appeals. The petition to bypass shall be filed simultaneously with the initial brief of the party. Such petition shall set forth the basis for the petition, including one or more of the factors set out in Neb. Rev. Stat. § 24-1106(2).

(1) Filing and Service of Petition to Bypass. An original and seven copies of the petition to bypass and brief in support thereof, together not to exceed five pages in length, with proof of service, shall be filed with the Supreme Court Clerk. A copy of the petition to bypass and brief shall be served on the opposing party or attorney of record. Service and proof of service shall be in accordance with Neb. Rev. Stat. § 25-534.

(2) Objection. Any objection to the petition to bypass shall be due when the brief of the responding party is filed or, when no reply brief is filed, before the expiration of the time prescribed for such filing as provided by Rule 9A(3). Such objection and brief in support thereof shall not exceed five pages in length. An original and seven copies of the objection and brief, together with proof of service on the opposing party or attorney of record, shall be filed with the Supreme Court Clerk.

(3) Oral Argument. No oral argument is permitted on the petition to bypass except as may be ordered by the Supreme Court; in such event, oral argument shall be limited to 5 minutes per side.

(4) Submission. All petitions to bypass shall be submitted for decision to the Supreme Court on the filing of appellant's reply brief or the expiration of the time prescribed for such filing as provided by Rule 9A(3).

C. Removal of Case From Court of Appeals. At any time during the pendency of a case, upon recommendation of the Court of Appeals or by the Supreme Court's own motion, the Supreme Court may order removal of a case from the Court of Appeals and its transfer to the Supreme Court docket.

D. Briefs. An original and 10 copies of each brief to be filed in the Court of Appeals, together with proof of service, shall be filed in the office of the Supreme Court Clerk on or before the date the brief is due. In all other respects, Rule 9 shall apply to the preparation of briefs for the Court of Appeals.

E. Opinions.

(1) Release of Written Opinions. The Court of Appeals will prepare a written opinion in cases where the court believes explanation of its decision is required or that the case is of value as a precedent. Opinions shall be released as ordered by the court.

(2) Copies Mailed. A copy of each opinion shall be mailed to all attorneys and pro se parties whose names and addresses appear on briefs submitted in connection with the case.

(3) Official Version. Official opinions of the Court of Appeals approved for publication in a permanent bound volume shall be the final, edited version which appears in the bound volume of the Nebraska Appellate Reports. Official opinions of the Court of Appeals not designated for permanent publication in the bound volume shall be the version which is filed with the Clerk of the Supreme Court.

(4) Opinions of the Court of Appeals which the deciding panel has designated as "For Permanent Publication" may be cited in all courts and tribunals in the State of Nebraska. Other opinions and memorandum opinions of the Court of Appeals may be cited only when such case is related, by identity between the parties or the causes of action, to the case then before the court.

(5) Opinions of the Court of Appeals which the deciding panel has designated as "For Permanent Publication" shall be followed as precedent by the courts and tribunals inferior to the Court of Appeals until such opinion is modified or overruled by the Nebraska Supreme Court.

(6) The panel of the Court of Appeals deciding a case may designate its opinion as "For Permanent Publication" only when one or more of the criteria set in Neb. Rev. Stat. § 24-1104(2) is satisfied.

F. Petition for Further Review by Supreme Court.

(1) Time and Filing Fee. An original and seven copies of a petition for further review and memorandum brief in support must be filed within 30 days after the release of the opinion of the Court of Appeals or the entry of the order of the Court of Appeals finally disposing of the appeal, whichever occurs later. For purposes of this subsection, an order of the Court of Appeals finally disposing of an appeal includes an order on a motion for rehearing or a motion for attorney fees. As of July 1, 2005, pursuant to Neb. Rev. Stat. § 33-103.01, a docket fee of \$50 shall be paid to the Clerk of the Supreme Court at the time of the filing of the petition for further review. Such docket fee shall be required for each appellate case number in which further review is sought, regardless of consolidation of cases for opinion by the Court of Appeals, and by each party filing for further review. This docket fee shall be waived for an indigent person who has been granted leave to proceed in forma pauperis on appeal by the trial court.

(2) Form. The petition for further review and memorandum brief in support shall be typewritten on 8½- by 11-inch paper, shall be double-spaced, and shall use 12-point type. The petition and supporting briefs shall not exceed 10 pages.

(3) Contents. The petition for further review and supporting memorandum brief shall set forth a separate, concise statement of each error alleged to have been made by the Court of Appeals, all of which must be annotated to the record as required by Rule 9. Each assignment of error shall be separately numbered and paragraphed as required by Rule 9D(1)e. The memorandum brief must discuss the errors assigned.

(4) Response. Parties to the case not filing a petition for further review may respond to the petition within 10 days after the petition for further review and supporting brief are filed. The response and supporting brief shall not exceed 10 pages. If no response will be filed, parties may notify the Clerk of the Supreme Court in writing, and the petition will be submitted immediately.

(5) Filing and Service. Petitions for further review, accompanying briefs in support, and responses thereto shall be filed and served as provided in Rule 9B(6). An original and seven copies shall be filed in the office of the Supreme Court Clerk.

(6) Submission. Oral argument is not permitted on a petition for further review. All petitions for further review will be submitted 14 days after the petition for further review is filed.

(7) Mandate. No mandate will issue in any case during the time allowed for the filing of a petition for further review or pending the consideration thereof by the Supreme Court. If the petition is sustained, the mandate will not issue during the pendency of the appeal in the Supreme Court as provided for in Rule 14.

G. Scope of Review. Further review by the Supreme Court is not a matter of right, but of judicial discretion. If the Supreme Court grants review of a Court of Appeals decision, the Supreme Court will review only the errors assigned in the petition for further review and discussed in the supporting memorandum brief. The Supreme Court may limit the issues to one or more of those raised by the parties and may notice plain error at its discretion.

H. Briefs and Oral Argument on Further Review by Supreme Court. The Supreme Court may order that the parties file supplemental briefs, in accordance with Rule 9, and may order that oral argument be heard. Even without an order from the Supreme Court for briefs, each party may file additional briefs in compliance with Rule 9 when further review by the Supreme Court is ordered. An original and 16 copies of the petitioning party's brief so prepared, together with proof of service, shall be filed in the Supreme Court Clerk's office within 20 days after the order for further review is entered; all nonpetitioning parties' briefs must be served and filed within 20 days after petitioner has served and filed briefs. For purposes of oral argument on further review, unless otherwise ordered by the Supreme Court on motion or stipulation of the parties or upon the Supreme Court's own motion, the party filing the initial petition for further review shall be entitled to open and close the argument, regardless of whether cross-petitions are filed in the case. Where there are cross-petitions, the petition and cross-petition shall be argued together as one case.

Rules 2, 2A, and 2C - 2H amended May 28, 1992; Rule 2E(4) amended June 16, 1993; Rule 2G(1) amended June 15, 1994; Rule 2E(4) amended April 30, 1997; Rules 2E(5) and (6) adopted April 30, 1997; Rule 2F(4) amended May 29, 1997; Rule 2G adopted and Rule 2H amended March 24, 1999; Rule 2F(1) amended December 15, 1999; Rule 2F(3) amended November 15, 2001; Rule 2H amended January 24, 2002; Rule 2F(1) amended June 15, 2005; Rule 2F(1) amended January 19, 2006; Rule 2F(2) amended March 22, 2006.

3. COURT-APPOINTED COUNSEL IN CRIMINAL CASES.

A. Representation on Appeal. Counsel appointed in district court to represent a defendant in a criminal case other than a postconviction action shall, upon request by the defendant after judgment, file a notice of appeal and continue to represent the defendant unless permitted to withdraw by this court.

B. Motion to Withdraw. A motion of court-appointed counsel for permission to withdraw shall state the reason for the request, and shall be served upon opposing counsel by regular mail and on the defendant by certified mail to the defendant's last-known address. An original and one copy of the motion and proof of service shall be filed with the Supreme Court Clerk.

Rule 3B amended February 22, 2001.

4. TRANSCRIPT.

A. How Ordered; Contents.

(1) Upon filing the notice of appeal, the appellant shall file with the court from which the appeal is taken a praecipe directing the clerk to prepare a transcript, which shall contain:

- a. The pleadings upon which the case was tried, as designated by the appellant;
- b. The judgment, decree, or final order sought to be reversed, vacated, or modified, and the lower court's memorandum opinion, if any; and
- c. A copy of the supersedeas bond, if any, given in the district court, or, if none has been given, a recital of the fact that a bond for costs was given and approved in the district court, or a deposit made as required by Neb. Rev. Stat. § 25-1914.
- d. In cases where an application to proceed in forma pauperis has been filed, a copy of the order of the district court granting or denying such.

(2) If the appellant is of the opinion that other parts of the record are necessary for the proper presentation of the errors assigned in this court, he or she shall further direct the clerk to include in the transcript such additional parts of the record as he or she shall specify in the praecipe, including the instructions given by the trial court, if the appellant intends to assign error in the giving of any instruction, and any tendered instruction refused, if the appellant intends to assign error to such refusal. The appellant shall limit his or her request for such additional material to only those portions of the record which are material to the assignments of error.

(3) In filing a praecipe for transcript with the clerk of the district court, the party making such praecipe shall identify by name each specific document which the party desires to have included in the transcript pursuant to this rule. The clerk of the district court may not include, without specific written request, a copy of any document not required under this rule. The district court clerk shall, upon request, certify that the record does not contain a described document. The notice of appeal, praecipes for preparation of transcripts and bills of exceptions, and poverty affidavits shall not be included in the transcript, since they are previously certified and sent to this court.

B. Form.

(1) The transcript may be typed or photocopied. The image produced shall be permanent, black on a white background, and sharply and clearly legible. Each document in the transcript shall bear a clear and distinct stamp or writing showing the date the document was filed by the clerk of the court. Transcripts shall be submitted on paper measuring 8½ by 11 inches. The paper shall be of approximately 16-pound substance. The transcript shall be securely bound at the top center of each page with a fastener with prongs 2¾ inches apart on center. No pages in the transcript may be stapled. Each page shall be consecutively numbered, with the number at the bottom of the page. An index shall be supplied, referring to the initial page of each item contained in the transcript. The index, preceded by a caption of the case and the appellate court docket number, shall constitute the first page or pages of the transcript.

(2) Journal entries may be typed as a group and included at the end of the transcript. Each entry must show the date it was filed with the clerk of the court and the name of the judge making the entry.

C. Supplemental Transcript. After the original transcript is filed in the office of the Supreme Court Clerk, any party may, without leave of court, request a supplemental transcript containing matters omitted from the original transcript and necessary to the proper presentation of the case in this court. The request shall be in writing, and in the same form as required in Rule 4A of these rules. After filing, no change in the original or supplemental transcript shall be made, or papers added to or withdrawn from the transcript, without leave of court. All supplemental transcripts must be filed prior to the day the case is submitted to the court, unless leave of court is obtained in advance to file later. Supplemental transcripts shall be submitted in the same form as transcripts.

D. Cases Previously Before the Court. If a case has been appealed previously and a transcript filed in the appellate court in the earlier case, the transcript in the new appeal should contain only pleadings filed after the issuance of the mandate of this court in the prior case.

COMMENT

It is the intent of Rule 4 to reduce the bulk of transcripts filed with the court. The court specifically intends to eliminate requests for subpoenas, subpoenas, requests for summonses, summonses, interrogatories, appearances of counsel, notices, and other documents not relevant to the appeal. Opinions of the appellate courts appear in the Nebraska Reports and the Nebraska Appellate Reports and should never be included as part of a transcript.

Rules 4A(1)a - 4A(1)c amended May 28, 1992; Rule 4A(1)d adopted October 14, 1999.

5. BILL OF EXCEPTIONS, MAKING, PRESERVING, TRANSCRIBING, AND DELIVERY OF RECORD OF TRIAL OR OTHER PROCEEDING.

A. Making and Preserving Record.

(1) The official court reporter shall in all instances make a verbatim record of the evidence offered at trial or other evidentiary proceeding, including but not limited to objections to any evidence and rulings thereon, oral motions, and stipulations by the parties. This record may not be waived.

(2) Upon the request of the court or of any party, either through counsel or pro se, the official court reporter shall make a verbatim record of anything and everything said or done by anyone in the course of trial or any other proceeding, including, but not limited to, any pretrial matters; the voir dire examination; opening statements; arguments, including arguments on objections; any motion, comment, or statement made by the court in the presence and hearing of a panel of potential jurors or the trial jury; and any objection to the court's proposed instructions or to instructions tendered by any party, together with the court's rulings thereon, and any posttrial proceeding.

B. Transcribing and Delivery of Record; the Bill of Exceptions.

(1) How Ordered, Contents, and Per-Page Rate.

a. Appellant shall file a request to prepare a bill of exceptions in the office of the clerk of the district court at the same time the notice of appeal is filed. At the same time, appellant shall deliver a copy of the request to the court reporter.

b. The request shall specifically identify each portion of the evidence and exhibits offered at any hearing which the party appealing believes material to issues to be presented to the Supreme Court for review. The court reporter shall prepare only those portions specified in the request for preparation of the bill of exceptions. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the bill of exceptions must include all

evidence relevant to the finding or conclusion. The appellant shall serve a copy of the request upon the appellee.

c. If the appellee believes additional evidence should be included in the bill of exceptions, the appellee shall, within 10 days after service of the request for bill of exceptions filed by the appellant, file a supplemental request for preparation of bill of exceptions. The request shall be filed with the clerk of the district court, and a copy shall be delivered simultaneously to the court reporter by the appellee.

d. The bill of exceptions shall contain only matters of evidence or exhibits which are necessary for a determination of the issues on appeal.

e. Effective June 8, 2005, the per-page fee to which a court reporter is entitled, as prescribed by the Supreme Court pursuant to Neb. Rev. Stat. § 25-1140.09 and set forth in Rule 18 of the Rules Relating to Official Court Reporters, shall be \$3.25 per page for an original copy of a bill of exceptions and 50 cents per page for each additional copy, with numbering to begin with the cover page. Except in those cases where payment is to be made by a governmental agency, the State of Nebraska, or any political or governmental subdivision thereof, the court reporter shall advise appellant of the approximate cost of the bill of exceptions immediately after receipt of the request for preparation of the bill of exceptions. Appellant shall deposit the estimated cost with the reporter within 14 days after receipt of the estimate. The court reporter shall retain the deposit in a separate trust account until the bill of exceptions is filed with the clerk of the district court. When the bill of exceptions is filed by the reporter, the reporter shall immediately refund any excess payment to the appellant. If additional compensation is due the reporter, appellant shall pay the additional amount within 10 days after receipt of a statement for the additional amount. A similar procedure shall be followed if an appellee requests a supplemental bill of exceptions, with the appellee being responsible for payments.

f. The party requesting the preparation of the bill of exceptions may, at any time before the bill of exceptions is completed by the court reporter, file with the clerk of the district court and serve upon the court reporter a statement advising the court reporter that settlement has been reached. Upon receipt of such statement, the court reporter shall cease any further work upon the bill of exceptions. The court reporter shall be entitled to payment by the party ordering such bill of exceptions for the work performed up to the time that such notice was served upon the court reporter, and rules with regard to payment of the fees to the court reporter for the bill of exceptions, as otherwise provided herein, shall apply.

(2) Delivery of Copy of Request. The clerk of the district court shall deliver a copy of each request filed, with attachments and endorsements thereon, to the Clerk of the Supreme Court, together with the notice of appeal.

COMMENT

It is the responsibility of the attorney or pro se party to deliver a copy of the request to the court reporter.

(3) Preparation and Delivery by Reporter.

a. The bill of exceptions shall be filed with the clerk of the district court as soon as possible. The bill of exceptions must be filed within the following time limits unless an extension of time is approved by the Supreme Court in accordance with these rules:

- Civil cases or criminal trials 7 weeks
- Guilty or nolo contendere pleas 3 weeks

Preparation of the bill of exceptions shall commence from the date the notice of appeal is filed with the clerk of the district court. The clerk shall serve a copy of the notice of appeal on the reporter forthwith.

b. In each case appealed to the Supreme Court, the reporter shall prepare an original of the bill of exceptions; the original, together with all documentary and other evidence, shall be filed with the clerk of the district court. The reporter may retain the bill of exceptions until the deposit is made in compliance with Rule 5B(1)e.

(i) The reporter shall prepare one or more write-protected 3½-inch computer disks, DVD's, or CD's containing the bill of exceptions, exclusive of exhibits, with line and page numbers corresponding to those of the original bill of exceptions. Such disks, DVD's, or CD's shall be formatted in Microsoft Word, or, if such formatting cannot be accomplished, in ASCII text (standard) or (stripped). An adhesive label shall be affixed to each computer disk legibly identifying the case caption, docket and page or case numbers, disk number (1 of 2, etc.), the format utilized, and the name of the reporter. The first line of the label shall be left blank. DVD's and CD's shall be marked in an appropriate manner with the same information as that required above for disks. The reporter shall mail such disks, DVD's, or CD's and a photocopy of the cover page of Volume 1 of the bill of exceptions to the Clerk of the Supreme Court on the date when the bill of exceptions is filed in the district court. The bill of exceptions text may also be transmitted to the Clerk of the Supreme Court via e-mail attachment sent to NSCBOE@nsc.state.ne.us and shall meet the formatting guidelines set out above. The subject line of such e-mail transmission shall include the case name, trial court number, and Supreme Court or Court of Appeals case number, if available. Regardless of the transmission option utilized, each transmission shall be limited to a single bill of exceptions. Such disks, DVD's, CD's, or e-mail attachments shall be for the exclusive use of the Supreme Court and authorized court personnel.

(ii) Any reporter who lacks the technological capability to comply with paragraph (3)b(i) of this rule shall include in the bill of exceptions a separate certificate so stating.

c. If the reporter is unable to prepare and certify a bill of exceptions, or if a bill of exceptions cannot be prepared and certified under provisions contained elsewhere in these rules, the bill of exceptions shall be prepared under the direction and supervision of the trial judge and shall be certified by the judge and delivered to the clerk of the district court.

d. Upon receipt of the bill of exceptions, the clerk of the district court shall forthwith file it and notify all parties or their attorneys of record and the Clerk of the Supreme Court of the date of such filing. When filed with the clerk of the district court, such bill of exceptions becomes the official bill of exceptions in the case and shall not be altered or marked in any fashion or be disassembled for any purpose. The clerk of the district court shall file the bill of exceptions in the office of the Clerk of the Supreme Court within 5 days after a case has been placed on the Supreme Court's proposed call for argument, or at such earlier time as the Clerk of the Supreme Court may request.

(4) Extension of Time for Preparation of Bill of Exceptions.

a. Where a bill of exceptions has been ordered according to law and these rules by the timely filing of a request, and the reporter is unable to prepare and file the bill of exceptions with the clerk of the district court within the times fixed by Rule 5B(3), the Supreme Court may grant additional time for preparation of the bill of exceptions.

b. A request for additional time for preparation of the bill of exceptions may be made by any party to the action. The request shall be made either by motion, which must be submitted to the Supreme Court as provided in Rule 6, or by the stipulation of all parties to the action. The motion or stipulation must be accompanied by the original copy of the affidavit of the court reporter setting forth the following information:

(i) the work performed in court since the receipt of the request on which extension is being requested;

(ii) the number of requests on hand on the date of receipt of the request on which extension is being requested;

(iii) the estimated total pages comprising the bill of exceptions, together with the number of pages completed as of the date the extension is requested;

(iv) the amount of time spent on clerical or stenographic duties for the appointing judge;

(v) the hours and dates spent in the performance of work for other than the appointing judge;

(vi) any illnesses or family emergencies contributing to the need for the requested extension;

(vii) any vacation time used since the receipt of the request on which extension is being requested; and

(viii) the method of preparing the bill of exceptions; e.g., prepared by the reporter, note-reader used, or dictated by the reporter and prepared by a typist.

c. A request for extension must be made not later than 7 days prior to the expiration of the time originally prescribed, or not later than 7 days prior to the expiration of an extension previously granted. Each such request shall bear the approval of the appointing judge. A first extension will not be routinely granted.

d. Except for exceptional cause, no more than one 2-week extension of the time originally prescribed will be granted.

(5) Amendments to the Bill of Exceptions. The parties in the case may amend the bill of exceptions by written agreement to be attached to the bill of exceptions at any time prior to the time the case is submitted to the Supreme Court. Proposed amendments not agreed to by all the parties to the case shall be heard and decided by the district court after such notice as the court shall direct. The order of the district court thereon shall be attached to the bill of exceptions prior to the time the case is submitted to the Supreme Court. Hearings with respect to proposed amendments to a bill of exceptions may be held at chambers anywhere in the state. If the judge shall have ceased to hold office, or shall be prevented by disability from holding the hearing, or shall be absent from the state, such proposed amendments shall be heard by the successor judge, or by another district judge in the district, or by a district judge in an adjoining judicial district.

(6) Form of the Bill of Exceptions.

a. The bill of exceptions shall have an index, which shall be the first item in the first volume. The index shall show:

- (i) each witness in the order called, and for whom called, and the initial page of the direct, cross, redirect, and recross examination,
 - (ii) motions to dismiss or to instruct a verdict and any other motions of major import, and stipulations, together with the rulings of the court thereon, and the page or pages where made and ruled on, and
 - (iii) all exhibits, with a description, and the initial page where marked, offered, ruled on, and found.
- b. The certificate of the court reporter shall immediately follow the index in the first volume of the bill of exceptions.
- c. The paper used in the bill of exceptions shall be 8½ by 11 inches and of suitable weight and quality as to make the printing thereon easily legible. If computer-generated, the bill of exceptions shall be in not smaller than 12-point Courier, Arial or Helvetica, or Times or Times New Roman font, double spaced, with not less than 12 points of leading. If typewritten, the bill of exceptions shall be double spaced, using nothing smaller than 12-point type. Each volume shall be bound on the lefthand side with either a wire or a plastic spiral. The pages, no matter how many volumes, shall be numbered consecutively, and no volume shall contain over 250 pages. If the record is of such size that it requires more than one volume, then all volumes shall be as nearly of equal size as possible. Each page of the bill of exceptions shall have line numbers in the left-hand margin from 1 to 25, inclusive, and the lines of typing shall be placed to correspond therewith. No margin line shall exceed ½ inch from the righthand edge of the page. The full name of each witness and whether the examination is direct, cross, or further examination shall be stated at the top of each page of the witness' testimony. Each volume must be an original copy and must have a cover and back; the cover shall be of flexible and the back of rigid material. Exhibits are to be marked in numerical order, irrespective of the party producing them, and shall show the date on which they were marked. The sequential numbering of exhibits shall begin with the first hearing held in the case and continue until final disposition. The same number shall not be given to more than one exhibit in any case. If the pages of a multipage exhibit are not otherwise numbered, the reporter shall number the pages in sequence and shall in all instances mark such an exhibit so as to indicate the number of pages it contains. Ordinarily, exhibits or papers contained in the bill of exceptions should be placed in the record immediately following where they are ruled on by the court. If exhibits are frequently referred to in the testimony, they should be inserted in the record in such a manner as to be easily removed; for instance, by placing them in an attached envelope. If the exhibits are of such character or so numerous that to insert them in any volume containing testimony would make the volume cumbersome and difficult to handle while reading, then such exhibits should be contained in a separate volume. If exhibits are of such character that they cannot be inserted in a bound volume, then they should separately accompany the record. Whether in separate volumes or separately accompanying the record, all exhibits should be properly identified as part of the record in the reporter's certificate. Except for documents, which term includes photographs and taped video and sound recordings, the bill of exceptions shall contain no item of physical evidence. The term "physical evidence" means any nondocumentary items as defined above and includes, but is not limited to, items such as weapons, contraband, wearing apparel, models, money, and body fluids. The party offering any nondocumentary item of physical evidence shall substitute therefor a photograph, not larger than 8½ by 11½ inches, which fairly and accurately depicts the item. If the party offering an item of nondocumentary evidence fails to provide a suitable substitute photograph, the court reporter shall cause one to be made at the offering party's expense. The court reporter shall in all instances preserve the nondocumentary item of physical evidence and shall make it available to the Supreme Court upon request. The bill of exceptions shall be visually neat. No typing errors or corrections shall be unduly

noticeable. All corrections and additions shall be on the same line as the rest of the typed line; no insertion is permitted in the space between two lines of type. Corrections shall not be written in.

(7) Video and Audio Exhibits and Depositions in the Nebraska Supreme Court.

a. Video exhibits and video depositions may be submitted to the court on either videotape or DVD. The court shall maintain video equipment capable of playback of VHS videotape and DVD-Video.

(i) The standard videotape for the Nebraska Supreme Court shall be VHS. If any other videotape, e.g., Beta, is presented to the court as an exhibit or deposition which is not able to be played back on VHS equipment, the party submitting the videotape shall provide at his or her own expense the appropriate equipment for playback.

(ii) DVD's shall be created in a manner which will allow playback on standard DVD-Video players and the format used to create the DVD, e.g., .mpeg, .avi, .mov, etc., must be stated on the DVD. If a DVD is presented to the court as an exhibit or deposition which is not able to be played back on the court's DVD-Video equipment, the party submitting the DVD shall provide at his or her own expense the appropriate equipment for playback.

b. Audio exhibits and depositions may be submitted to the court on a cassette tape or an Audio CD or CD-R in either .mp3 or .wav format. The court shall maintain equipment capable of audio playback of cassette tapes and Audio CD's and CD-R's in .mp3 or .wav format. If any other type of audio recording is presented to the court which cannot be played back on the equipment maintained by the court, the party submitting the audio recording shall provide at his or her own expense the appropriate equipment for playback.

(8) Delivery of the Bill of Exceptions to the Supreme Court; Certain Evidence Excluded. Upon request by counsel or the Clerk of the Supreme Court, the clerk of the district court shall send bound volumes and exhibits of the bill of exceptions to the Clerk of the Supreme Court. The clerk of the district court shall not be required to send any exhibits which may not be sent by United Parcel Service or the U.S. mail. It shall be the duty of the party wishing such exhibit, or an exhibit which is large and cumbersome, to be brought to the Supreme Court to arrange and pay for transporting the exhibit to the Supreme Court Clerk and to arrange and pay for return thereof to the clerk of the district court; provided, however, that if a request for such an exhibit is made by the Supreme Court, the appellant shall arrange and pay for transporting the exhibit to the Supreme Court Clerk and to arrange and pay for return thereof to the clerk of the district court. Under no circumstances shall the clerk of the district court send to the Clerk of the Supreme Court contraband, drugs, firearms, or other weapons, unless specifically requested to do so by the Supreme Court.

(9) Applicability to Appeals From Tribunals Other Than District Court. These rules shall apply to all appeals and error proceedings where specific provision is not made by law for a bill of exceptions. Any reporter approved by the court, board, or tribunal from which the appeal or error proceedings is taken may attend and record the trial or proceedings and prepare a bill of exceptions, certified to be true and complete by the reporter, and file the same with the chief clerical officer of such court, board, or tribunal. Proposed amendments not agreed to shall be heard and determined by such court, board, or tribunal as provided in Rule 5B(5). The completed bill of exceptions shall be filed in the reviewing court within the time provided by law and, if no time be fixed, before the case is submitted to the reviewing court.

(10) Bills of Exceptions From Other Tribunals Filed in District Court. The clerk of the district court shall promptly forward any bill of exceptions from another tribunal filed in the district court to the court reporter serving the district court judge to whom the case is assigned. Said reporter shall review the bill of

exceptions for the purpose of determining whether it has been prepared in compliance with Rule 5B(6). If in the opinion of the reporter the bill of exceptions has not been so prepared, the reporter shall advise the judge to whom the case is assigned for such action as the judge deems appropriate.

(11) Criminal Cases. In all criminal cases where a defendant shall feel himself or herself aggrieved by any decision of the district court, he or she may order a bill of exceptions, and the ordering, preparing, signing, filing, correcting, and amending thereof shall be governed by the rules established in such matters in civil cases. In criminal cases where the sentence is capital punishment, the clerk of the district court in which the conviction was had shall notify the court reporter, who shall prepare the bill of exceptions as expeditiously as possible, but in no event to exceed the time limitations prescribed in Rule 5B(3)a, unless an extension for such later filing is granted by the Supreme Court.

(12) Statement of Cost. The certificate of the reporter shall include a statement of the cost of the bill of exceptions and a showing that such amount is one permitted to be charged by Rule 5B(1)e and Neb. Ct. R. of Official Ct. Rptrs. 18.

(13) Case Stated. The parties may by agreement state the case to be presented to this court on appeal. The case stated shall briefly recite the facts out of which the questions of law arise, and also any substantial conflict in the evidence as to any fact involved. It shall separately identify and quote the rulings of the court complained of, with so much of the record as will fully show the law question involved in such ruling and the exceptions and contentions of the parties thereon. The case stated shall constitute the bill of exceptions. It must be allowed and certified by the judge who tried the case, filed with the clerk of the district court, made a part of the record of the district court as in other cases, and included therein when the transcript of the record is filed in this court.

Rules 5C(1) and 5K amended May 28, 1992; Rule 5F(3) amended November 25, 1992; Rule 5A(2) amended February 18, 1993; Rule 5F(3) amended May 26, 1993; Rules 5J, K, L, and M amended September 14, 1994; Rule 5 amended in its entirety February 1, 1995; Rule 5B(6)c amended September 25, 1996; Rule 5B(3)b amended September 20, 2000; Rule 5B(3)(b)(i) amended June 5, 2002; Rule 5B(3)(d) amended Dec. 22, 2004; Rule 5B(1)e and Rule 5(12) amended June 22, 2005; Rule 5B(3)b and 5B(7) amended October 26, 2005; Rule 5B(3)b(i) amended January 19, 2006; Rule 5B(3)b(i) amended February 23, 2006; Rule 5B(6)c amended March 22, 2006.

6. MOTIONS GENERALLY.

A. Motions Not Covered. Motions for summary disposition and motions for rehearing are covered in Rules 7 and 13 respectively, and are not covered by this rule.

B. Form. All motions shall be typewritten on 8½- by 11-inch paper. Type shall be 12-point and shall be double- or 1½-spaced.

C. Content. A motion shall set forth the relief requested and must:

(1) Be agreed to by opposing counsel in the form of a stipulation; or

(2) Be submitted to the court for decision 14 days after it is filed with the Supreme Court Clerk or after service upon opposing counsel, whichever is later. Any response to the motion must be in writing and filed prior to the submission date.

D. Filing and Service of Motions. An original and one copy of the motion and proof of service shall be filed with the Supreme Court Clerk and a copy shall be served upon the opposing party or the attorney of record. Service and proof of service may be made as provided in Neb. Rev. Stat. § 25-534.

E. Oral Argument. No oral argument is permitted on any motion except as may be ordered by the Supreme Court; in such event, oral argument shall be limited to 5 minutes per side.

F. Motions for Extension of Brief Date.

(1) No extension of brief date will be allowed in any advanced case (see Rule 11B(2)) except upon a showing of exceptional cause.

(2) For cases which are not advanced, the procedures contained in Rule 6C and D shall be followed. Any request for extension of brief date beyond the first 30-day extension must be supported by a showing of good cause. Neither the stipulation of the parties nor the press of other business constitutes good cause.

See appendices 1 and 2 for form.

G. Waiver Acceptable. Opposing counsel may waive notice, hearing, and objections to a motion.

H. Briefs. Complex motions may be accompanied by a typewritten brief. The brief may be in memorandum form. If a brief is filed in support of a motion, an original and seven copies of the motions and the brief shall be filed together.

Rule 6D amended May 28, 1992; Rule 6D amended May 29, 1997; Rule 6B amended March 22, 2006.

7. SUMMARY DISPOSITIONS.

A. Summary Disposition on the Supreme Court's Own Motion.

COMMENT

Parties may not request disposition under this section of this rule.

(1) When the court determines that any one or more of the following circumstances exist and are dispositive of the case submitted to the court for decision:

- a. the judgment is based on findings of fact which are not clearly erroneous;
- b. the evidence in support of a jury verdict is not insufficient;
- c. the judgment or order is supported by substantial evidence in the record as a whole; or
- d. no error of law appears;

and the court also determines that a detailed opinion would have no precedential value, the judgment or order will be affirmed in the following manner: "AFFIRMED. See rule 7A(1)."

(2) When the court determines it lacks jurisdiction the appeal will be dismissed in the following manner: "APPEAL DISMISSED. See rule 7A(2)."

(3) When the court determines that grounds may exist for summary reversal of the order or judgment appealed from, such as a prior controlling appellate decision which is dispositive of the appeal or a clear error of law exists, the court may summarily reverse or reverse and remand. Such disposition may occur only after an order to show cause has issued, citing the appellate decision or law deemed controlling, and the parties have been provided an adequate opportunity to respond.

B. Motions for Summary Dismissal or Affirmance.

(1) A motion to dismiss for lack of jurisdiction may be filed at any time after an appeal has been docketed. Such a motion shall document the claimed lack of jurisdiction by citations to the dispositive portions of the record and to the controlling statutory and case law.

(2) A motion to affirm on the ground that the questions presented for review are so unsubstantial as not to require argument may be filed after the appellant's brief has been filed or the time for filing has expired. Such a motion shall document the claimed lack of substance of the questions presented by citations to the dispositive portions of the record and to the controlling statutory and case law.

(3) Where appropriate, a motion to affirm may be joined, in the alternative, with a motion to dismiss.

(4) The appellant may file written objections opposing the motion within 10 days from the date of service of the motion.

(5) Upon the filing of objections or the expiration of time allowed therefor, or express waiver of the right to file, a motion for summary disposition shall be considered submitted.

(6) Motions for summary dismissal or affirmance must be typewritten on 8½- by 11-inch paper.

(7) The motion and proof of service shall be filed with the Supreme Court Clerk and a copy shall be served upon all other parties or the attorneys of record. Service and proof of service may be made as provided in Neb. Rev. Stat. § 25-534. An original and three copies of any motion, objections, or supporting briefs shall be filed.

(8) The time for filing briefs under Rule 9 is not extended by the filing of a motion for summary dismissal or affirmance.

See appendix 3 for form.

C. Stipulation of Parties for Summary Reversal.

(1) At any time after an appeal has been docketed the parties may file a stipulation that grounds exist for summary reversal of the order or judgment appealed from, such as a prior controlling appellate decision which is dispositive of the appeal or the existence of a clear error of law. The stipulation must cite the appellate decision or law deemed to be controlling and must be executed by all the parties to the appeal.

(2) Stipulations for summary reversal must be submitted on 8½- by 11-inch paper and otherwise conform to the requirements set forth in subsection B(6), (7), and (8) above.

D. Suggestion of Mootness in Prison Disciplinary and Postconviction Relief Appeals.

(1) It is the duty of all parties to an appeal of a prison disciplinary procedure governed by Neb. Rev. Stat. § 83-4,109 et seq., at all times during the course of an appeal, to inform the appellate court that the defendant is no longer in custody under sentence and that, therefore, the issue of the prison disciplinary procedure is moot.

It is the duty of all parties to an appeal of a postconviction relief action governed by Neb. Rev. Stat. § 29-3001 et seq., at all times during the course of an appeal, to inform the appellate court that the defendant is no longer in custody under sentence, which could render the issue of the postconviction relief action moot.

(2) Form.

a. If any party determines that the issue of the prison disciplinary procedure or postconviction relief action has been rendered moot, the party shall so advise the court by filing a "suggestion of mootness" in the form of a motion to dismiss on the ground that the question presented is moot.

b. The opposing party or parties may file written objections opposing the motion within 10 days from the date of service of the motion.

c. Upon the filing of objections or the expiration of time allowed therefor, or express waiver of the right to file, a motion for summary disposition on the grounds of mootness shall be considered submitted.

d. Motions for summary disposition on the grounds of mootness must be submitted on 8½-by 11-inch paper and otherwise conform to filing requirements.

e. The motion and proof of service shall be filed with the Supreme Court Clerk and a copy shall be served upon all other parties or the attorneys of record. Service and proof of service may be made as provided in Neb. Rev. Stat. § 25-534. An original and seven copies of any motion, objections, or supporting briefs shall be filed.

f. The time for filing briefs under Rule 9 is not extended by the filing of a motion for summary disposition on the grounds of mootness.

Rule 7B(1) amended August 25, 1993; Rule 7C adopted January 23, 1997; Rule 7B(7) amended May 29, 1997; Rule 7A(3) adopted September 19, 2001; Rule 7C amended to Rule 7D September 19, 2001; Rule 7C adopted September 19, 2001.

8. DISMISSAL OF APPEAL.

A. Parties. An appeal may be dismissed by the appellant or appellants.

B. Form. The motion to dismiss must be in such typewritten form as provided in Rule 6B.

C. Service. A motion to dismiss must be served upon the attorney or attorneys of record for all other parties, and must contain proof of such service.

See appendix 3 for form.

D. Time for Response of Appellees. A motion to dismiss filed by appellant will be submitted to the court 14 days after it is filed with the Supreme Court Clerk or after service upon opposing counsel, whichever is later. Appellee's response to the motion must be made within 14 days. Any party having a right of cross-appeal at the time the motion to dismiss is filed may, within the 14-day period provided in this rule, file a notice of intention to cross-appeal. Upon the filing of such notice, the court shall deny the motion to dismiss and shall fix a brief day for the cross-appellant. The cause shall then proceed as if the appeal had originally been perfected by the appellee who has cross-appealed.

E. Dismissal by Agreement. All parties may agree to the dismissal of the appeal. In that event, appellees may waive objection to the motion to dismiss, or a stipulation may be filed instead of a motion.

9. BRIEFS.

A. Time for Filing. The briefs listed below must be filed within the times stated in the rules. Briefs in support of motions are described in Rules 6, 7, and 13. Requests for additional time to file briefs must be made in accordance with the provisions of Rule 6. **NO EXTENSIONS OF TIME WILL BE ALLOWED IN ADVANCED CASES EXCEPT UPON A SHOWING OF EXCEPTIONAL CAUSE.**

(1) Appellant's briefs must be served and filed as follows:

a. No request for preparation of bill of exceptions filed: 2 months from the date the appeal is filed in the Supreme Court.

b. Request for preparation of bill of exceptions filed: 1 month after the date the bill of exceptions is due to be filed.

(2) Appellee's brief must be served and filed within 1 month after appellant has served and filed briefs. If service of appellant's brief is by mail, 3 days are added to allow for delivery time. (See Neb. Rev. Stat. § 25-534.)

(3) Appellant's reply brief must be served and filed within 14 days after appellee has served and filed briefs; 3 days are added if service of appellee's brief is by mail.

(4) Briefs of amicus curiae may not be filed without leave of court. (See Rule 6.) Leave to file amicus briefs shall not be considered within 20 days of oral argument.

(5) A motion for rehearing and brief in support must be filed in the office of the Supreme Court Clerk within 10 days after the release of the opinion of the court or the entry of the order of the court disposing of the appeal. Any response to the motion for rehearing must be filed in the office of the Supreme Court Clerk within 10 days after the motion for rehearing and brief in support is filed. An original and 10 copies of said motion for rehearing and brief in support or response to the motion for rehearing are required to be filed in Court of Appeals cases, and an original and 16 copies are required in Supreme Court cases. See Rule 13 for the form and content of a motion for rehearing.

(6) If rehearing is granted in a case, the parties may file additional briefs at least 1 week prior to reargument or other submission to the court. See Rule 11.

(7) Briefs in advanced cases are due as provided by these rules or as ordered by the court.

B. Form.

(1) Printed briefs shall be produced on unglazed white book paper on pages 6½ inches wide and 9½ inches long, trimmed size. The printed matter shall be black in color, 4 inches wide and 7 inches long. The type used may be 11 or 12 point with lines leaded 2 points, except in quotations which may be leaded 1 point. Type may be underscored, *italicized*, or **boldfaced** for emphasis. The use of footnotes is not permitted. The brief shall have a cover, which may be of heavier stock than the rest of the brief.

(2) Computer-generated or typewritten briefs may be filed in any case on unglazed, white, 8½- by 11-inch paper of at least 16 pound weight and shall be securely bound by a single staple in the upper left-hand corner only. The print on such briefs shall be black in color, shall be on only one side of each sheet, and may be mechanically reproduced on uncoated white paper by any method which provides a clear and distinct image of the type. Type may be underscored, *italicized*, or **boldfaced** for emphasis. Quoted material of 50 words or

more shall be indented five spaces from the left margin. A page shall contain not more than 25 lines, and margins shall be at least 1 inch at the sides, top, and bottom. The use of programs which condense the space between letters or words is not permitted. The use of footnotes is not permitted. Brief covers shall not be of greater weight than the paper within the brief and shall have a dull finish, allowing the ink to penetrate.

a. Computer-generated briefs shall be in not less than 12-point Courier, Arial or Helvetica, or Times or Times New Roman font, double spaced, with not less than 12 points of leading.

b. Typewritten briefs shall be in nothing smaller than 12-point type and double spaced.

(3) The cover shall show the Supreme Court number, the case caption listing the plaintiff first (regardless of who is appellant), the county from which the case was brought, the name of the trial judge, the name, address, city, state, zip code, telephone number, e-mail address, and Nebraska attorney identification number of the attorney filing the brief (the name of the law firm, if any, may also appear), and the name of the party for whom the brief is filed. If a party or parties represent themselves, it shall contain the above information except for the identification number. The cover of the brief shall serve as the title page, and no additional title page may be contained within the brief.

(4) The color of the brief covers shall be:

a. Appellant, or plaintiff in an original action,--gray (same for reply brief);

b. Appellee, or defendant in an original action,--tan; and

c. Amicus--white.

(5) Briefs may not exceed the following page lengths: original submission (combined total of appellant's brief, reply brief, and answer brief to cross-appeal, or combined total of appellee's brief, brief on cross-appeal, and reply brief to answer brief on cross-appeal), 50 pages; motions for rehearing and amicus curiae, 15 pages. These page limitations are exclusive of the cover; the table of contents, the table of cases, statutes, and authorities; and the certificate of mailing, but inclusive of all other pages and materials, including appendixes, indices, exhibits, and other documents of any nature, character, kind, or description whatsoever.

(6) Service of two copies of the brief shall be made either on the opposing party or the attorney of record for the party and upon all other parties participating in the appeal. Service may be made either by personal service or by regular, certified, or registered mail. Proof of service may be shown by the affidavit of the person making service or by the receipt of the party or attorney served.

(7) An original and 16 copies of Supreme Court briefs and an original and 10 copies of Court of Appeals briefs, together with proof of service, shall be filed in the office of the Supreme Court Clerk on or before the date the brief is due.

C. General Rules for Preparation of Briefs. In the preparation of the brief, the following general rules shall be observed:

(1) References to the transcript shall be made by setting forth in parentheses the capital letter "T" followed by the page of the transcript, as, for example, (T26). In original actions, references shall be made to the pleading and page thereof.

(2) References to questions, answers, objections, motions, rulings, or any other matters found in the bill of exceptions shall be made by setting forth in parentheses the numbered page and line in the bill of

exceptions where found, as, for example, (156:12). The number preceding the colon should represent the page of the bill of exceptions where found, and the number following the colon, the line.

(3) References to exhibits in the bill of exceptions shall be made by setting forth in parentheses the capital letter E, followed by the number of the exhibit, followed by a comma and the page of the exhibit on which the material to which reference is made appears, followed by a colon and the page of the bill of exceptions where the exhibit was offered and received or refused, followed by a comma and the page where the exhibit is found, as, for example, (E5,3:92, 95). References to documents not in the bill of exceptions but nonetheless subject to review by the Supreme Court, such as a presentence investigation report, shall identify the document, followed by a comma and the page on which the material to which reference is made appears, as, for example, (Presentence Investigation Report, p. 75).

(4) Every reference to a reported case shall set forth the title thereof, the volume and page where found, the tribunal deciding the case, and the year decided. If the cited opinion is long, it shall also refer to the page where the pertinent portion of the opinion is found. Nebraska cases shall be cited by the Nebraska Reports and/or Nebraska Appellate Reports, but may include citation to such other reports as may contain such cases.

(5) If a current statute is relied upon, it must be cited from the last published revision or compilation of the statutes, or supplement thereto, if contained therein; if not contained therein, to the session laws wherein contained, or the legislative bill as enacted.

(6) Citations to textbooks, encyclopedias, and other works shall give the title, edition, year of publication, volume number, section, and page where found.

D. Content of Briefs.

(1) The brief of appellant, or plaintiff in an original action, shall contain the following sections, under appropriate headings, and in the order indicated:

a. The title page, which is the cover;

b. A table of contents with page references, and an alphabetically arranged table of cases, statutes, and other authorities cited, with references to the pages of the brief where cited;

c. A statement of the basis of jurisdiction of the appellate court. The jurisdictional statement must identify the statute, court rule, or case law believed to confer jurisdiction on the Supreme Court or Court of Appeals, state relevant facts establishing why the judgment or order sought to be reviewed is an appealable order, and further must include the following information:

(i) the date of entry of the judgment or order sought to be reviewed;

(ii) the date of filing of any motion claimed to toll the time within which to appeal, the disposition of such motion, and the date of entry of the order disposing of it;

(iii) the date of filing of the notice of appeal, and the date of depositing of the docket fee or date of the granting of the order to proceed in forma pauperis, and;

(iv) if the order sought to be reviewed adjudicates fewer than all the claims, or the rights and liabilities of fewer than all the parties, the jurisdictional statement must recite the language of the lower court's order providing the basis for such interlocutory appeal or otherwise identify the statute, court rule, or case law authorizing such interlocutory appeal.

d. A statement of the case, which, in original actions, shall state the issues before the court. Except in original actions, the statement of the case shall contain the following, in the order indicated: (1) The kind of action or nature of the case; (2) the issues actually tried in the court below; (3) how the issues were decided and what judgment or decree was entered by the trial court; and (4) the scope of the Supreme Court's review;

e. A separate, concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error. Each assignment of error shall be separately numbered and paragraphed, bearing in mind that consideration of the case will be limited to errors assigned and discussed. The court may, at its option, notice a plain error not assigned;

f. Propositions of law shall be contained in separate, numbered paragraphs, and shall state concisely and without argument or elaboration the legal propositions urged as controlling. Only propositions discussed in the argument shall be stated. Each proposition of law shall be followed by a list of supporting authorities. Preference in citation shall be given to those authorities deemed most important. Authorities cited under any proposition must be quoted or otherwise discussed in the argument;

g. The statement of facts shall be made in narrative form, and shall consist of so much of the substance of the record as is necessary to present the case. Each and every recitation of fact, whether in the statement of facts or elsewhere in the brief, shall be annotated to the record in the manner set forth in part C of this rule; and

h. The argument shall present each question separately, and shall present each proposition of law as best sets forth the contentions of the party. Authorities relied upon shall be quoted or otherwise discussed. A party may make such further statements of fact or quotations from the record as deemed necessary to properly present the question, supporting such facts by appropriate references to the record.

(2) The brief of appellee, or defendant in an original action, shall contain the following matters, in the order indicated:

a. Table of contents and table of cases cited;

b. A statement of the basis of jurisdiction of the appellate court, if appellant's statement is not accepted as correct;

c. Statement of the case, if appellant's statement thereof is not accepted as correct;

d. Propositions of law;

e. Statement of facts, if appellant's statement is not accepted as correct or is amplified. Each and every recitation of fact shall be annotated to the record in the manner set forth in part C of this rule, no matter where in appellee's brief such recitation is made; and

f. Argument.

(3) If a party wishes to avail himself or herself of the provisions of the statute with reference to remittitur, a special assignment of error may be made in the brief of appellee, or a cross-appeal may be taken.

(4) Where the brief of appellee presents a cross-appeal, it shall be noted on the cover of the brief and it shall be set forth in a separate division of the brief. This division shall be headed "Brief on Cross-Appeal" and shall be prepared in the same manner and under the same rules as the brief of appellant.

(5) The reply brief shall be prepared in the same manner as the brief of appellee. The answer of appellant to any cross-appeal shall be set forth in a separate division of the reply brief and shall be headed "Answer to Brief on Cross-Appeal," and shall be noted on the cover of the brief.

(6) All rules for motions for rehearing may be found in Rule 13.

E. Cases Involving Constitutional Questions. A party presenting a case involving the federal or state constitutionality of a statute must file and serve a separate written notice thereof with the Supreme Court Clerk at the time of filing such party's brief. If the Attorney General is not already a party to an action where the constitutionality of the statute is in issue, a copy of the brief assigning unconstitutionality must be served on the Attorney General within 5 days of the filing of the brief with the Supreme Court Clerk; proof of such service shall be filed with the Supreme Court Clerk.

F. Any person who claims the right under the law or a uniform course of practice to an attorney fee in a civil case appealed to the Supreme Court or the Court of Appeals must file a motion for the allowance of such a fee supported by an affidavit which justifies the amount of the fee sought for services in the appellate court. Such a motion must be filed no later than 10 days after the release of the opinion of the court or the entry of the order of the court disposing of the appeal, unless otherwise provided by statute. Any person filing a motion for attorney fees beyond the 10-day time limit must include within the motion a citation to the statutory authority permitting a filing beyond the time limit prescribed by this Rule. For purposes of this subsection an order of the court disposing of the appeal shall include an order disposing of a motion for rehearing. A motion for attorney fees which is timely filed in the Court of Appeals shall toll the time for filing a petition for further review. See Rule 2F. An original and one copy of such motion and proof of service shall be filed with the Supreme Court Clerk, and a copy shall be served upon the opposing party or the attorney of record. A court-appointed attorney in a criminal case, appealed to the Supreme Court or the Court of Appeals, may, after issuance of a mandate by the appellate court, apply to the appointing court for an attorney fee regarding services in the appeal.

Rule 9B(1), 9B(2)e, and 9B(5) amended March 25, 1992; Rule 9B(2)e amended April 22, 1992; Rule 9A(5) amended April 29, 1992; Rule 9A(2) amended May 28, 1992; Rule 9F amended July 1, 1992; Rule 9F amended November 25, 1992; Rule 9B(7) amended June 15, 1994; Rule 9A(5) and 9B(7) amended October 17, 1995. Rule 9B amended September 25, 1996; Rule 9B(1) amended November 20, 1996; Rules 9A and 9B(6) amended May 29, 1997; Rule 9A(4) amended March 17, 1999; Rule 9D(1) and (2) amended October 27, 1999, effective December 6, 1999; Rule 9F amended December 15, 1999; Rule 9B(3) amended June 6, 2001; Rule 9F amended November 15, 2001; Rule 9B(2)b amended March 22, 2006.

10. DEFAULT IN FILING BRIEFS.

A. Appellant in Default - Failure to File a Brief. If appellant fails to file its brief within the time allowed by these rules, the Supreme Court Clerk shall mail notice to all pro se parties and all attorneys of record that appellant is in default for failure to file a brief and is required to file a brief within 10 days after receipt of such notice. Appellant's failure to file a brief in response to the notice of default subjects the appeal to dismissal.

B. Appellee in Default. Where the appellant's brief has been properly served and filed, even if not within time, and an appellee's brief has not been filed, appellee will be considered in default and appellant may proceed ex parte. If the appellee is in default, and after notice to the appellee, the case will be placed on the proposed call according to the original brief date of the appellee.

C. Hearing Not Delayed. The hearing of a case will not be delayed by default of either party in serving or filing briefs, unless, for good cause shown, it is otherwise ordered.

Rule 10A amended May 28, 1992.

11. SCHEDULING, ARGUMENT, AND SUBMISSION.

A. General. Cases are eligible for submission at any time after the appellee's brief has been filed. This rule sets out the methods of scheduling cases for submission, the various submission methods, and rules relating to oral argument.

B. Methods of Submission on the Merits.

(1) The court may order the submission of any case without oral argument. Cases to be submitted without argument will be submitted immediately after the time for filing the appellant's reply brief has expired. The Supreme Court Clerk will notify counsel both when the order that the case be submitted without argument is entered and at the time the case is actually submitted.

(2) Cases which are advanced are scheduled for oral argument as soon as the appellee's brief is due to be filed, except that appeals in juvenile cases not involving § 43-247(1), (2), or (4) are scheduled for oral argument as soon as the appellant's brief is scheduled to be filed. The following categories of cases will be advanced without motion:

- a. Criminal cases;
- b. Workers' compensation cases;
- c. Unemployment compensation cases;
- d. Questions certified by other courts;
- e. Original actions;
- f. Appeals involving custody of minor children;
- g. Appeals within original concurrent jurisdiction of the court;
- h. Cases where a "case stated" has been prepared and filed by the parties;
- i. Appeals from the Tax Equalization and Review Commission; and
- j. Appeals from the Department of Natural Resources.

(3) In all other cases, either party may file a motion with the court requesting that the case be advanced for argument. A party seeking an advancement of oral argument shall file a showing in support of said motion setting out the reasons said case should be advanced for oral argument. To ensure proper scheduling, attorneys are requested to notify the Supreme Court Clerk by letter if the case should be advanced and advancement is not obvious.

(4) Cases which are not advanced are scheduled in the order in which the briefs of the appellee are filed, not in the order in which the cases were docketed. Nonadvanced cases are scheduled in the argument slots remaining after scheduling advanced cases.

C. Proposed Call. The proposed call is a list of cases ready for argument and likely to be scheduled for argument during the argument session shown. All advanced cases will be scheduled unless continued, and most nonadvanced cases are scheduled. The proposed call is prepared to allow attorneys to set aside time on their schedules for argument. Cases on the proposed call may not be continued unless leave is granted by the court. A party may file an application for continuance, which must be accompanied by a showing of exceptional cause. See Rule 6 for the form of the application.

D. Call. The call is the final schedule of oral arguments for a specified session of the court. Cases are heard in the order listed. Cases will not be continued to another session of the court after scheduling on the call unless leave is granted by the court. A party may file an application for continuance, which must be accompanied by a showing of exceptional cause. See Rule 6 for the form of the application.

E. Oral Argument. The Supreme Court will hear oral argument as scheduled.

(1) Unless otherwise ordered by the court, oral argument shall not exceed 10 minutes per side in any civil or criminal case; provided, however, that where a criminal defendant has been convicted of first or second degree murder and the case at issue is a direct appeal from such conviction, oral argument shall not exceed 20 minutes per side.

(2) On the court's own motion or on application, additional time may be granted. An application, in the form prescribed by Rule 6, must be filed within 10 days after the proposed call is mailed. Such application must be accompanied by a showing of good cause.

(3) The court may further limit oral argument in any case. In such event, the Clerk of the Supreme Court shall notify the parties of the time limit at the time the order is entered.

(4) No party will be permitted oral argument unless he or she has a brief on file. An amicus curiae may, with the consent of a party, request leave to present oral argument on the side of that party within the time allowed to that party for argument.

(5) Except where the penalty prescribed by law is life imprisonment or death, no oral argument is allowed in any criminal case:

a. Where the accused entered a plea of guilty or no contest; or

b. Where the sole allegation of error is that the sentence imposed was excessive or excessively lenient or the trial court refused to reduce the sentence upon application of the defendant.

c. Where the penalty prescribed by law is life imprisonment or death, and subsection (a) and/or (b) of this rule applies, oral argument shall not exceed 10 minutes per side unless otherwise ordered by the court.

(6) Unless otherwise directed by the court, the parties may elect to waive oral argument and submit a case solely on the briefs.

F. Court of Appeals Oral Argument. Except in exigent circumstances, the Court of Appeals will hear oral arguments in panels of three judges, as scheduled, in the Court of Appeals courtroom located in the State

Capitol Building, or at other locations throughout the state as designated by the Chief Judge. Whenever any member of a panel is not able to be present at the scheduled oral argument of a case, the case shall be deemed submitted to that member on the record and briefs. If a member of a panel is unable for any reason to participate after the case is submitted for decision, the Chief Judge shall appoint a substitute judge from the Court of Appeals or, at the request of the Chief Judge, the Chief Justice may call an active or retired district court judge to serve as a substitute judge, and the case shall be deemed submitted to the new member on the record and briefs. The rules relating to oral argument shall be the same as provided in Rule 11 E above, except as may be modified by the Court of Appeals.

G. Bankruptcy. In a pending civil action before the Supreme Court, involving a party named as a debtor in a bankruptcy petition:

(1) The party named as such debtor in bankruptcy, or any other party to the pending civil action having knowledge of bankruptcy proceedings involving another party to the action pending before the Supreme Court, shall, as soon as reasonably possible, notify the Supreme Court Clerk concerning the proceedings in bankruptcy. The Supreme Court Clerk will attempt to confirm the existence of such bankruptcy proceedings. On confirmed existence of such bankruptcy proceedings, the proceedings in the Supreme Court involving such named debtor in bankruptcy shall be suspended immediately. The Supreme Court Clerk shall notify the parties that the action has been suspended. An action so suspended shall be removed from the active docket of the Supreme Court and shall remain suspended until order of the Supreme Court restoring the action to the active docket of the court. If the Supreme Court Clerk is unable to confirm existence of the alleged proceeding in bankruptcy, the parties shall be so informed, and compliance with Rule 11G(2) is then required.

(2) If the Supreme Court Clerk is unable to confirm the existence of a bankruptcy proceeding, as provided in Rule 11G(1), the party named as a debtor in a bankruptcy petition, or any party to the action having knowledge of the bankruptcy proceedings involving another party to an action pending before the Supreme Court, shall file with the Supreme Court Clerk a suggestion of bankruptcy and either a certified copy of the bankruptcy petition or a copy of the caption sheet of the bankruptcy petition showing the case number, the names of the parties, and the filing stamp affixed by the clerk of the bankruptcy court.

(3) An action before the Supreme Court which involves a party as a named debtor in a bankruptcy petition shall remain suspended as the result of the automatic stay imposed by 11 U.S.C. § 362 (1982) until some party shows that relief from the automatic stay has been granted. A showing regarding relief from the automatic stay shall include a detailed order, signed by the bankruptcy judge, which shall outline the relief granted by the bankruptcy court and shall state that the action, involving a subject matter otherwise within the jurisdiction of the bankruptcy court, may be prosecuted in the courts of the State of Nebraska. Such showing in the Supreme Court shall be made by motion under Rule 6.

(4) If a debtor in bankruptcy is a party to a proposed compromise involving an appeal in the Supreme Court, any party to such compromise shall provide the Supreme Court with a certified copy of the bankruptcy judge's approval of the compromise, which order of approval shall state that the procedures of Fed. Bankr. R. 2002(a)(3) have been satisfied. After proof of such approval by the bankruptcy court, the Supreme Court may take appropriate action regarding the matter which is the subject of the compromise involving the debtor in bankruptcy as a party to an action pending in the Supreme Court.

Rule 11E and 11F amended May 28, 1992; Rule 11F amended March 31, 1999; Rule 11B(2)(i) amended May 17, 2000; Rule 11B(2) and (3), 11E(1), (5), and (5)(a) amended March 16, 2005; Rule 11E(5)(c) adopted March 16, 2005; Rule 11B(2)j amended November 22, 2006.

12. OPINIONS.

A. Release of Written Opinions. The court will prepare a written opinion in cases where the court believes explanation of its decision is required or that the case is of value as a precedent. Opinions are released as ordered by the court.

B. Copies Mailed. A copy of each opinion will be mailed to all attorneys and pro se parties whose names and addresses appear on briefs submitted in connection with a case.

C. Official Version. The official opinion of the court shall be the final, edited version which appears in the bound volume of the Nebraska Reports.

13. MOTIONS FOR REHEARING.

A. Time. A motion for rehearing and brief in support must be filed within 10 days after the release of the opinion of the court or the entry of the order of the court disposing of the appeal. A motion for rehearing is not permitted following an order of the Supreme Court denying a petition for further review. A motion for rehearing which is timely filed in the Court of Appeals shall toll the time for filing a petition for further review. See Rule 2F. An original and 10 copies of said motion for rehearing and brief in support are required to be filed in Court of Appeals cases, and an original and 16 copies are required to be filed in Supreme Court cases. An extension of time to file the brief in support of the motion for rehearing may be requested by following the procedure set out in Rule 6, except that every request must be accompanied by a showing of good cause.

B. Form of Motion. The motion for rehearing shall be typewritten on 8½- by 11-inch paper, shall be double- or 1½-spaced, and shall use 12-point type.

C. Contents of Motion. The motion for rehearing need only notify the court that the party filing the motion asks for a rehearing.

D. Contents of Brief. The brief in support of the motion for rehearing shall contain the following divisions, in the order indicated:

- (1) tables;
- (2) assignments of error;
- (3) propositions of law; and
- (4) argument.

The assignments of error shall be set out in separate, numbered paragraphs, pointing out specifically any claimed mistakes or inaccuracies in statements of fact or law in the opinion, and any questions involved which the court is claimed to have failed to consider on the appeal.

E. Form of Brief. The brief in support of the motion for rehearing shall be in the same form as provided for all briefs in Rule 9B. Briefs in response to the motion for rehearing shall generally follow the form of the brief in support of the motion for rehearing.

F. Response. Parties to the case not filing a motion for rehearing may respond to the motion for rehearing and brief in support of the motion within 10 days after the motion for rehearing is filed. If no response will be filed, parties may notify the Clerk of the Supreme Court in writing, and the motion will be submitted immediately.

G. Filing and Service. Motions for rehearing shall be filed and served as provided in Rule 9B(6) and (7). An original and 10 copies of the motion are required to be filed in Court of Appeals cases, and an original and 16 copies are required in Supreme Court cases.

H. Submission. Oral argument is not permitted on a motion for rehearing. All motions for rehearing will be submitted 11 days after the motion for rehearing is filed or the due date of the response has expired, whichever occurs first, except as provided in Rule 13F.

I. Mandate. The mandate will not issue until the motion for rehearing has been acted upon, if briefs have been filed, or until the date for filing briefs in support of the motion for rehearing has passed.

J. Penalty for Delay. Any party filing a motion for rehearing who does not file the briefs in support of the motion for rehearing by the due date may be assessed all costs of the action.

K. Original Actions. Where the error assigned is that the court erred as to the legal principles involved or in its application of the law to the facts, this rule shall apply, but as to all other assignments the motion must be made as provided by Neb. Rev. Stat. § 25-1143.

L. Briefs on Reargument. Either party may file additional briefs when reargument is ordered by the court. Seventeen copies of each brief so prepared and served, together with proof of service, shall be filed in the Supreme Court Clerk's office not less than 1 week before the case is submitted. These briefs will be taxed as costs only if the court ordered the filing of the briefs.

Rule 13 amended May 28, 1992; Rule 13G amended October 17, 1995; Rule 13A amended May 29, 1997; Rule 13A amended September 23, 1998; Rule 13A amended December 15, 1999; Rule 13B amended March 22, 2006.

14. MANDATES AND TAXATION OF COSTS.

A. Mandates.

(1) Unless agreed by the parties and ordered by the court, no mandate will issue in any case during the time allowed for the filing of a motion for rehearing or petition for further review, or pending the consideration thereof.

(2) Parties desiring to prosecute proceedings to the United States Supreme Court, and desiring an order staying the mandate, must make application within 7 days from the date of the filing of the opinion or other dispositive entry. The application must be accompanied by a written showing that a federal question is involved. If a motion for rehearing is filed, the application and showing shall be filed with the motion. If the application is granted, the court may require the giving of bond as a condition therefor.

(3) A motion to recall a mandate must be filed in accordance with the provisions of Rule 6 of these rules. The motion must be accompanied by a showing that no action has been taken on the mandate by the trial court. The opposing party may file objections to the motion to recall the mandate on or before the date of submission of the motion.

B. Costs.

(1) The following costs are taxed in the Supreme Court and are itemized on the mandate:

- a. Fees (Neb. Rev. Stat. § 33-103);
- b. Transcript preparation fees (only in cases where appellant prevails);
- c. Printing costs;
- d. Attorney fees; and
- e. Other fees and costs as awarded by the court.

(2) The Supreme Court Clerk shall tax costs for the following printed briefs when filed in accordance with these rules: brief of each appellant; brief of each appellee; brief on cross-appeal; and only such portion of reply brief as is in response to the cross-appeal. No costs shall be taxed for other briefs. The amount taxed shall be the actual costs of printing, or \$7.50 per page up to a maximum of 50 pages, whichever is lower. The pages taxed shall include the cover (taxed as two pages) and all index and appendix pages, as well as numbered pages in the body of the brief. The printer shall submit proof of the actual printing costs at the time the brief is filed. Briefs which are not timely filed and are not stricken from the record will not be taxed as costs.

(3) When unnecessary costs have been made by either party, the court may order the same to be taxed to the party making them, without reference to the disposition of the case.

(4) At the time the mandate is issued, the Supreme Court Clerk shall send a statement to counsel for the costs which are due to the other party. Payment for costs due is to be made in accordance with Neb. Rev. Stat. § 25-1915.

COMMENT

Costs which are to be paid to the opposing party must be paid to the clerk of the district court or originating tribunal, who then makes payment to the appropriate party.

(5) A motion to retax costs may be filed in accordance with the provisions of Rule 6 if a party disagrees with the taxation of costs in a case.

Rule 14A(1), 14B(1)a, and 14B(4) amended May 28, 1992.

15. ORIGINAL ACTIONS.

A. How Commenced.

(1) An original action may not be commenced except by leave of court.

(2) Application for leave to commence an original action shall be made by filing with the Supreme Court Clerk a verified petition setting forth the action. Applicant must also file with the clerk a statement setting forth the basis of the court's jurisdiction and the reasons which make it necessary to commence the action here. Seven copies of each must accompany the petition and the statement. No oral argument will be permitted except as may be ordered by the court.

See appendix 4.

B. Docketing the Case.

(1) All applications for leave of court to file an original action shall be recorded in an application docket.

(2) The docket fee provisions of Neb. Rev. Stat. § 33-103 and Rule 1G shall apply to the application docket.

(3) If the court accepts the application as an original action, the case shall be transferred to the Supreme Court docket. A second filing fee shall not be required.

Rule 15B(2) amended May 28, 1992.

16. RECORDS.

A. Records Checked Out. Transcripts and bills of exceptions may be checked out by counsel for not more than 14 days. Counsel shall pay postage for records mailed to their offices. Counsel may obtain an extension of time for keeping the record in a case by sending a letter to the Supreme Court Clerk, setting forth the case number, caption of the case, and a request to keep the record for an additional 14 days. Counsel failing to return records when requested by the Supreme Court Clerk may be penalized by appropriate sanctions, including suspension of the privilege to check out records from the Clerk's office.

Any litigant is entitled to inspect the original transcript and bill of exceptions in his or her case at the office of the clerk of the trial court. Transcripts and bills of exceptions shall not be checked out to litigants. Any nonincarcerated litigant is entitled to obtain a copy of his or her transcript or bill of exceptions by filing a written request with the clerk of the trial court. A copy of the transcript shall be prepared by the clerk of the trial court and a copy of the bill of exceptions shall be prepared by the court reporter at the litigant's cost unless the litigant has been allowed to proceed in forma pauperis in the action in which the request for a record has been made. Except for good cause shown, any additional copies of the transcript and/or the bill of exceptions once provided to a litigant on an in forma pauperis basis shall be prepared at the litigant's cost.

When a request is made to the clerk of the trial court for a transcript of pleadings by or on behalf of any incarcerated person, the clerk of the trial court shall prepare two copies, one to be filed in the court to which the matter is being appealed and one to be sent to the incarcerated person at the correctional center where he or she resides. The cost shall be paid by the person making the request unless the person has been allowed to proceed in forma pauperis in the action in which the request for a record has been made. Except for good cause shown, any additional copies of the transcript once provided to a litigant on an in forma pauperis basis shall be prepared at the litigant's cost.

When a request is made by or on behalf of any incarcerated person for a bill of exceptions, the court reporter shall prepare the original to be filed with the clerk of the trial court. The court reporter shall also prepare a duplicate copy at the statutory rate for copies and send it to the incarcerated person at the correctional center where he or she resides. The copy shall contain the index of exhibits but shall not include exhibits. The cost shall be paid by the person making the request unless that person has been allowed to proceed in forma pauperis in the action in which the request for a record has been made. Except for good cause shown, any additional copies of the bill of exceptions once provided to a litigant on an in forma pauperis basis shall be prepared at the litigant's cost. An incarcerated person may request copies of exhibits by filing a motion with the court having jurisdiction of the case.

B. Presentence Report. In all cases where a presentence report may be material on appeal, the defendant, his or her counsel, or counsel for the State may request the sentencing judge to forward it to the Supreme Court Clerk. In each instance, the sentencing judge shall cause a copy of the report to be forwarded to the Clerk in a separate sealed envelope. The defendant, his or her counsel, or counsel for the State may examine the report, but it may not be removed from the office of the Clerk.

C. Return of Records to District Court. The bill of exceptions and presentence report shall be returned to the clerk of the district court after the issuance of the mandate in a case. The Supreme Court Clerk may retain records in certain criminal homicide cases to facilitate microfilming of the records.

D. Records as Exhibits. Original Supreme Court records shall not be introduced as exhibits in any proceeding.

E. Microfilm Records. Certain records which this court is keeping pursuant to Neb. Rev. Stat. §§ 29-2521.02 et seq. have been photographed on microfilm. These records may be checked out by Nebraska District Court judges. These records shall not be introduced as evidence.

Rule 16E amended May 28, 1992; Rule 16A amended September 27, 2000; Rule 16A and B amended May 21, 2003.

17. MEDIA COVERAGE OF PROCEEDINGS BEFORE THE NEBRASKA SUPREME COURT AND THE NEBRASKA COURT OF APPEALS.

A. Definitions.

(1) "Judicial proceeding" or "proceeding" as referred to in these rules shall include all public trials, hearings, or other proceedings in the Supreme Court and the Court of Appeals, except those specifically excluded by these rules.

(2) "Expanded media coverage" includes broadcasting, televising, electronic recording, or photographing of judicial proceedings for the purpose of gathering and disseminating news to the public.

(3) "Supreme Court" shall mean the Supreme Court of Nebraska.

(4) "Chief Justice" shall mean the Chief Justice of the Supreme Court of Nebraska.

(5) "Court of Appeals" shall mean the Nebraska Court of Appeals.

(6) "Chief Judge" shall mean the Chief Judge of the Nebraska Court of Appeals.

B. General. Except as provided below, broadcasting, televising, recording, and photographing will be permitted in all judicial proceedings in the courtroom during sessions of the Supreme Court and the Court of Appeals, including recesses between sessions, under the following conditions:

(1) There shall be no audio pickup or broadcast of conferences in a court proceeding between attorneys and their clients, between cocounsel, or between judges.

(2) The quantity and types of equipment permitted in the courtroom shall be subject to the discretion of the Chief Justice within the guidelines set out in the accompanying rules.

(3) Notwithstanding the provisions of any of these procedural or technical rules, the Chief Justice, or the Chief Judge as to the Court of Appeals, upon application, may permit the use of equipment or techniques

at variance therewith, provided the application for variance is made at least 10 days prior to the scheduled hearing. Ruling upon such a variance application shall be in the sole discretion of the Chief Justice or the Chief Judge, as the case may be. Such variances may be allowed by the Chief Justice or the Chief Judge without advance application or notice if all counsel and parties consent.

(4) The rights provided for herein may be exercised only by persons or organizations which are part of the news media.

(5) These rules are designed primarily to provide guidance to media and courtroom participants and are subject to withdrawal or amendment by the Supreme Court at any time.

C. Preservation of Rights. Expanded media coverage of a proceeding shall be permitted in all judicial proceedings unless the court concludes, after objection and showing of good cause, that under the circumstances of the particular proceeding such coverage would materially interfere with the rights of the parties to a fair trial. The Chief Justice or the Chief Judge, when applicable, may, as to any or all media participants, limit or terminate photographic or electronic media coverage at any time during the proceeding in the event the Chief Justice or Chief Judge finds

(1) that rules established under this order or additional rules imposed by the Chief Justice or Chief Judge have been violated or

(2) that substantial rights of individual participants or rights to a fair trial will be prejudiced by such manner of coverage if it is allowed to continue.

D. Objections. A party to a proceeding objecting to expanded media coverage under these rules shall file a written objection, stating the grounds therefor, at least 3 days before commencement of the proceeding. All objections shall be heard and determined by the Chief Justice, or the Chief Judge as to the Court of Appeals, prior to commencement of the proceeding. Time for filing of objections may be extended or reduced in the discretion of the Chief Justice, or the Chief Judge as to the Court of Appeals, who may also in appropriate circumstances extend the right of objection to persons not specifically provided for in these rules.

E. Technical.

(1) Equipment to be used by the media in the courtrooms during the proceeding must be unobtrusive and must not produce distracting sound. In addition, such equipment must satisfy the following criteria:

a. Still cameras are to be standard, professional quality, single-lens reflex or rangefinder 35 mm cameras, or twin-lens reflex 120 mm cameras in good repair. Motor-driven film advances and autowinders on still cameras are not allowed.

b. Television cameras are to be electronic and, together with any related equipment to be located in the courtroom, must be unobtrusive in both size and appearance, and without distracting sound or light. Television cameras are to be designed or modified so that participants in the proceeding being covered are unable to determine when recording is occurring.

c. Microphones, wiring, and audio recording equipment shall be unobtrusive and of adequate technical quality to prevent interference with the proceeding being covered. No modifications of existing systems shall be made without approval by the Supreme Court after submission of a specific written proposal which shall include technical specifications and details of the proposed changes. Microphones for use of counsel and judges shall be equipped with off/on switches.

(2) Other than light sources already existing in the courtroom, no flashbulbs or other artificial lighting device of any kind shall be employed in the courtroom.

(3) The following limitations on the amount of equipment and number of photographic and broadcast media personnel in the courtroom shall apply:

a. At any one time, not more than one still photographer, using not more than two camera bodies and two lenses, shall be permitted in the courtroom during a proceeding.

b. Not more than one television camera, operated by not more than one person knowledgeable in its use, shall be permitted in the courtroom during any proceeding. Where possible, recording and broadcasting equipment which is not a component part of a television camera shall be located outside the courtroom.

c. Not more than one audio system shall be set up in the courtroom for broadcast coverage of a proceeding. Audio pickup for broadcast coverage shall be accomplished from any existing audio system present in the courtroom, if such pickup would be technically suitable for broadcast. Where possible, electronic audio recording equipment and any operating personnel shall be located outside the courtroom, except that an audio recorder which is a component part of the television camera operating in the courtroom may be used for audio pickup.

d. Where the above limitations on equipment and personnel make it necessary, the media shall be required to pool equipment and personnel. Pooling arrangements shall be the sole responsibility of the media, and neither the Supreme Court or the Court of Appeals nor their employees shall be called upon to mediate any dispute as to the appropriate media representatives authorized to cover a particular proceeding.

(4) Equipment and operating personnel shall be located in, and coverage of the proceeding shall take place from, an area or areas within the courtroom designated by the Chief Justice or Chief Judge.

(5) Television cameras and audio equipment may be installed in or removed from the courtroom only when court is not in session. In addition, such equipment shall at all times be operated from a fixed position. Still photographers and broadcast media personnel shall not move about the courtroom while a proceeding is in session, nor shall they engage in any movement which attracts undue attention. Still photographers shall not assume body positions inappropriate for spectators.

(6) All still photographers and broadcast media personnel shall be properly attired and shall maintain proper courtroom decorum at all times while covering the proceeding.

Rule 17, 17A(5), 17A(6), 17B(3), 17C, 17C(1), 17D, 17E(3)d, and 17E(4) amended April 15, 1992; Rule 17B(3) amended May 28, 1992; Rule 17E(1)c and (3)c amended November 23, 1999.

18. MEDIA COVERAGE OF PROCEEDINGS BEFORE ANY COURT OTHER THAN THE NEBRASKA SUPREME COURT OR THE NEBRASKA COURT OF APPEALS.

A. Other than as provided in Rule 17, there shall be no broadcasting, televising, recording, or photographing in courtrooms and areas immediately adjacent thereto during sessions of a court or recesses between sessions, except that under rules which may be prescribed by the Nebraska Supreme Court a judge of a court other than the Supreme Court or Court of Appeals may authorize broadcasting, televising, recording, and photographing of judicial proceedings in such courtrooms and areas immediately adjacent thereto consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such

coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with administration of justice.

Rule 18 adopted April 15, 1992.

19. WAIVER OF TIME REQUIREMENTS.

For good cause, the Supreme Court and the Court of Appeals may shorten the time within which any filing must be made or act must be done.

Rule 19 adopted March 1, 1995.

IN THE SUPREME COURT/COURT OF APPEALS OF NEBRASKA

_____ ,)	
)	
Appellee/Appellant,	)	CASE NO.
)	
v.	)	MOTION
)	
_____ ,)	
)	
Appellee/Appellant.)	

Comes now the appellant (or appellee) Name , and requests a 30-day extension of brief day from Date to Date .

/s/ _____
 Attorney Name (Bar Number)
 Firm Name
 Street Address/P.O. Box #
 City/State/Zip Code
 Area Code/Phone Number

AFFIDAVIT OF SERVICE

The foregoing Motion was served upon _____, attorney for appellee/appellant by mailing a copy to him/her at _____.
 (Address/Zip Code)

/s/ _____
 Attorney Name (Bar Number)

(NOTE: In all advanced cases, a showing of exceptional cause must accompany any request for extensions. In nonadvanced cases any extension past the first 30-day extension must be accompanied by a showing of cause. Neither the stipulation of the parties nor the press of other business constitutes good cause. See Rule 6F(2).)

APPENDIX 1

This form is neither approved nor disapproved by any court or judicial tribunal. Use of this form provides no immunity from error.

IN THE SUPREME COURT/COURT OF APPEALS OF NEBRASKA

_____ ,)	
)	
Appellant,	)	CASE NO.
)	
v.	)	STIPULATION
)	
_____ ,)	
)	
Appellee.)	

Comes now the parties and stipulate that appellant's (or appellee's) brief day may be extended from
 Date to Date .

/s/ _____
 Attorney Name (Bar Number)
 Firm Name
 Street Address/P.O. Box #
 City/State/Zip Code
 Area Code/Phone Number

/s/ _____
 Attorney Name (Bar Number)
 Firm Name
 Street Address/P.O. Box #
 City/State/Zip Code
 Area Code/Phone Number

(NOTE: In all advanced cases, a showing of exceptional cause must accompany any request for extensions. In nonadvanced cases any extension past the first 30-day extension must be accompanied by a showing of cause. Neither the stipulation of the parties nor the press of other business constitutes good cause. See Rule 6F(2).)

APPENDIX 2

This form is neither approved nor disapproved by any court or judicial tribunal. Use of this form provides no immunity from error.

Sample motion and proof of service for dismissal of appeal by appellee.

IN THE SUPREME COURT/COURT OF APPEALS OF NEBRASKA

_____,)	
)	
Appellee/Appellant,	)	CASE NO.
)	
v.	)	MOTION
)	
_____,)	
)	
Appellee/Appellant.)	

Comes now appellee and moves to dismiss on the ground that (e.g., the appellant accepted the benefits of the judgment of the District Court.)

/s/ _____
 Attorney Name (Bar Number)
 Firm Name
 Street Address/P.O. Box #
 City/State/Zip Code
 Area Code/Phone Number

AFFIDAVIT OF SERVICE

The foregoing Motion was served upon _____, attorney for appellant, by mailing a copy to him/her at _____.
(Address/Zip Code)

/s/ _____
 Attorney Name (Bar Number)

APPENDIX 3

This form is neither approved nor disapproved by any court or judicial tribunal. Use of this form provides no immunity from error.

**Summary to Accompany Application for Leave to File
Appeal by County Attorney - § 29-2315.01**

The Nebraska Supreme Court requires that this form be filed as part of an application by a county attorney requesting leave to file an appeal pursuant to § 29-2315.01. This form is only a synopsis of the action in the case, and is not a substitute for any pleading or application required by statute. Answers may be continued on an attached sheet of paper.

1. Name, address, and telephone number of attorney presenting application:

2. County where case filed:

3. Name of district judge:

4. Case Caption:

STATE v.

5. Charge(s) filed against defendant:

6. Description of order for which review is sought:

7. Date order entered:

8. Summary of the basis or reasons for the application:

9. Brief, concise statement of facts:

10. Description of the public interest to be protected by this review:

11. Portion of record to be presented for review:

12. Date application presented to judge:

13. Date application signed:

APPENDIX 4

SAMPLE CERTIFICATE - CIVIL CASES

IN THE DISTRICT COURT OF _____ COUNTY, NEBRASKA

In the Matter of the Estate of
Matilda A. Farquar, Deceased.

Trial Court No. _____

F. J. Farquar, Plaintiff,

Tyrone A. Ledbetter, No. 28154
(Address)
(Telephone)

v.

Alfred T. Farquar, Defendant.

Frank X. O'Brien, No. 18766
(Address)
(Telephone)

I certify that the attached are true and accurate copies of pleadings filed in the above-captioned case.

- The case is a civil case
 - Law (general) or
 - Equity

- Origin of case:
- County Court
 - District Court
 - Other _____

Notice of appeal directed to:

- Court of Appeals
- Supreme Court

Statutory Authority:

- Constitutionality of statute
- Other (specify statute) _____

The notice of appeal was filed on _____.

The statutory docket fee was paid on _____;
or a poverty affidavit was filed on _____.

Cost bond posted on _____ (date) in \$_____.
Cash in lieu of cost bond posted on _____
in \$_____; or supersedeas bond posted on
_____ in \$_____.

The following motions have been filed:

- Motion for new trial. Date filed: _____ Date disposed of: _____
- Motion to alter or amend judgment. Date filed: _____ Date disposed of: _____
- Motion to set aside verdict or judgment. Date filed: _____ Date disposed of: _____
- None of the above motions have been filed.

Date: _____

(SEAL)

Clerk of District Court

By: _____

APPENDIX 5

Appendix 5 amended July 25, 2000.

SAMPLE CERTIFICATE - CRIMINAL CASES

IN THE DISTRICT COURT OF _____ COUNTY, NEBRASKA

STATE OF NEBRASKA,

Trial Court No. _____

Plaintiff,

Tyrone A. Ledbetter, No. 28154
(Address)

v.

(Telephone)

ALFRED T. FARQUAR,

Frank X. O'Brien, No. 18766
(Address)

Defendant.

(Telephone)

I certify that the attached are true and accurate copies of pleadings filed in the above-captioned case.

The case is a criminal case in which a plea was entered:

not guilty (trial held)

Origin of case:

to jury

County Court

to judge

District Court

Other _____

guilty or nolo contendere

felony

misdemeanor

postconviction

plea in bar

other

Notice of appeal directed to:

Court of Appeals

Supreme Court

Statutory Authority:

Death sentence

Life imprisonment

Constitutionality of statute

Other (specify statute) _____

The notice of appeal was filed on _____. The statutory docket fee was paid on _____; **or** a poverty affidavit was filed on _____.

Cost bond posted on _____ (date) in \$_____. Cash in lieu of cost bond posted on _____ in \$_____; **or** supersedeas bond posted on _____ in \$_____.

All motions for new trial have been disposed of:

Yes. Date: _____

No.

No motions for new trial filed.

Date: _____

(SEAL)

Clerk of District Court

By: _____

APPENDIX 6

RULES OF PRACTICE AND PROCEDURE

INDEX

	<u>RULE</u>	<u>PAGE</u>
ADMINISTRATIVE AGENCIES, APPEAL FROM	See SPECIAL TRIBUNALS	
ADVANCED CASES		
Categories		
Case stated	11 B 2 h	1.22
Certified questions	11 B 2 d	1.22
Child custody	11 B 2 f	1.22
Criminal	11 B 2 a	1.22
Original actions	11 B 2 e	1.22
Original concurrent jurisdiction	11 B 2 g	1.22
Employment security law	11 B 2 c	1.22
Tax Equalization and Review Commission	11 B 2 i	1.22
Water Resources, Department of	11 B 2 j	1.22
Workers' compensation	11 B 2 b	1.22
Extension of brief date	6 F 1, 9 A	1.14, 1.17
Motion to advance	11 B 3	1.22
Oral argument	11 B 2, 11 B 3	1.22, 1.22
Scheduling, argument, and submission	11 B 2, 11 B 3	1.22, 1.22
AFFIDAVIT OF POVERTY	See POVERTY AFFIDAVIT	
AMICUS CURIAE		
Briefs		
Cover color	9 B 4 c	1.18
Filing	9 A 4	1.17
Page length	9 B 5	1.18
Oral argument	11 E 4	1.23
APPEAL BONDS	1 G 2, 4 A 1 c	1.2, 1.6
APPEALS		
Administrative agencies	1 D, 5 B 9	1.2, 1.12
Advance	11 B	1.22
Bill of exceptions	5 B	1.7
Briefs	9	1.17
Case stated	5 B 13	1.13
Constitutional questions	9 E	1.21
Court of Appeals	1 B 1, 2	1.1, 1.3
Court-appointed counsel in		
criminal cases	3	1.5
Cross-appeal	1 E	1.2
Dismissal	7, 8	1.14, 1.16
Docketing	1	1.1
Jurisdiction	9 D 1 c, 9 D 2 b	1.19, 1.20
Multiple, prohibited	1 C	1.2
Notice of	See NOTICE OF APPEAL	
Perfecting	1 A	1.1

	<u>RULE</u>	<u>PAGE</u>
Scheduling, argument, and submission	11	1.21
Security for costs	1 G 2	1.3
Special tribunals	1 D, 5 B 9	1.2, 1.12
Summary dispositions	7	1.14
Supreme Court	1 B 1	1.1
Transcript	4	1.6
U.S. Supreme Court	14 A 2	1.26
APPELLANT		
Bill of exceptions	5 B	1.7
Effect on brief date	9 A 1	1.17
Briefs		
Contents	9 D 1	1.19
Costs	14 B	1.27
Cover color	9 B 4 a	1.18
Default	10 A	1.21
Filing	9 A 1	1.17
Jurisdiction	9 D 1 c	1.19
Page length	9 B 5	1.18
Reargument	13 L	1.26
Reply	9 A 3	1.17
Service	9 A 1	1.17
Constitutional questions	9 E	1.21
Costs (See, also, COSTS)	14 B	1.27
Default in filing briefs	10	1.21
Defined	1 C	1.2
Dismissal of appeal	8	1.16
Motion for attorneys fees	9 F	1.21
Motion for rehearing	13	1.25
Petition for further review	2 F	1.4
Petition to bypass	2 B	1.3
Submission of case	11	1.22
Summary disposition objections	7 B 4	1.15
Transcript		
Fees	14 B 1 b	1.27
Praecipe	4 A	1.6
APPELLEE		
Bill of exceptions	5 B	1.7
Briefs		
Contents	9 D 2	1.20
Costs	14 B	1.27
Cover color	9 B 4 b	1.18
Default	10 B	1.21
Filing	9 A 2	1.17
Jurisdiction	9 D 2 b	1.20
Page length	9 B 5	1.18
Reargument	13 L	1.26
Service	9 A 2	1.17
Constitutional questions	9 E	1.21
Costs (See, also, COSTS)	14 B	1.27

	<u>RULE</u>	<u>PAGE</u>
Cross-appeal	1 E, 9 D 4	1.2, 1.21
Default in filing briefs	10	1.21
Defined	1 C	1.2
Dismissal of appeal		
Response	8 D	1.16
Waiver	8 E	1.16
Motion for attorneys fees	9 F	1.21
Motion for rehearing	13	1.25
Petition for further review	2 F	1.4
Petition to bypass	2 B	1.3
Submission of case	11	1.22
Summary dispositions	7 B	1.15
Transcript	4	1.6
ARGUMENT OF CASES	See ORAL ARGUMENT	
ASSIGNMENTS OF ERROR		
Briefs	9 D 1 e	1.20
Motion for rehearing	13 D	1.25
Excessive sentence	11 E 5	1.23
Excessively lenient sentence	11 E 5	1.23
Original actions	13 K	1.26
Transcript contents	4 A 2	1.6
ATTORNEY FEES		
Itemization on mandate	14 B 1	1.27
Motion required	9 F	1.21
ATTORNEY GENERAL		
Constitutional questions	9 E	1.21
ATTORNEYS OF RECORD		
Criminal cases		
Court-appointed	3	1.5
Withdrawal of court-appointed	1 F 1, 3 B	1.2, 1.5
Dismissal of appeal	8 C	1.16
Opinions	12 B	1.24
Pro se litigants	1 F	1.2
Status on appeal	1 F	1.2
Withdrawal	1 F, 3 B	1.2, 1.5
BANKRUPTCY	11 G	1.24
BILL OF EXCEPTIONS		
Administrative agencies	5 B 9	1.12
Alterations prohibited	5 B 3 d	1.9
Amendments	5 B 5	1.10
Brief reference format	9 C 2	1.18
Capital punishment appeals	5 B 11	1.13
Case stated	5 B 13	1.13
Checked out	16 A	1.28

	<u>RULE</u>	<u>PAGE</u>
Civil cases	5 B 3	1.8
Clerk of the district court		
Capital punishment	5 B 11	1.13
Case stated	5 B 13	1.13
Copy of request to Supreme Court	5 B 2	1.8
Exclusions	5 B 8	1.12
Filed with	5 B 3	1.8
Filing with Supreme Court	5 B 3 d	1.9
Notification, parties, Supreme Court	5 B 3 d	1.9
Request filed	5 B 1 a	1.7
Returned to	16 C	1.29
Supplemental request filed	5 B 1 c	1.8
Clerk of the Supreme Court		
Copy of request filed	5 B 2	1.8
Delivery	5 B 8	1.12
Filed with	5 B 3 d	1.9
Notice of filing	5 B 3 d	1.9
Returned to district court	16 C	1.29
Contents	5 B 1	1.7
Contraband excluded	5 B 8	1.12
Costs		
Deposit required	5 B 1 e, 5 B 3 b	1.8, 1.8
Estimated	5 B 1 e	1.8
Prior to completion	5 B 1 f	1.8
Statement of	5 B 12	1.13
Transporting large exhibits	5 B 8	1.12
Videotape equipment	5 B 7	1.12
Court reporter		
Administrative agencies	5 B 9	1.12
Capital punishment	5 B 11	1.13
Certificate of	5 B 6 b, 5 B 12	1.10, 1.13
Costs		
Deposit required	5 B 1 e, 5 B 3 b	1.8, 1.8
Estimated	5 B 1 e	1.8
Prior to completion	5 B 1 f	1.8
Statement of	5 B 12	1.13
Preparation and delivery	5 B 3	1.8
Request for extension of time	5 B 4	1.9
Affidavit	5 B 4 b	1.10
Special tribunals	5 B 9	1.12
Unable to prepare bill	5 B 3 c	1.10
Criminal cases	5 B 3, 5 B 11	1.8, 1.13
Delivery to Supreme Court	5 B 3, 5 B 8	1.8, 1.12
Exclusions	5 B 8	1.12
Large exhibits	5 B 8	1.12
Evidence and exhibits	5 B 6 c	1.11
Brief reference format	9 C 3	1.19
Exclusions	5 B 1 d, 5 B 8	1.8, 1.12
Inclusions	5 B 1 b, 5 B 1 c	1.8, 1.8
Videotape	5 B 7	1.12

	<u>RULE</u>	<u>PAGE</u>
Extension of time for preparation	5 B 4	1.9
Affidavit	5 B 4 b	1.10
Form		
Body	5 B 6 c	1.11
Certificate	5 B 6 b	1.11
Index	5 B 6 a	1.10
Statement of cost	5 B 12	1.13
Large exhibits	5 B 8	1.12
Ordering	5 B 1	1.7
Payment		
Deposit required	5 B 1 e, 5 B 3 b	1.8, 1.9
Estimated cost	5 B 1 e	1.8
Governmental agency	5 B 1 e	1.8
Prior to completion	5 B 1 f	1.8
Refund	5 B 1 e	1.8
Supplemental bill	5 B 1 e	1.8
Transporting large exhibits	5 B 8	1.12
Praecipe	See Request to prepare	
Preparation	5 B 3, 5 B 4	1.8, 1.9
Request to prepare		
Copy to court reporter	5 B 1 a	1.7
Copy to Supreme Court Clerk	1 B 3, 5 B 2	1.1, 1.8
Effect on brief date	9 A 1	1.17
Evidence and exhibits	5 B 1 b	1.7
Extension of time	5 B 4	1.9
Filing	5 B 1 a	1.7
Service	5 B 1 b	1.7
Returned to district court	16 C	1.29
Settlement prior to completion	5 B 1 f	1.8
Special tribunals	5 B 9	1.12
Statement of cost	5 B 1 e, 5 B 12	1.8, 1.13
Prior to completion	5 B 1 f	1.8
Supplemental bill of exceptions		
Filing	5 B 1 c	1.8
Payment	5 B 1 e	1.8
Request	5 B 1 c	1.8
Time of preparation	5 B 3 a, 5 B 4	1.8, 1.9
Videotape	5 B 7	1.12
Weapons excluded	5 B 8	1.12
BRIEFS		
Additional, on rehearing	9 A 6	1.17
Advanced cases	9 A 7	1.17
Extensions not allowed	9 A	1.17
Amicus curiae	9 A 4	1.17
Appellant		
Constitutional questions	9 E	1.21
Contents	9 D 1	1.19
Argument	9 D 1 h	1.20
Assignments of error	9 D 1 e	1.20
Constitutional questions	9 E	1.21

	<u>RULE</u>	<u>PAGE</u>
Cover	9 D 1 a	1.19
Jurisdiction	9 D 1 c	1.19
Order of	9 D 1	1.19
Propositions of law	9 D 1 f	1.20
Statement of facts	9 D 1 g	1.20
Statement of the case	9 D 1 d	1.20
Table of cases cited	9 D 1 b	1.19
Table of contents	9 D 1 b	1.19
Title page	9 D 1 a	1.19
Costs	14 B	1.27
Cover color	9 B 4 a	1.18
Court of Appeals		
On further review	2 G	1.5
Original	2 D, 9 B 7	1.3, 1.18
Default	10 A	1.21
Filing	9 A 1, 9 A 3	1.17, 1.17
Reply	9 A 3	1.17
Service	9 A 1, 9 A 3	1.17, 1.17
Submission of case	11	1.22
Appellee		
Contents	9 D 2	1.20
Argument	9 D 2 f	1.20
Constitutional questions	9 E	1.21
Jurisdiction	9 D 2 b	1.20
Order of	9 D 2	1.20
Propositions of law	9 D 2 d	1.20
Statement of facts	9 D 2 e	1.20
Statement of the case	9 D 2 c	1.20
Table of cases cited	9 D 2 a	1.20
Table of contents	9 D 2 a	1.20
Costs	14 B	1.27
Court of Appeals		
On further review	2 G	1.5
Original	2 D, 9 B 7	1.3, 1.18
Cover color	9 B 4 b	1.18
Default	10 B	1.21
Filing	9 A 2	1.17
Service	9 A 2	1.17
Submission of case	11	1.22
Argument	9 D 1 g, 9 D 2 f	1.20, 1.20
Motion for rehearing	13 D	1.25
Assignments of error	9 D 1 e	1.20
Excessive sentence	11 E 5	1.23
Excessively lenient sentence	11 E 5	1.23
Motion for rehearing	13 D	1.25
Complex motions	6 H	1.14
Constitutional questions	9 E	1.21
Contents	9 D	1.18
Cross-appeal	9 D 4, 9 D 5	1.21, 1.21
Jurisdiction	9 D 1 c, 9 D 2 b	1.19, 1.20

	<u>RULE</u>	<u>PAGE</u>
Motion for rehearing	9 D 6, 13 D	1.21, 1.25
Original actions	9 D	1.19
Remittitur	9 D 3	1.20
Reply	9 D 5	1.21
Copies, number of		
Court of Appeals	2 D, 9 B 7	1.4, 1.18
Supreme Court	9 B 6, 9 B 7, 13 L	1.18, 1.18, 1.26
Costs	13 L, 14 B	1.26, 1.27
Not taxed	14 B 2	1.27
Court of Appeals		
On further review	2 G	1.5
Original	2 D, 9 B 7	1.3, 1.18
Cover		
Color	9 B 4	1.18
Contents	9 B 3	1.18
Cross-appeal	9 D 4, 9 D 5	1.21, 1.21
Printed	9 B 1	1.17
Typewritten	9 B 2 b	1.18
Cross-appeal	1 E, 8 D, 9 D 4	1.2, 1.16, 1.21
	9 D 5, 14 B 2	1.21, 1.27
Default in filing	10	1.21
Appellant	10 A	1.21
Appellee	10 B	1.21
Hearing not delayed	10 C	1.22
Excessive sentence	11 E 5	1.23
Excessively lenient sentence	11 E 5	1.23
Extension of date	6 F, 9 A	1.14, 1.17
Extension of date not applicable		
Summary dismissal or affirmance	7 B 8	1.15
Filing	9 A	1.17
Default	10	1.21
Form	9 B	1.17
Footnotes (not permitted)	9 B 2	1.17
Motion for rehearing	13 E	1.25
Printed	9 B 1	1.17
Typewritten	9 B 2 b	1.18
Further review by Supreme Court	2 G	1.5
In support of motions	6, 7, 13	1.13, 1.14, 1.25
Motion for rehearing	9 A 5, 9 A 6,	1.17, 1.17
	9 D 6, 13	1.21, 1.25
Opinions	12 B	1.25
Original actions	9 D	1.20
Defendant	9 D 2	1.20
Plaintiff	9 D 1	1.20
Page length	9 B 5	1.18
Petition for further review	2 G	1.5
Response	2 G	1.5
Petition to bypass	2 B 1	1.3
Response	2 B 2	1.3
Preparation of text	9 C	1.18

	<u>RULE</u>	<u>PAGE</u>
Printed	9 B 1, 14 B	1.17, 1.27
Propositions of law	9 D 1 f, 9 D 2 d	1.20, 1.20
Motion for rehearing	13 D	1.25
Reargument	13 L	1.26
Reference format		
Bill of exceptions	9 C 2	1.18
Case citations	9 C 4	1.19
Exhibits	9 C 3	1.19
Statutes	9 C 5	1.19
Textbook citations	9 C 6	1.19
Transcript	9 C 1	1.19
Remittitur	9 D 3	1.20
Reply	9 A 3, 9 D 5	1.17, 1.21
Costs	14 B	1.27
Service	9 A, 9 B 6	1.17, 1.18
Statement of facts	9 D 1 g, 9 D 2 e	1.20, 1.20
Statement of the case	9 D 1 d, 9 D 2 c	1.20, 1.20
Submission on	11 E 6	1.23
Summary disposition	7 B 6	1.15
Brief date not extended	7 B 8	1.15
Table of cases	9 D 1 b, 9 D 2 a	1.19, 1.20
Table of contents	9 D 1 b, 9 D 2 a	1.19, 1.20
Motion for rehearing	13 D	1.25
Time		
Advanced cases	9 A 7	1.17
Amicus curiae	9 A 4	1.17
Appellant	9 A 1	1.17
Appellee	9 A 2	1.17
Constitutional questions	9 E	1.21
Default	10	1.21
Exceptional cause	9 A	1.17
Extension	6 F, 9 A	1.14, 1.17
Extension not applicable		
Summary dismissal or affirmance	7 B 8	1.15
Filing	9 A	1.17
Further review by Supreme Court	2 G	1.5
Motion for rehearing	9 A 5	1.17
Response	9 A 5	1.17
Rehearing	9 A 6	1.17
Reply	9 A 3	1.17
Service	9 A	1.17
Title page	See Cover	
Typewritten	9 B 2	1.17
BYPASS, PETITION TO	2 B	1.3
CALL		
Amicus curiae	9 A 4	1.17
Bill of exceptions filed	5 B 3 d	1.9
Continuance after scheduling	11 C, 11 D	1.23, 1.23

	<u>RULE</u>	<u>PAGE</u>
Default in filing briefs	10 B	1.21
Order of cases heard	11 D	1.23
Proposed	11 C	1.23
CAPTION OF CASE		
Briefs	9 B 3	1.18
District court	1 B 5 a	1.1
Supreme Court	1 C	1.2
Transcript	4 B 1	1.6
CASE STATED		
Advanced case	11 B 2 h	1.22
Bill of exceptions	5 B 12	1.13
Scheduling, argument, and submission	11	1.22
CERTIFICATE OF COURT REPORTER		
	5 B 6 b, 5 B 12	1.10, 1.13
CERTIFICATE OF DISTRICT COURT CLERK		
	1 B 5	1.1
CERTIFIED QUESTIONS		
Advanced case	11 B 2 d	1.22
Scheduling, argument, and submission	11	1.22
CHILD CUSTODY		
Advanced case	11 B 2 f	1.22
Scheduling, argument, and submission	11	1.22
CIVIL CASES		
Bankruptcy	11 G	1.24
Bill of exceptions	5 B	1.7
Oral argument	11 E	1.23
CLERK OF THE DISTRICT COURT		
Bill of exceptions		
Capital punishment	5 B 11	1.13
Exclusions	5 B 8	1.12
Filed	5 B 3	1.8
Prior to completion	5 B 1 f	1.8
Request	1 B 3, 5 B 1, 5 B 2	1.1, 1.7, 1.8
Transporting large exhibits	5 B 8	1.12
Certificate	1 B 5	1.1
Docket fee	1 B 4	1.1
Notice of appeal	1 B 1	1.1
Perfecting appeal	1 A	1.1
Poverty affidavit	1 B 4	1.1
Request for transcript	1 B 2, 4 A	1.1, 1.6
Supplemental bill of exceptions	5 B 1 c	1.8
Supplemental transcript	4 C	1.7

	<u>RULE</u>	<u>PAGE</u>
Transcript	4	1.6
Cases previously appealed	4 D	1.7
Exclusions	4 A 3	1.6
Form	4 B	1.6
Index	4 B 1	1.6
Journal entries	4 B 2	1.6
CLERK OF THE SUPREME COURT/COURT OF APPEALS		
Advanced case	11	1.22
Bill of exceptions	5 B	1.7
Briefs	9 B 7	1.18
Default	10 A	1.21
Reargument	13 L	1.26
Constitutional questions	9 E	1.21
Docket appeal	1 C	1.2
Mandate		
Costs	14 B	1.27
Motion to dismiss	8 D	1.16
Motion for rehearing	13 F, 13 G	1.26, 1.26
Motion for summary disposition	7 B 7	1.15
Motions generally	6	1.13
Oral argument time limits	11 E 3	1.23
Original actions	15	1.27
Perfecting appeal	1 B	1.1
Petition for further review	2 F	1.4
Petition to bypass	2 B	1.3
Records		
Checked out	16 A, 16 B	1.28, 1.29
Retained	16 C	1.29
Scheduling, argument, and submission	11	1.22
Transcript	4	1.6
CONSTITUTIONAL QUESTIONS	9 E	1.21
CONTINUANCE		
Bill of exceptions	5 B 4	1.9
Briefs	6 F	1.14
Scheduling, argument, and submission	11 C, 11 D	1.23, 1.23
COSTS		
Attorney fees	14 B 1 d	1.27
Motion required	9 F	1.21
Briefs	14 B	1.27
Reargument	13 L	1.26
Bill of exceptions		
Deposit required	5 B 1 e, 5 B 3 b	1.8, 1.9
Estimated	5 B 1 e	1.8
Prior to completion	5 B 1 f	1.8
Statement of	5 B 12	1.13
Transporting large exhibits	5 B 8	1.12
Videotape equipment	5 B 7	1.12

	<u>RULE</u>	<u>PAGE</u>
Docket fee		
Check of clerk of district court	1 B 4	1.1
Not required in advance	1 G 1 b, 1 G 1 c	1.2, 1.3
Original actions	15 B 2, 15 B 3	1.28, 1.28
Paid in advance	1 G 1	1.2
Perfecting appeal	1 A	1.1
Poverty affidavit	1 A, 1 B 4, 1 G 1 b	1.1, 1.1, 1.2
Waived	1 G 1 a	1.2
Fees	14 B 1	1.27
Mandate	14 B	1.27
Motion for rehearing	13 J	1.26
Motion to retax	14 B 5	1.27
Original actions	15 B	1.28
Payment	14 B 4	1.27
Printing	14 B 1 c	1.27
Security for costs		
Appeal to U.S. Supreme Court	14 A 2	1.26
Docketing	1 G 2, 4 A 1 c	1.3, 1.6
Statement	14 B 4	1.27
Transcript preparation	14 B 1 b	1.27
Unnecessary	14 B 3	1.27
COUNSEL	See ATTORNEYS OF RECORD	
COURT OF APPEALS		
Briefs		
On further review by Supreme Court	2 G	1.5
Original	2 D, 9 B 7	1.3, 1.18
Mandate	2 F 7	1.5
Opinions	2 E	1.4
Copies mailed	2 E 2	1.4
Official version	2 E 3	1.4
Publication	2 E 4	1.4
Release	2 E 1	1.4
Petition for further review by		
Supreme Court	2 F	1.4
Contents	2 F 3	1.4
Filing and service	2 F 5	1.5
Form	2 F 2	1.4
Mandate not to issue during		
pendency	2 F 7	1.5
Response	2 F 4	1.5
Submission	2 F 6	1.5
Time for filing	2 F 1	1.4
Petition to bypass	2 B	1.3
Filing and service	2 B 1	1.3
Objections	2 B 2	1.3
Oral argument	2 B 3	1.3
Submission	2 B 4	1.3
Removal of case from Court of Appeals	2 C	1.3

	<u>RULE</u>	<u>PAGE</u>
Supreme Court rules to apply	2 A	1.3
COURT REPORTER		
Bill of exceptions	5 B	1.7
Administrative agencies	5 B 9	1.12
Affidavit for extension	5 B 4 b	1.10
Capital punishment	5 B 11	1.13
Certificate	5 B 6 b, 5 B 12	1.11, 1.13
Costs		
Deposit	5 B 1 e, 5 B 3 b	1.8, 1.9
Estimated	5 B 1 e	1.8
Prior to completion	5 B 1 f	1.8
Statement of	5 B 12	1.13
Extension of time to prepare	5 B 4	1.9
Preparation and delivery	5 B 3	1.8
Form	5 B 6	1.10
Request to prepare	5 B 1	1.7
Special tribunals	5 B 9	1.12
Supplemental request	5 B 1 c	1.8
Unable to prepare	5 B 3 c	1.9
Record, making, preserving, transcribing, and delivery	5	1.7
COURT-APPOINTED COUNSEL		
Appeal filed at request of defendant	3 A	1.5
Motion to withdraw	3 B	1.5
Postconviction	3 A	1.5
Representation on appeal	3 A	1.5
CRIMINAL CASES		
Advanced	11 B 2 a	1.22
Bill of exceptions	5 B	1.7
Capital punishment	5 B 11	1.13
Certificate of district court clerk	1 B 5	1.1
Court-appointed counsel	3	1.5
Excessive sentence	11 E 5	1.23
Excessively lenient sentence	11 E 5	1.23
Plea of guilty or no contest	11 E 5 a	1.23
Homicide record retention	16 C	1.29
Microfilm	16 E	1.29
Oral argument	11 E	1.23
Postconviction	3 A	1.5
Presentence report	16 B	1.29
Record, verbatim	5 A	1.7
Scheduling, argument, and submission	11	1.22
CROSS-APPEALS		
Appellee	1 E, 9 D 4	1.2, 1.21
Answer	9 D 5	1.21
Costs	14 B	1.27
Motion to dismiss	8 D	1.16

	<u>RULE</u>	<u>PAGE</u>
Response	9 D 5	1.21
CUSTODY	See CHILD CUSTODY	
DEFAULT IN FILING BRIEFS		
Appellant	10 A	1.21
Appellee	10 B	1.21
Hearing not delayed	10 C	1.22
Notice	10	1.21
DISCIPLINARY PROCEEDINGS		
Docket fee	1 G 1 c	1.3
DISMISSAL OF APPEAL		
Appellee response	8 D, 8 E	1.16, 1.16
Bill of exceptions	5 B 1 f	1.8
Brief day for cross-appellant	8 D	1.16
By agreement	8 E	1.16
Cross-appeal	8 D	1.16
Default in filing briefs	10	1.21
Form of motion	8 B	1.16
Motion to dismiss		
Appellant	8	1.16
Appellee response	8 D, 8 E	1.16, 1.16
Parties	8 A	1.16
Proof of service	8 C	1.16
Security for costs	1 G 2	1.3
Service	8 C	1.16
Stipulation to dismiss	8 E	1.16
Summary dispositions	7	1.14
Waiver of objection	8 E	1.16
DISTRICT COURT CLERK COURT	See CLERK OF THE DISTRICT COURT	
DOCKET FEE	See COSTS	
DOCKETING THE CASE		
Administrative agencies	1 D	1.2
Attorneys of record	1 F	1.2
Clerk of the district court	1 B, 4 A	1.1, 1.6
Clerk of the Supreme Court	1 B, 4 A	1.1, 1.6
Costs	1 G	1.2
Court of Appeals	1 B 1	1.1
Cross-appeal	1 E	1.2
Method	1 C	1.2
Original actions	15 B 3	1.28
Perfecting appeal	1 A, 4 A	1.1, 1.6
Security for costs	1 G	1.2
Special tribunals	1 D	1.2
Supreme Court	1 B 1	1.1

	<u>RULE</u>	<u>PAGE</u>
EMPLOYMENT SECURITY LAW		
Advanced case	11 B 2 c	1.22
Docket fee waived	1 G 1 a	1.2
Scheduling, argument, and submission	11	1.22
EXCEPTIONAL CAUSE		
Bill of exceptions extension	5 B 4 d	1.10
Brief date extension	6 F, 9 A	1.14, 1.17
Scheduling, argument, and submission	11 C, 11 D	1.23, 1.23
EXCESSIVE SENTENCE		
No oral argument	11 E 5	1.23
EXCESSIVELY LENIENT SENTENCE		
No oral argument	11 E 5	1.23
EXHIBITS		
Bill of exceptions	5 B 6 c	1.11
Exclusions	5 B 1 d, 5 B 8	1.8, 1.12
Request	5 B 1	1.7
Transporting large exhibits	5 B 8	1.12
Brief reference format	9 C 3	1.19
Supreme Court records prohibited as	16 D	1.29
Videotape	5 B 7	1.12
EXTENSION OF BRIEF DATE		
	6 F, 9 A	1.14, 1.17
FEE, ATTORNEY, CLAIM FOR		
	9 F	1.21
FILING A NEW CASE		
	See DOCKETING THE CASE	
FURTHER REVIEW, PETITION FOR		
	2 F	1.4
GUARDIANS AD LITEM		
Status on appeal	1 F	1.2
Withdrawal of appearance	1 F	1.2
HABEAS CORPUS		
Docket fee	1 G 1 c	1.3
INDEXES		
Bill of exceptions	5 B 6 a	1.10
Transcript	4 B 1	1.6
JURISDICTION		
Statement of Appellant	9 D 1 c	1.19
Statement of Appellee	9 D 2 b	1.20
JURY, COMMENTS BEFORE, RECORD OF		
	5 A 2	1.7

	<u>RULE</u>	<u>PAGE</u>
MANDATE		
Appeal to U.S. Supreme Court	14 A 2	1.26
Application to stay	14 A 2	1.26
Costs	14 B	1.27
Attorney fees	14 B 1 d	1.27
Briefs		
Amount taxed	14 B 2	1.27
Printed	14 B 1 c	1.27
Fees	14 B 1	1.27
Motion to retax	14 B 5	1.27
Payment	14 B 4	1.27
Printing	14 B 1 c	1.27
Statement	14 B 4	1.27
Transcript	14 B 1 b	1.27
Unnecessary	14 B 3	1.27
Motion to recall	14 A 3	1.26
Objections	14 A 3	1.26
Motion for rehearing	13 I, 14 A 1	1.26, 1.26
Petition for further review	14 A 1	1.26
Return of record	16 C	1.29
MEDIA COVERAGE	17, 18	1.29, 1.31
MOTIONS		
Advanced for argument	11 B 2, 11 B 3	1.22, 1.22
Attorneys fees	9 F	1.21
Bankruptcy	11 G	1.24
Bill of exceptions extensions	5 B 4	1.9
Brief in support		
Copies	6 H	1.14
Form	6 H	1.14
When allowed	6 H	1.14
Complex	6 H	1.14
Copies	6 H	1.14
Contents	6 C	1.13
Dismissal		
Appellant	8	1.16
Appellee	7 B, 8 E	1.15, 1.17
Extension of brief date	6 F, 9 A	1.14, 1.17
Advanced case	6 F 1, 9 A	1.14, 1.17
Nonadvanced case	6 F 2	1.14
Filing	6 D	1.13
Form	6 B	1.13
Generally	6	1.13
Not covered	6 A	1.13
Oral argument	6 E	1.14
Advancement	11 B	1.22
Proof of service	6 D, 8 C	1.13, 1.16
Recall mandate	14 A 3	1.26
Objections	14 A 3	1.26
Record concerning	5 A 2	1.7

	<u>RULE</u>	<u>PAGE</u>
Rehearing		
Brief in support	9 A 5, 13	1.17, 1.25
Contents	9 D 6, 13 D	1.21, 1.25
Order	13 D	1.25
Filing	13 A	1.25
Form	13 E	1.25
Page length	9 B 5	1.18
Penalty for delay	13 J	1.26
Time	9 A 5, 13 A	1.17, 1.25
Briefs on reargument	9 A 6, 13 L	1.17, 1.26
Copies	13 L	1.26
Contents	13 C	1.25
Copies	13 G	1.26
Filing	9 A 5, 13 A, 13 G	1.17, 1.25, 1.26
Form	13 B	1.25
Mandate	13 I, 14 A	1.26, 1.26
Oral argument not permitted	13 H	1.26
Original actions	13 K	1.26
Penalty for delay	13 J	1.26
Response	9 A 5, 13 F	1.17, 1.26
Briefs	13 E	1.25
Time	13 F	1.26
Service	9 B 6, 9 B 7, 13 G	1.18, 1.18, 1.26
Submission	13 F, 13 H	1.26, 1.26
Time	9 A 5, 13 A	1.17, 1.25
Response	6 C 2, 7 B, 8 D	1.13, 1.15, 1.16
Retax costs	14 B 5	1.27
Service	6 D, 8 C	1.13, 1.16
Stipulations	5 A 1, 6 C 1, 8 E	1.7, 1.13, 1.16
Submission	6 C 2	1.13
Summary disposition	7	1.14
Court's own motion	7 A	1.14
Grounds	7 A	1.14
Summary dismissal or affirmance	7 B	1.15
Grounds	7 B	1.15
Mootness in prison disciplinary and postconviction relief appeals	7 D	1.15
Time limits		
Oral argument	6 E	1.14
Submission	6 C 2	1.13
Waive notice, hearing, and objections	6 G	1.14
Withdrawal		
Court-appointed counsel	1 F 1, 3 B	1.2, 1.5
Generally	1 F 1	1.2
NEBRASKA APPELLATE REPORTS		
Citation of opinions	2 E 4	1.4
Official version of opinion	2 E 3	1.4
NEBRASKA REPORTS		
Brief reference format	9 C 4	1.19

	<u>RULE</u>	<u>PAGE</u>
Official version of opinion	12 C	1.25
 NONADVANCED CASE		
Extension of brief date	6 F 2, 9 A	1.14, 1.17
Scheduling, argument, and submission	11	1.22
 NOTICE OF APPEAL		
Appeal to Court of Appeals	1 B 1	1.1
Appeal to Supreme Court	1 B 1	1.1
Appeal to U.S. Supreme Court	14 A 2	1.26
Clerk of the district court	1 B 2	1.1
Clerk of the Supreme Court	1 B 1	1.1
Court-appointed counsel	3 A	1.5
Perfecting appeal	1 A	1.1
Transcript	4 A	1.6
 OBJECTIONS		
Evidence	5 A 1	1.7
Motion for rehearing	13 F	1.26
Motion for summary disposition	7 B 4	1.15
Motion to dismiss	8 D	1.16
Motions	6 C 2	1.13
Petition for further review	2 F 4	1.5
Petition to bypass	2 B 2	1.3
 OPENING STATEMENT, RECORD OF		
	5 A 2	1.7
 OPINIONS		
Copies mailed		
Court of Appeals	2 E 2	1.4
Supreme Court	12 B	1.25
Court of Appeals	2 E	1.4
Citation of	2 E 4	1.4
Disposition without	7	1.14
Official version		
Nebraska Appellate Reports	2 E 3	1.4
Nebraska Reports	12 C	1.25
Release	12 A	1.25
Appeal to U.S. Supreme Court	14 A 2	1.26
Motion for rehearing	13 A	1.25
 ORAL ARGUMENT		
Additional time	11 E 2	1.23
Advanced cases	11 B 2, 11 B 3	1.22, 1.22
Amicus curiae	11 E 4	1.23
Argument not permitted		
Application to file original		
actions	15 A 2	1.27
Excessive sentence	11 E 5 b	1.23
Excessively lenient sentence	11 E 5 b	1.23
Motion for rehearing	13 H	1.26

	<u>RULE</u>	<u>PAGE</u>
Motions	6 E	1.14
No brief on file	11 E 4	1.23
Plea of guilty or no contest	11 E 5 a	1.23
Bill of exceptions filed	5 B 3 d	1.9
Call	11 D	1.23
Court of Appeals	11 E	1.23
Criminal Cases	11 E 5	1.23
Motions	6 E	1.14
Nonadvanced cases	11 B 4	1.23
Proposed call	11 C	1.23
Reargument	9 A 6, 13 L	1.17, 1.26
Record	5 A 2	1.7
Scheduling	11	1.22
Submission with	11	1.22
Submission without	11 B 1, 11 E 6	1.22, 1.23
Time limits	11 E	1.23
Waiver	11 E 6	1.23
ORAL PROCEEDINGS, RECORD OF	5 A	1.7
ORIGINAL ACTIONS		
Advanced	11 B 2 e	1.22
Application	15 A	1.27
Docket	15 B	1.28
Oral argument not permitted	15 A 2	1.27
Briefs		
Defendant	9 D 2	1.20
Plaintiff	9 D 1	1.19
Reference format	9 C 1	1.18
Commenced	15 A 1	1.27
Docketing	15 B	1.28
Fee	15 B 2, 15 B 3	1.28, 1.28
Filing	15	1.27
Copies	15 A 2	1.27
Fee	15 B	1.28
Petition and statement	15 A 2	1.27
Motion for rehearing	13 K	1.26
Original concurrent jurisdiction	11 B 2 g	1.22
Scheduling, argument, and submission	11	1.22
Transfer to Supreme Court docket	15 B 3	1.28
PETITION FOR FURTHER REVIEW BY SUPREME COURT		
Contents	2 F 3	1.4
Filing and service	2 F 5	1.5
Form	2 F 2	1.4
Mandate not to issue during pendency	2 F 7	1.5
Response	2 F 4	1.5
Submission	2 F 6	1.5
Time for filing	2 F 1	1.4

	<u>RULE</u>	<u>PAGE</u>
PETITION TO BYPASS		
Filing and service	2 B 1	1.3
Objections	2 B 2	1.3
Oral argument	2 B 3	1.3
Submission	2 B 4	1.3
PLEA OF GUILTY, NO CONTEST		
No oral argument	11 E 5 a	1.23
POSTCONVICTION		
Court-appointed counsel	3	1.5
Representation on appeal	3 A	1.5
POVERTY AFFIDAVIT		
Current affidavit required	1 B 4	1.1
Docket fee	1 G 1 b	1.2
Perfecting appeal	1 A, 1 B 4	1.1, 1.1
PRAECIPE		
Bill of exceptions	5 B 1, 5 B 2	1.7, 1.8
Transcript	4 A	1.6
PRESENTENCE REPORT		
	See CRIMINAL CASES	
PRO SE LITIGANTS		
	1 F	1.2
PROPOSED CALL		
	See CALL	
PUBLIC SERVICE COMMISSION (See, also, SPECIAL TRIBUNALS)		
	1 D	1.2
REARGUMENT		
	See ORAL ARGUMENT	
RECORDS		
Bill of exceptions	5 B, 16 A, 16 C	1.7, 1.28, 1.29
Case stated	5 B 13	1.13
Checked out	16 A	1.28
Costs	16 A	1.28
Microfilm	16 E	1.29
Presentence report	16 B	1.29
Suspension of privileges	16 A	1.28
Time limits	16 A	1.28
Extension	16 A	1.28
Homicide cases	16 C	1.29
Making, preserving, transcribing, and delivery of record of trial or other oral proceedings	5 A	1.7
Microfilm	16 C, 16 E	1.29, 1.29
Presentence report	16 B, 16 C	1.29, 1.29
Return to district court	16 C	1.29

	<u>RULE</u>	<u>PAGE</u>
Supreme Court records not exhibits Transcript	16 D 4, 16 A	1.29 1.6, 1.28
REHEARING, MOTION FOR	13	1.25
REMITTITUR	9 D 3	1.20
REPLY BRIEF	See BRIEFS	
REQUEST FOR BILL OF EXCEPTIONS	1 B 3, 5 B 1, 5 B 2	1.1, 1.7, 1.8
REQUEST FOR TRANSCRIPT	1 B 2, 4 A	1.1, 1.6
REVIEW, PETITIONS FOR	2 F	1.4
SCHEDULING, ARGUMENT, AND SUBMISSION		
Advanced cases	11 B 2, 11 B 3	1.22, 1.22
Bankruptcy	11 G	1.24
Call	11 D	1.23
Clerk of the Supreme Court	11	1.22
Default in filing briefs	10	1.21
Motion for rehearing	13 F, 13 H	1.26, 1.26
Motion to advance, nonadvanced	11 B 3	1.22
Motion to dismiss	7, 8 D	1.14, 1.16
Motion to recall mandate	14 A 3	1.26
Motions generally	6	1.13
Nonadvanced cases	11 B 4	1.22
Oral argument	11 E	1.23
Amicus curiae	11 E 4	1.23
Excessive sentence	11 E 5	1.23
Excessively lenient sentence	11 E 5	1.23
Motion for additional time	11 E 2	1.23
Not permitted unless brief on file	11 E 4	1.23
Plea of guilty or no contest	11 E 5 a	1.23
Time	11 E	1.23
Waived	11 E 6	1.23
Proposed call	11 C	1.23
Submission		
With argument	11	1.22
Without oral argument	11 B 1, 11 E 6	1.22, 1.23
Summary dispositions	7	1.14
SECURITY FOR COSTS (See, also, COSTS)	1 G 2, 14 A 2	1.3, 1.26
SENTENCES	11 E 5	1.23
SERVICE	See specific categories of items served	
SPECIAL TRIBUNALS		
Advanced case	11 B 2 i, 11 B 2 j	1.22, 1.22

	<u>RULE</u>	<u>PAGE</u>
Appeals from	1 D	1.2
Bill of exceptions	5 B 9	1.12
Scheduling, argument, and submission	11	1.22
STATUTES		
Briefs		
Constitutional questions	9 E	1.21
Reference format	9 C 5	1.19
Table of contents	9 D 1 b	1.19
Cited		
11 U.S.C. § 362	11 G	1.24
Neb. Rev. Stat. § 24-1106(2)	2 B	1.3
Neb. Rev. Stat. § 25-534	2 B 1, 6 D, 9 A 2	1.3, 1.13, 1.17
Neb. Rev. Stat. § 25-1140.09	5 B 12	1.13
Neb. Rev. Stat. § 25-1143	13 K	1.26
Neb. Rev. Stat. § 25-1914	1 G 2, 4 A 1 c	1.3, 1.6
Neb. Rev. Stat. § 25-1915	14 B 4	1.27
Neb. Rev. Stat. § 29-2306	1 A, 1 G 1 b	1.1, 1.2
Neb. Rev. Stat. § 29-2521.02 et seq.	16 E	1.29
Neb. Rev. Stat. § 33-103	1 A, 1 G 1 14 B 1 a, 15 B 2	1.1, 1.2 1.27, 1.28
Unconstitutionality	9 E	1.21
SUBMISSION	See SCHEDULING, ARGUMENT, AND SUBMISSION	
SUGGESTION OF BANKRUPTCY	See BANKRUPTCY	
SUMMARY DISPOSITIONS		
Court's own motion	7 A	1.14
Grounds	7 A	1.14
Mootness in prison disciplinary and postconviction relief appeals	7 D	1.15
Default in filing briefs	10 A	1.21
Motion for summary dismissal or affirmance	7 B	1.15
Copies	7 B 7	1.15
Form	7 B 6	1.15
Grounds	7 B	1.15
Objections	7 B 4	1.15
Submission	7 B 5	1.15
Time		
Filing	7 B	1.15
Not extended for filing briefs	7 B 8	1.15
Objections	7 B 4	1.15
SUMMARY REVERSAL	7 C	1.15
SUPPLEMENTAL BILL OF EXCEPTIONS	See BILL OF EXCEPTIONS	
SUPPLEMENTAL TRANSCRIPT	See TRANSCRIPT	

	<u>RULE</u>	<u>PAGE</u>
SUPREME COURT CLERK	See CLERK OF THE SUPREME COURT	
TAX EQUALIZATION AND REVIEW COMMISSION	See SPECIAL TRIBUNALS	
TEXTBOOKS		
Brief reference format	9 C 6	1.19
TIME LIMITS		
Appeal bonds	1 G 2	1.3
Appeal to U.S. Supreme Court	14 A 2	1.26
Bill of exceptions		
Amendments	5 B 5	1.10
Capital punishment	5 B 11	1.13
Payment	5 B 1 e	1.8
Preparation and delivery	5 B 3, 5 B 4	1.8, 1.9
Request	5 B 1 a	1.7
Special tribunals	5 B 9	1.12
Supplemental request	5 B 1 c	1.8
Briefs		
Constitutional questions	9 E	1.21
Default	10	1.21
Extensions	6 F, 9 A	1.14, 1.17
Extensions not applicable		
Advanced cases	9 A	1.17
Summary dispositions	7 B 8	1.15
Filing	9 A	1.17
Motion for rehearing	9 A 5, 9 A 6,	1.17, 1.17
	13 A, 13 J	1.25, 1.26
Mandate	13 I	1.26
Response	9 A 5, 13 F	1.17, 1.26
Submission	13 F, 13 H	1.26, 1.26
Reargument	13 L	1.26
Service	9 A	1.17
Constitutional questions	9 E	1.21
Docketing the case	1	1.1
Costs and security	1 G 2	1.3
Mandate	13 I, 14 A	1.26, 1.26
Motion to recall	14 A 3	1.26
Media coverage		
Objections	17 D	1.30
Variance application	17 B 3	1.29
Motion for rehearing	9 A 5, 9 A 6, 13	1.17, 1.17, 1.25
Mandate	13 I	1.26
Response	9 A 5, 13 F	1.17, 1.26
Submission	13 F, 13 H	1.26, 1.26
Motion of court-appointed counsel		
to withdraw	3 B	1.5
Motion to dismiss	7 B, 8 D	1.15, 1.16
Response	8 D	1.16
Submission	7 B, 8 D	1.15, 1.16

	<u>RULE</u>	<u>PAGE</u>
Motions generally	6 C 2	1.13
Oral argument	6 E	1.14
Oral argument	11 E	1.23
Additional time	11 E 2	1.23
Records checked out	16 A	1.28
Scheduling, argument, and submission	11	1.22
Motion for rehearing	13 F, 13 H	1.26, 1.26
Service	See specific categories of items served	
Summary disposition	7 B	1.15
Objections	7 B 4	1.15
Summary reversal	7 C	1.15
Transcript, supplemental	4 C	1.7
Waiver of time requirements	19	1.32
TRANSCRIPTS		
Appeal bond	4 A 1 c	1.6
Brief reference format	9 C 1	1.18
Cases previously appealed	4 D	1.7
Checked out	16 A	1.28
Contents	4 A	1.6
Costs	14 B	1.27
Exclusions from	4 A 3	1.6
Form	4 B	1.6
Index	4 B 1	1.6
Judgment, decree, or final order	4 A 1 b	1.6
Jury instructions	4 A 2	1.6
Limitations	4 A	1.6
Ordering	4 A	1.6
Praecipe	See Request to prepare	
Request to prepare	1 B 2	1.1
Supplemental transcript	4 C	1.7
TRIAL, RECORD OF ORAL PROCEEDINGS	5 A	1.7
UNEMPLOYMENT COMPENSATION CASES	See EMPLOYMENT SECURITY LAW	
VERBATIM RECORD, WHAT REPORTED	5 A	1.7
VIDEOTAPE EXHIBITS AND DEPOSITIONS	5 B 7	1.12
VOIR DIRE EXAMINATION OF JURY, RECORD OF	5 A 2	1.7
WAIVER		
Objections to motion	5 A 1, 6 G, 8 E	1.7, 1.14, 1.16
Of time requirements	19	1.32
WATER RESOURCES, DEPARTMENT OF	See SPECIAL TRIBUNALS	
WITHDRAWAL OF COUNSEL	1 F, 3 B	1.2, 1.5

	<u>RULE</u>	<u>PAGE</u>
WORKERS' COMPENSATION (See, also, SPECIAL TRIBUNALS)		
Advanced case	11 B 2 b	1.22
Docket fee waived	1 G 1 a	1.2
Scheduling, argument, and submission	11	1.22

APPENDICES

APPENDIX 1 Motion and Proof of Service	1.33
APPENDIX 2 Stipulation	1.34
APPENDIX 3 Motion to Dismiss by Appellee	1.35
APPENDIX 4 Application for Leave to File Appeal by County Attorney	1.36
APPENDIX 5 Sample Clerk's Certificate (Civil)	1.37
APPENDIX 6 Sample Clerk's Certificate (Criminal)	1.38

ADMISSION OF ATTORNEYS

1. Admission of Attorneys; Time of Examination; Filing of Application. Examination of applicants for admission to the bar will be held on the days set for the National Multistate Bar Examination and for the Multistate Essay Examination; provided, however, that the commission may hold examinations at such other times and places as it may deem advisable. The application for examination must be filed with the secretary of the bar commission as provided in rule 2.

Commencing in 1991, and thereafter, each candidate for admission on examination in Nebraska must have passed the Multistate Professional Responsibility Examination as a requirement for admission to practice law in Nebraska. The passing score will be established from time to time by the Nebraska Supreme Court. The examination may be taken by the applicant at any location where it is administered.

Rule 1 amended February 10, 1993.

2. Application and Showing; Character Affidavits. Each applicant must file with the secretary of the bar commission a written request for admission and a personal affidavit as to the applicant's age, residence, and time and place of study and degree, or admission and period of practice in courts of record in another state, the District of Columbia, or a territory, together with the certificates or affidavits of at least two citizens of good standing in the community where the applicant resides, or formerly resided, and such other information as the bar commission may require. These certificates or affidavits must show that the parties making them are well acquainted with the applicant, that the applicant is of good reputation in that community, and that they believe the applicant to be of good moral character. In case the applicant seeks admission on examination, he or she must file an application, in the form provided by the bar commission, on or before November 1 to be eligible to sit for the following February examination and on or before April 1 to be eligible to sit for the following July examination. If the applicant is under suspension or disbarment, the applicant will not be eligible to be admitted or eligible to take the bar examination in Nebraska.

Rule 2 amended December 29, 1993; effective March 1, 1994.

3. Standard of Character and Fitness. An attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them. A record manifesting a significant deficiency by an applicant in one or more of the following essential eligibility requirements for the practice of law may constitute a basis for denial of admission. In addition to the admission requirements otherwise established by these rules, the essential eligibility requirements for admission to the practice of law in Nebraska are:

(a) The ability to conduct oneself with a high degree of honesty, integrity, and trustworthiness in all professional relationships and with respect to all legal obligations;

(b) The ability to conduct oneself diligently and reliably in fulfilling all obligations to clients, attorneys, courts, and others;

(c) The ability to conduct oneself with respect for and in accordance with the law and the Nebraska Rules of Professional Conduct;

(d) The ability to communicate clearly with clients, attorneys, courts, and others;

(e) The ability to reason, analyze, and recall complex factual information and to integrate such information with complex legal theories;

- (f) The ability to exercise good judgment in conducting one's professional business;
- (g) The ability to avoid acts that exhibit disregard for the health, safety, and welfare of others;
- (h) The ability to use honesty and good judgment in financial dealings on behalf of oneself, clients, and others;
- (i) The ability to comply with deadlines and time constraints;
- (j) The ability to conduct oneself professionally and in a manner that engenders respect for the law and the profession.

See Appendix A, Character and Fitness Standards.

Rule 3 amended July 28, 1998; Rule 3(c) amended July 13, 2005, effective September 1, 2005.

4. Other Proof of Character; Qualifications of Applicant; Report of Committee on Inquiry. The qualifications of an applicant for admission are not necessarily established by the foregoing. In addition thereto the applicant will, in the application, give the names and addresses of at least three persons, other than those whose certificates or affidavits the applicant presents, of whom inquiry can be made in regard to the applicant's character and other qualifications.

5. Admission Qualifications.

A. Classification of Applicants.

(1) Class I-A applicants who may be admitted to practice in Nebraska upon approval of a proper application are those:

(a) who, as determined by the bar commission, have been admitted to, and are active and in good standing in, the bar of another state, territory, or district of the United States, and

(b) who at the time of their admission had attained educational qualifications at least equal to those required at the time of application for admission by examination to the bar of Nebraska, and

(c) who have passed an examination equivalent to the examination administered in the State of Nebraska, and, beginning in 1991, who have passed the Multistate Professional Responsibility Examination with the score required by Nebraska.

(2) Class I-B applicants who may be admitted to practice in Nebraska upon approval of a proper application are those:

(a) who have been licensed and are active and in good standing in the practice of law in another state, territory, or district of the United States preceding application for admission to the bar of Nebraska and have actively and substantially engaged in the practice of law in another state, territory, or district of the United States for 5 of the 7 years immediately preceding application for admission, and

(b) who at the time of their admission had attained educational qualifications at least equal to those required at the time of application for admission by examination to the bar of Nebraska.

(3) For purposes of this rule, "practice of law" means:

(a) The private practice of law as a sole practitioner or as an attorney employee of, or partner or shareholder in, a law firm, professional corporation, legal clinic, legal services office, or similar entity; or

(b) Employment as an attorney for a corporation, partnership, trust, individual, or other entity with the primary duties of:

(i) Furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law; or

(ii) Preparing cases for presentation to or trying before courts, executive departments, or administrative bureaus or agencies; or

(c) Employment as an attorney in the law offices of the executive, legislative, or judicial departments of the United States, including the independent agencies thereof, or of any state, political subdivision of a state, territory, special district, or municipality of the United States, with the primary duties of:

(i) Furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law; or

(ii) Preparing cases for presentation to or trying cases before courts, executive departments, or administrative bureaus or agencies; or

(d) Employment as a judge, magistrate, hearing examiner, administrative law judge, law clerk, or similar official of the United States, including the independent agencies thereof, or of any state, territory, or municipality of the United States, with the duties of hearing and deciding cases and controversies in judicial or administrative proceedings, provided such employment is available only to an attorney; or

(e) Employment as a teacher of law at a law school approved by the American Bar Association throughout the applicant's employment; or

(f) In the event that the applicant has not served for a full 5 of the last 7 years with any of the entities listed in subparagraphs (a) through (e) above, for purposes of this paragraph, the applicant may use any combination of subparagraphs (a) through (e) above.

(4) All other applicants are Class II applicants, who must take a written examination.

(5) Applicants with the qualifications to be classified as Class I-A or Class I-B applicants shall not be permitted to apply for the written examination taken by Class II applicants without the prior approval of the bar commission, which approval may be given on good cause shown.

B. Applications.

(1) All applications must be made on forms furnished by the commission.

(2) Fees are required by all applicants in an amount fixed by the Supreme Court and must be paid in cash, bank cashier's check, or money order. Fees may be refunded in accordance with guidelines adopted by the commission.

C. Education Qualifications; Class II Applicants. All applicants must have received at the time of the examination their first professional degree from a law school approved by the American Bar Association. An applicant without a first degree from an approved law school shall be permitted to take the examination if such applicant will receive a first degree from an approved law school within 60 days after the date of the examination taken. In cases of hardship, the Supreme Court may, upon written application stating the nature and reason for the hardship to the applicant, permit the examination to be taken by an applicant before all other requirements have been fulfilled.

D. Policy on Applicants with a Disability. The bar commission will follow special rules set forth in the Policy on Applicants with a Disability, Appendix C.

E. Oath of Admission. No applicant will be admitted to the bar of Nebraska until such time as he or she has taken the oath of admission prescribed by the Supreme Court. No Class I applicant will be permitted to take such oath later than 18 months subsequent to the date upon which his or her application has been approved. No Class II applicant will be permitted to take such oath later than 18 months subsequent to the date of the announcement by the Court that he or she has passed the examination. Nothing precludes reapplication for admission. Admission of all applicants, including applicants who are being admitted with conditions set by the Supreme Court, will be by order of the Court, and certificates of admission issued to applicants will be signed by a Judge of the Court.

Rule 5B(3) eliminated February 10, 1993; Rule 5C amended May 22, 1996; Rule 5D and 5E amended July 28, 1998; Rule 5E amended May 23, 2001; Rule 5C amended January 29, 2003; Rule 5A(1) amended May 13, 2004; Rule 5A(5) adopted February 9, 2005.

6. Admission, Pro Hac Vice, of Attorneys of Good Moral Character Who Are Admitted to Practice in Another State, the District of Columbia, or a Territory. Any attorney of good moral character who is admitted to and engaged in the practice of law in the courts of record of another state, the District of Columbia, or a territory, having professional business in the courts of this state, may on motion to such court, in the discretion of the court, be admitted for the purpose of transacting such business, provided that the applicant takes the oath required to be taken by individuals regularly practicing before the Nebraska Supreme Court and, further, upon its being made to appear to the court by a written showing filed therein that the applicant has associated and is appearing with an attorney who is a resident of Nebraska, duly and regularly admitted to practice in the courts of record of this state, and upon whom service may be had in all matters connected with the action with the same force and effect as if personally made on such foreign attorney within this state.

7. Fees; Payment and Disbursement; Per Diem of Bar Commission. Each applicant, with the filing of the application, must pay the fee prescribed by the Nebraska Supreme Court. Application fees will be used for administrative expenses and costs incurred by the bar commission in carrying out its duties. As an expense of the commission, the attorney members will be entitled to receive reimbursement for all reasonable expenses incurred in the performance of their duties and a per diem allowance to be fixed by the Court. Each year, the bar commission will submit a budget to the Court for the purpose of establishing the application fee to be charged.

8. Bar Examination; Subjects. The bar commission will publish the subjects to which examination will conform. The subjects will be those the members of the bar commission deem necessary to properly prepare for the practice of law in this state, including the subject of legal ethics.

9. Bar Commission; Appointment; Duties. On October 23, 1985, the Nebraska Supreme Court appointed a commission composed of six persons, learned in law, to make recommendations to the Court with

reference to applicants for admission and to conduct examinations for the ensuing years. One commissioner was selected from each Supreme Court judicial district. In order to create staggered terms, commissioners first appointed on October 23, 1985, were selected so that one was appointed for a term of 1 year, one for a term of 2 years, one for a term of 3 years, one for a term of 4 years, one for a term of 5 years, and one for a term of 6 years, the terms beginning November 1, 1985. Thereafter, each commissioner is appointed for a term of 6 years. The Court appoints a secretary to the bar commission, who serves under the supervision of the Court and the bar commission. The commission so appointed will, prior to the examinations, examine the proofs of qualifications filed in accordance with these rules and may make further investigation as to the qualifications of any applicant as it deems expedient. On the day appointed, it will commence the examination of applicants upon the subjects as published. The method of conducting the examinations will be left to the discretion of the commission. The purpose of the examination will be to determine whether any individual seeking admission is unqualified and incompetent to be permitted to practice law within the State of Nebraska. The standards for passing the examination will be established by the commission with the approval of the Court.

10. Review by Commission. Within 10 days following the bar examination, the commission will file a copy of the examination questions (excluding any Multistate Bar Examination questions which have not been made available to the bar commission) with the secretary of the commission, which copy will be a public record. The secretary of the commission will furnish a copy of any such examination questions to any person for the prescribed fee.

Immediately following the examination, the commission will file the examination papers (excluding any Multistate Bar Examination papers) of all applicants who fail the examination with the secretary of the commission, but no examination papers will become a public record. Within 10 days after the examination results have been announced, any applicant who fails may personally inspect his or her paper in the presence of the secretary of the commission.

Any applicant who has failed to pass the bar examination or to be admitted on motion, who has been denied admission on the basis of fitness or character, or who has been refused permission to take the examination, may, within 30 days after the mailing of the notice of failure, refusal of permission, denial of admission on motion, or denial of admission on the basis of fitness or character, request a hearing before the bar commission. The applicant must appear at the hearing for an oral presentation and present a concise written brief setting forth the reasons why the applicant should pass, be permitted to take the examination, be admitted on motion, or be admitted on fitness or character. The applicant may, at the applicant's expense, make arrangements to have the proceeding recorded for use by the commission or the Supreme Court on appeal. The commission will then review and consider the reasons presented. Upon reaching a determination, the commission will advise the applicant of its decision in writing. In the event that the applicant is dissatisfied with the decision of the commission, the applicant may, within 30 days from the date of the letter from the commission, appeal the decision to the Supreme Court. The appeal must be taken and perfected in accordance with rule 15.

Rule 10 amended May 22, 1996.

11. Bar Commission; Reports. As soon as practicable after the conclusion of the examination, the commission will make a written report to the Court of its recommendations. All applicants who are approved by the Court will be admitted to practice upon taking the oath prescribed by law.

12. Bar Commission; Rules and Regulations. The bar commission is authorized to make, subject to the approval of the Supreme Court, such further rules and regulations as it deems necessary or expedient to carry out the intent and purpose of these rules.

13. Bar Commission; Administration of Oaths; Power of Subpoena. Each member of the bar commission is hereby authorized to administer oaths in any proceeding before the bar commission on matters relative thereto, and has power in such matters to subpoena witnesses and take depositions.

14. Resignation; Readmission. Any attorney admitted to practice law in the State of Nebraska who resigns membership in the Nebraska State Bar Association, as provided in article III, § 9, of the Rules Creating, Controlling and Regulating Nebraska State Bar Association, will no longer be a member of the Nebraska bar, and if thereafter such person desires to be readmitted to the Nebraska bar, the applicant must comply with the applicable provisions of this article.

15. Appeal to Supreme Court; Procedure. Any applicant entitled to appeal from a final adverse determination of the bar commission in accordance with rule 10 must file an original and seven copies of a notice of appeal with the Clerk of the Supreme Court within 30 days following the date notice of the decision was mailed to the applicant at the address given to the commission by the applicant at the time of the hearing before the commission. The notice of appeal shall be accompanied by a written statement, an original and seven copies, setting forth the nature of the case, the reason for the appeal, and the facts and pertinent authorities upon which the applicant relies. No fee will be charged for filing the appeal. The Supreme Court will consider the matter de novo on the record made at the hearing before the commission, including such proceedings as may have been recorded pursuant to rule 10; provided, however, that the Supreme Court may appoint a master, who, after hearing the arguments of the applicant and the commission, shall make findings and report them to the Court, together with a recommended disposition. A copy of such report shall be forwarded to the applicant on the same day an original and seven copies are filed with the Court. The applicant shall have 14 days from the filing of the report within which to file an original and seven copies of such response, if any, as the applicant may wish to make.

16. Passing Standards. The passing standard for the bar examination is a grade of 135 on a single administration of the examination, determined by averaging the scaled score on the MBE (multiple choice) and the scaled score on the MEE (essay). The passing score for the Multistate Professional Responsibility Examination is 85.

Rule 16 adopted May 22, 1996; Rule 16 amended May 13, 2004.

17. Examination Costs. Applicants shall also pay to the commission all charges for examinations prepared by the National Conference of Bar Examiners on behalf of the commission.

Rule 17 adopted May 22, 1996; Rule 17 amended July 28, 1998.

18. Communications in Official Confidence; Immunity. The records, papers, application, and other documents containing information collected and compiled by the commission, its members, employees, agents, or representatives are held in official confidence for all purposes other than cooperation with another bar examining authority. The bar commission and its members, employees, agents, and representatives are immune from all civil liability for damages for conduct and communications occurring in the performance of and within the scope of their official duties relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law. Records, statements of opinion, and other information regarding an applicant for admission to the bar communicated by any entity, including any person, firm, or institution, without malice, to the bar commission or to its members, employees, agents, or representatives are privileged, and civil suits for damages predicated thereon may not be instituted.

Rule 18 adopted July 28, 1998.

19. Fingerprint Record Checks. The bar commission shall obtain a complete set of fingerprints from all bar applicants on a form designated by the commission as provided under Neb. Rev. Stat § 7-102(2). The commission will forward the fingerprints of all such applicants to the Nebraska State Patrol for a national criminal history record information check by the Identification Division of the Federal Bureau of Investigation. The Supreme Court may, at any time, order the commission to discontinue requesting, or to thereafter resume requesting, fingerprint record checks on all applicants that are fingerprinted pursuant to Neb. Rev. Stat. § 7-102(2).

Rule 19 adopted April 24, 2002.

APPENDIX A

CHARACTER AND FITNESS STANDARDS

PURPOSE. The primary purposes of character and fitness screening before admission to the bar of Nebraska are to assure the protection of the public and to safeguard the justice system. The attorney licensing process is incomplete if only testing for minimal competence is undertaken. The public is adequately protected only by a system that evaluates character and fitness as those elements relate to the practice of law. The public interest requires that the public be secure in its expectation that those who are admitted to the bar are worthy of the trust and confidence clients may reasonably place in their attorneys.

ORGANIZATION. The bar commission will administer character and fitness screening. It will perform its duties in a manner that assures the protection of the public by recommending for admission only those who qualify.

THE INVESTIGATIVE PROCESS. The rules of the bar commission place on the applicant the burden of proving good character by producing documentation, reports, and witnesses in support of the application. Each investigation will be initiated by requiring the applicant to execute under oath a thorough application, and to sign an authorization and release form that extends to the bar commission and to any persons or institutions supplying information thereto. The applicant will be informed of the consequences of failing to produce information requested by the application and of making material omissions or misrepresentations.

STANDARD OF CHARACTER AND FITNESS. An attorney should be one whose record of conduct justifies the trust of clients, adversaries, courts, and others with respect to the professional duties owed to them. A record manifesting a significant deficiency in the honesty, trustworthiness, diligence, or reliability of an applicant may constitute a basis for denial of admission.

RELEVANT CONDUCT. The revelation or discovery of any of the following should be treated as cause for further inquiry before the bar commission decides whether the applicant possesses the character and fitness to practice law:

1. misconduct in employment;
2. acts involving dishonesty, fraud, deceit, or misrepresentation;
3. abuse of legal process, including the filing of vexatious lawsuits;
4. neglect of financial responsibilities;
5. neglect of professional obligations;
6. violation of an order of a court, including child support orders;
7. evidence of mental or emotional instability;
8. evidence of drug or alcohol dependence or abuse;
9. denial of admission to the bar in another jurisdiction on character and fitness grounds;
10. disciplinary action by an attorney disciplinary agency or other professional disciplinary agency of any jurisdiction.

USE OF INFORMATION. The bar commission will determine whether the present character and fitness of an applicant qualify the applicant for admission. In making this determination through the processes described above, the following factors should be considered in assigning weight and significance to prior conduct:

1. the applicant's age at the time of the conduct;
2. the recency of the conduct;
3. the reliability of the information concerning the conduct;
4. the seriousness of the conduct;
5. the factors underlying the conduct;
6. the cumulative effect of the conduct or information;
7. the evidence of rehabilitation;
8. the applicant's positive social contributions since the conduct;
9. the applicant's candor in the admissions process;
10. the materiality of any omissions or misrepresentations.

The investigation conducted by the bar commission will be thorough in every respect and will be concluded expeditiously.

APPENDIX B

Reserved for Future Use

APPENDIX C

POLICY ON APPLICANTS WITH A DISABILITY

I. POLICY. It is the policy of the Nebraska State Bar Commission to administer the bar examination in a manner that does not discriminate, on the basis of disability, against a qualified applicant with a disability. An applicant who is otherwise eligible to take the Nebraska bar examination may file a request for special testing accommodations.

II. DEFINITIONS. For the purpose of this policy, the following definitions shall apply:

A. "Disability" means any of the following:

1. A physical or mental impairment that substantially limits one or more of the major life activities of the applicant and that substantially limits the ability of the applicant to demonstrate, under standard testing conditions, that the applicant possesses the essential skills, level of achievement, and aptitudes that the Nebraska Supreme Court and the commission require for admission to the practice of law in Nebraska;

2. A record of having such an impairment;

3. Being regarded as having such an impairment.

B. "Qualified applicant with a disability" means an applicant with a disability who, with or without reasonable modifications to rules, policies, or practices; the removal of architectural, communication, or transportation barriers; or the provision of auxiliary aids and services, meets the essential eligibility requirements for admission to the practice of law in Nebraska.

C. "Reasonable accommodation" means an adjustment or modification of the standard testing conditions that ameliorates the impact of the applicant's disability without doing any of the following:

1. Fundamentally altering the nature of the examination or the commission's ability to determine through the bar examination whether the applicant possesses the essential skills, level of achievement, and aptitudes that are among the essential eligibility requirements set forth in rule 3, that the Nebraska Supreme Court and the commission have determined are required for admission to the practice of law in Nebraska;

2. Imposing an undue burden on the commission;

3. Compromising the security of the examination;

4. Compromising the integrity, the reliability, or the validity of the examination.

III. REQUESTS FOR SPECIAL TESTING ACCOMMODATIONS

A. Requests

1. A request for special testing accommodations will be on forms prescribed by the commission and consist of all of the following:

(a) a statement from the applicant, including a description of the applicant's disability and the special accommodations requested;

(b) a statement from the applicant's appropriate health care professional(s) certifying the applicant's disability;

(c) a statement from any educational institution or employer that provided special accommodations to the applicant while the applicant attended the educational institution or was employed by the employer, certifying the accommodation provided;

(d) an authorization for release of records from the applicant's physician(s) and/or other appropriate health care professional(s) for the purpose of assessing the disability, and accommodations which may be required.

The applicant may file any additional documentation in support of the request.

2. A request for special testing accommodations for an examination must be filed with the applicant's Application to take the Bar Examination and by the deadline in rule 2 for filing that application. A request for special testing accommodations for re-examination must be filed with the Application for Re-examination and by the deadline in rule 2 for filing that application.

B. Availability of Request Forms

All forms necessary to complete a request for special testing accommodations will be available at no charge from the Nebraska State Bar Commission Admissions Office.

IV. COMMISSION DECISIONS

A. Procedures for Review of Requests

1. The commission will review all requests for special testing accommodations that are properly filed in accordance with this policy.

(a) Requests that are not timely filed, that are incomplete, or that otherwise do not comply with the requirements of this policy may be rejected for consideration by the commission.

(b) The commission may ask an applicant to submit additional information to support the applicant's request.

(c) The commission may seek the assistance of a medical, psychological, or other authority of the commission's choosing in reviewing a request.

(d) The commission may ask the applicant to submit to an independent evaluation conducted by an appropriate health care professional selected by the commission.

(e) The cost of the independent evaluation shall be paid by the commission.

2. In reviewing a request, the commission will follow these procedures.

(a) The commission will make a determination, and the secretary of the commission will send notification of the determination to the applicant, no fewer than 25 days before the examination.

(b) The commission's denial of a request will be in writing and sent to the applicant by certified mail to the address provided by the applicant on the request. The commission's denial will include a statement of the commission's reasons for denial. The commission will also provide the applicant with a copy of the written report of any expert it consulted in reviewing the request.

(c) The applicant may appeal the denial of a request to the Supreme Court in accordance with rules 10 and 15.

3. The commission may delegate to a committee of bar examiners its authority to review and rule upon requests pursuant to this policy.

B. Standards for Decision on the Merits

1. The commission will grant a request and provide special testing accommodations to an applicant if it finds all of the following:

(a) the applicant has a disability and is otherwise eligible to take the bar examination;

(b) the special testing accommodations are necessary to ameliorate the impact of the applicant's disability;

(c) the special testing accommodations are reasonable accommodations.

2. The commission will have sole discretion to determine what special testing accommodations are reasonable accommodations. The commission may provide accommodations different from those requested by the applicant if the commission determines that the accommodations provided will effectively ameliorate the impact of the applicant's disability.

3. No special testing accommodation granted pursuant to this policy will alter in any manner the limitation otherwise imposed on the length of an applicant's answers.

4. If an applicant is permitted to dictate answers to the essay portion of the examination, those answers will be transcribed by personnel selected solely by the commission for that purpose.

V. CONFIDENTIALITY

All requests for special testing accommodations, supporting documentation, and information developed by the commission with respect to the requests will remain confidential; however, the commission may reveal the contents of applications to its experts in assessing and commenting on the matters contained in the applications.

Appendix C amended May 22, 1996; part II(A) and (C) amended July 28, 1998; part IV(A)1(e) amended October 16, 2003.

DISCIPLINARY RULES

PREFACE

The Nebraska Supreme Court has the inherent power and duty to prescribe standards of conduct for attorneys admitted to practice law in Nebraska; to determine what constitutes grounds for the discipline of attorneys: to disbar, suspend, censure, or reprimand for cause attorneys whose failure to comply with the obligations of a member of the bar has been duly established.

Attorneys are a part of the judicial system of the State and are officers of its courts. A license to practice law confers no vested right, but is a conditional privilege, revocable for cause.

The discipline of attorneys is for the protection of the public, the profession, and the administration of justice.

DEFINITIONS

The following definitions shall apply wherever used in these rules:

ASSOCIATION The Nebraska State Bar Association.

ATTORNEY A person duly admitted to the practice of law in the State of Nebraska by the Court, under the laws of the State of Nebraska, and who is by his or her oath required to abide by its laws, including the laws of its subdivisions and the Nebraska Rules of Professional Conduct.

Amended July 13, 2005, effective September 1, 2005.

CLERK The Clerk of the Supreme Court and Court of Appeals of the State of Nebraska.

COMPLAINANT Any person who makes a Grievance.

COMPLAINT A written statement prepared by the Counsel for Discipline as a result of an investigation of a Grievance and filed with the appropriate Committee on Inquiry.

CONDITIONAL ADMISSION OF GUILT
A process whereby a member charged can conditionally admit his or her guilt pending final approval by the Court.

COUNSEL FOR DISCIPLINE
The person employed by the Nebraska Supreme Court to fulfill the duties and responsibilities set out in these rules, and it shall include that person's staff to whom he or she shall have the power to delegate the authority to make the required investigations and such other duties as he or she may assign to the staff. It shall also include the person appointed by the Court to serve as special prosecutor in a disciplinary case.

Amended Dec. 13, 1995.

COURT The Supreme Court of the State of Nebraska.

DISABILITY INACTIVE STATUS
Suspension from the practice of law due to a disability or substance abuse problem.

EXECUTIVE COUNCIL
The Executive Council of the Nebraska State Bar Association.

FORMAL CHARGE A written statement prepared by the Counsel for Discipline at the direction of the Committee on Inquiry or the Disciplinary Review Board.

GRIEVANCE Any written statement made by any person alleging conduct on the part of a member which appears, in the judgment of the Counsel for Discipline, to have merit, and, if true, would constitute a violation of the member's oath, the Nebraska Rules of Professional Conduct, or these rules; allegations of misconduct not appearing in the judgment of the Counsel for Discipline to have merit are not deemed a Grievance under these rules.

Amended February 28, 2001; amended July 13, 2005, effective September 1, 2005.

INQUIRY	A review of the investigative file of the Counsel for Discipline by a Committee on Inquiry Panel subsequent to the filing of a Complaint. An Inquiry is not a hearing and witnesses shall not be called and evidence shall not be introduced. At the request of the Inquiry Panel, the Counsel for Discipline may appear and participate in the proceeding.
MEMBER	A member of the Nebraska State Bar Association of any class of membership.
OATH	The oath of office taken by an attorney or member at the time of his or her admission to practice as provided by Neb. Rev. Stat. § 7-104, or as the same may be hereafter amended.
PRIVATE REPRIMAND	A reprimand of a member by the Committee on Inquiry of the appropriate Judicial District or the Disciplinary Review Board which shall be in writing, signed by the Chairperson and Vice Chairperson, and directed to the member by United States certified mail, return receipt requested, but shall not be made public.
RELATOR	The Counsel for Discipline of the Nebraska Supreme Court.
RESPONDENT	A member charged with a violation of his or her oath, or the Nebraska Rules of Professional Conduct, or these rules. <small>Amended July 13, 2005, effective September 1, 2005.</small>
RULES	These rules as adopted by the Court or as the same may be hereafter amended.
RULES OF PROFESSIONAL CONDUCT	The Nebraska Rules of Professional Conduct as adopted by the Court, together with such amendments thereto as may from time to time be approved by the Court. <small>Adopted July 13, 2005, effective September 1, 2005.</small>
SERIOUS CRIME	Any felony or any lesser crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer.

RULE 1. JURISDICTION

(A) Every attorney admitted to practice in the State of Nebraska is subject to the exclusive disciplinary jurisdiction of the Court.

(B) Nothing herein contained shall be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it, such as the power of contempt.

(C) Time limitations for the Committees on Inquiry and Disciplinary Review Board as set forth herein are directory and not jurisdictional. Failure to observe prescribed time intervals may result in sanctions against the violator but does not justify abatement of any discipline or disability investigation or proceeding.

(D) Incumbent judges shall not be subject to the jurisdiction of the Counsel for Discipline.

(E) Every attorney admitted to practice in the State of Nebraska shall pay a disciplinary assessment for each calendar year from January 1 to December 31, payable in advance on or before January 1 of each year, in such amount as may be fixed by the Court. The first disciplinary assessment shall be due on or before January 1, 2001. The disciplinary assessment shall be paid to the Treasurer of the Association and shall be used to defray the costs of disciplinary administration and enforcement as established by these rules. Different classifications of disciplinary assessments may be established for Active Jr., Active Sr., Active, Inactive, Military, and Emeritus members as those membership classes are defined in Article III of the Rules Creating, Controlling, and Regulating Nebraska State Bar Association. Members newly admitted to the practice of law in the State of Nebraska shall not pay a disciplinary assessment for the remainder of the calendar year in which they are admitted.

(F) Members who fail to pay the disciplinary assessment shall be subject to suspension from the practice of law as provided in Article III(5) of the Rules Creating, Controlling, and Regulating Nebraska State Bar Association.

RULE 2. JURISDICTION OF DISCIPLINARY DISTRICTS

The Disciplinary District which shall have jurisdiction over a member shall be any District, as defined in Rule 7, in which the member maintains an office, or the District in which his or her conduct under investigation occurred. If the member resides in Nebraska but does not maintain an office in Nebraska, jurisdiction shall be in the District of the member's residence. If the member does not maintain an office or a residence in Nebraska and the conduct under investigation did not occur in Nebraska, the Disciplinary Review Board shall determine which District shall have jurisdiction and shall assign the investigation to the Counsel for Discipline.

RULE 3. GROUNDS FOR DISCIPLINE

(A) The license to practice law in this State is a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of the conditional privilege to practice law to conduct himself or herself at all times, both professionally and personally, in conformity with the standards imposed upon members as conditions for that privilege.

(B) Acts or omissions by a member, individually or in concert with any other person or persons, which violate the Nebraska Rules of Professional Conduct as adopted by the Court, the oath, or the provisions of these rules, shall be grounds for discipline whether the act or omission occurred in the course of an attorney-client relationship or otherwise.

Rule 3(B)(1) amended July 13, 2005, effective September 1, 2005.

RULE 4. TYPES OF DISCIPLINE

(A) Misconduct shall be grounds for:

- (1) Disbarment by the Court; or
- (2) Suspension by the Court; or
- (3) Probation by the Court in lieu of or subsequent to suspension, on such terms as the Court may designate; or
- (4) Censure and reprimand by the Court; or
- (5) Temporary suspension by the Court; or
- (6) Private reprimand by the Committee on Inquiry or Disciplinary Review Board.

(B) The Court may, in its discretion, impose one or more of the disciplinary sanctions set forth above.

Rule 4A(3) and 4B amended June 16, 2004.

RULE 5. THE ADVISORY COMMITTEE

(A) The Court shall appoint a committee to be known as the Advisory Committee which shall consist of one member from each Supreme Court Judicial District in effect at the time of the adoption of these rules and as may hereafter be changed, a member at large to be Chairperson, and a member at large to be Vice Chairperson.

(B) When the Advisory Committee is first appointed, one member shall be appointed for a term of one year, one member for two years, one member for three years, one member for four years, one member for five years, one member for six years, and one member for seven years. The first person appointed Vice Chairperson shall serve for seven years. Thereafter the full regular term of each member of the Committee shall be for seven years and no member shall serve full regular consecutive terms, but may be reappointed after a lapse of one year; provided, however, that at no time shall the terms of the Chairperson and Vice Chairperson expire at the same time.

(C) In the interest of continuity and efficiency of operation the Court may deviate from time to time from the above designated terms of membership. Members of the Advisory Committee shall not receive compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties.

(D) The Advisory Committee shall have the following powers and duties:

(1) In its discretion, render to a member upon his or her written request an advisory opinion or an interpretation of the Nebraska Rules of Professional Conduct regarding anticipatory conduct on the part of the member. A member requesting an opinion from the Advisory Committee shall prepare and submit with his or her request a statement of the specific facts upon which the opinion is requested and a memorandum directing the attention of the Committee to the pertinent Nebraska Rules of Professional Conduct and relevant case authority. The Chairperson of the Advisory Committee may waive this requirement in appropriate cases.

(2) Make appropriate arrangements, through its Chairperson, for publication and dissemination of such advisory opinions as the Committee deems of general interest to the members.

Rule 5(D)(1) amended February 22, 1996; Rule 5(A) and (B) amended July 23, 1997; Rule 5(D)(1) amended July 13, 2005, effective September 1, 2005.

RULE 6. THE DISCIPLINARY REVIEW BOARD

(A) The Court shall appoint a committee to be known as the Disciplinary Review Board which shall consist of one member from each Supreme Court Judicial District in effect at the time of the adoption of these rules and as may hereafter be changed, one member of which shall be designated as Vice Chairperson; a member at large to be Chairperson; and three residents of Nebraska, not members, representing the public at large. The Vice Chairperson shall act as Chairperson if the designated Chairperson is absent or disqualified from acting in a particular proceeding. Neither the Chairperson nor the Vice Chairperson shall be nonlawyers.

(B) When the Disciplinary Review Board is first appointed, one member shall be appointed for a term of one year, one member for two years, one member for three years, one member for four years, one member for five years, one member for six years, and one member for seven years. Thereafter the full regular term shall be for seven years and no member shall serve full regular consecutive terms, but may be reappointed after a lapse of one year. Initially, one representative of the public shall be appointed for a term of two years, one for a term of three years, and one for a term of four years. Thereafter the full regular term of the representative of the public shall be for three years. Representatives of the public may serve full regular consecutive terms.

(C) In the interest of continuity and efficiency of operation the Court may deviate from time to time from the above designated terms of membership. Any member who is participating in a disciplinary proceeding which is pending at the time the member's term expires shall continue to serve as a member of the Board, with respect to such proceeding, until final disposition of that proceeding. Such a member will serve in addition to the seven regular members of that Board. Members of the Disciplinary Review Board shall not receive compensation for their services but may be reimbursed for travel and other expenses incidental to the performance of their duties.

(D) The Disciplinary Review Board shall have the following powers and duties:

(1) If necessary, because of disqualification or unavailability, to direct that the Complaint be referred to some other Committee on Inquiry, in which case the Committee on Inquiry to which it is so referred shall have full power and jurisdiction to the same extent and in like manner as the Committee which had original jurisdiction.

(2) Assume jurisdiction of and determine a matter to the same extent and with like power as a Committee on Inquiry when directed by the Court.

(3) Review motions to quash subpoenas.

(4) Review a dismissal of a Grievance by the Counsel for Discipline upon application of the Complainant filed within thirty days of receipt of notice of the dismissal. After review of the investigative file of the Counsel for Discipline, the Disciplinary Review Board may affirm the dismissal of the Grievance, direct the Counsel for Discipline to further investigate, or direct the Counsel for Discipline to file a Complaint with the appropriate Committee on Inquiry. Should the Disciplinary Review Board reverse the Counsel for Discipline's decision to dismiss a Grievance, a special prosecutor shall be appointed to prosecute the action.

(5) Review the private reprimand issued by the Committee on Inquiry in conformity to Rule 9(H) upon written application of the member against whom the reprimand was issued or the Counsel for Discipline filed within thirty days of issuance of the reprimand. After review of the investigative

file of the Counsel for Discipline, the Disciplinary Review Board may affirm the issuance of the private reprimand, reverse the issuance of the private reprimand and dismiss the complaint, or determine that there are reasonable grounds for discipline of the Respondent and that a public interest would be served by the filing of a Formal Charge.

(6) Review a dismissal of a Complaint by the Committee on Inquiry in conformity with Rule 9(H) upon written application of the Counsel for Discipline filed within thirty days of receipt of the notice of dismissal. After review of the investigative file of the Counsel for Discipline, the Disciplinary Review Board may affirm the dismissal of the Complaint; determine that there are reasonable grounds for discipline of the Respondent but that no public interest would be served by the filing of a Formal Charge and, thereupon, prepare and issue a private reprimand; or determine that there are reasonable grounds for discipline of the Respondent and that a public interest would be served by the filing of a Formal Charge. If the Disciplinary Review Board determines that a Formal Charge is warranted, the Board shall direct the Counsel for Discipline to file the same with the Clerk.

(7) A review provided for in subparagraphs (4), (5), or (6) immediately above shall be completed within sixty days after it is received by the Disciplinary Review Board unless the Chairperson of the Disciplinary Review Board, because of the extent of the record or the complexity of the issues, determines that additional time is necessary.

(E) Reviews provided for in paragraph (D)(4), (5), or (6) of this rule shall be conducted by a panel appointed by the Chairperson of the Board. The panel shall be composed of three members of the Disciplinary Review Board. One member of each panel shall be a nonlawyer. The Chairperson of the Board shall appoint one lawyer member of the panel to serve as Chairperson of the panel.

Rule 6(A) amended November 14, 1996; Rule 6(D)4 amended November 22, 2000.

RULE 7. DISTRICT COMMITTEE ON INQUIRY

(A) (1) The Court shall appoint a Committee on Inquiry in each of six districts. For the purposes of these rules, such districts shall be coterminous with the Supreme Court Judicial District of the same number in effect at the time of the adoption of these rules, and as hereafter may be changed. The Committees on Inquiry shall contain the following number of members, one-third of whom shall be nonlawyers: districts 1 and 2 shall contain 12 members and districts 3, 4, 5, and 6 shall contain 6 members.

(2) The members of each committee shall be residents of, or have their principal law office in, the district in which they serve as herein described; provided, however, that members of the Committee on Inquiry for district 4 may reside in any part of Douglas County, and members of the Committee on Inquiry for district 2 may reside in Sarpy County.

(3) Members of the Committees on Inquiry as they exist as of the date of adoption of this rule amendment shall continue to serve out their terms on such committees; however, when those terms expire, replacement for such members shall be in accordance with the boundaries and residence requirements of these rules.

(B) The Court shall designate one member as Chairperson and two members as Vice Chairpersons, either of whom may serve as Chairperson in the event of the disqualification or unavailability of the Chairperson. Neither the Chairperson nor the Vice Chairpersons shall be nonlawyers.

(C) When a Committee on Inquiry is first appointed, one-sixth of its members shall be appointed for a term of one year, one-sixth for a term of two years, one-sixth for a term of three years, one-sixth for a term of four years, one-sixth for a term of five years, and one-sixth for a term of six years and thereafter all regular

terms shall be six years. No member of the Committee shall serve consecutive terms but may, however, be reappointed after a lapse of one year.

(D) In the interest of continuity and efficiency of operation the Court may deviate from time to time from the above designated terms of membership. Any member who is participating in a disciplinary proceeding which is pending at the time the member's term expires shall continue to serve as a member of the Committee, with respect to such proceeding, until final disposition of that proceeding. Such a member will serve in addition to the regular members of that Committee. Members of the Committee shall not receive compensation for their services but may be reimbursed for travel and other expenses incidental to performance of their duties.

(E) The Committee on Inquiry shall have the following powers and duties:

- (1) Review the investigations and Complaint presented to it by the Counsel for Discipline.
- (2) Dismiss the Complaint upon being satisfied it is without foundation and merit.
- (3) Issue a private reprimand if the Complaint indicates a matter not appropriate for a Formal Charge.
- (4) Make application to the Court requesting that a member be placed on disability inactive status or for an immediate temporary suspension of a member in conformity with Rule 11 or Rule 12.

(F) An Inquiry regarding a Complaint filed with a Committee on Inquiry by the Counsel for Discipline shall be conducted by an Inquiry Panel composed of three members of the Committee appointed by the Chairperson of the Committee, one of whom shall be the Chairperson or a Vice Chairperson of the Committee, who shall serve as Chairperson of the Inquiry Panel. One member of each Inquiry Panel shall be a nonlawyer.

Rule 7(A)(2) amended November 23, 1994; Rule 7(A)(2) amended May 30, 1996; Rule 7(A)(2) amended November 12, 1998; Rule 7(A)(1)-(3) amended March 24, 2004..

RULE 8. COUNSEL FOR DISCIPLINE

(A) The Counsel for Discipline shall be appointed by the Nebraska Supreme Court and his or her appointment and tenure of office shall be on such terms and for such period as may be designated by the Court. The Counsel for Discipline shall not be permitted to engage in the private practice of law except the Court may agree to a reasonable period of transition after his or her appointment.

(B) The Counsel for Discipline shall have the following powers and duties:

- (1) Review, investigate, or refer for investigation all matters of alleged misconduct called to his or her attention by Grievance or otherwise. The Counsel for Discipline may initiate Grievances.
- (2) Notify a member in writing that he or she is the subject of a Grievance and furnish the member a copy thereof within fifteen days of receipt of the Grievance.
- (3) Dismiss a Grievance if, in his or her judgment, it is without foundation and merit.
- (4) Refer members to Attorney Assistance Programs under appropriate circumstances.
- (5) Prepare a Complaint and file it with the appropriate Committee on Inquiry if, in his or her judgment, there is sufficient evidence to substantiate such Complaint.

(6) Confer with any Committee on Inquiry prior to dismissal of a Grievance or preparation of a Complaint if he or she is in doubt as to the proper disposition of the matter.

(7) Provide research services for the Advisory Committee.

(8) Maintain records as follows:

(a) Records of correspondence received by the Counsel for Discipline but not classified as a Grievance shall be maintained for a period of three years, after which time they may be destroyed.

(b) Records of Grievances which have resulted in referral to Attorney Assistance Programs shall be maintained for a period of three years, after which time they may be destroyed.

(c) Records of Grievances which have been dismissed by the Counsel for Discipline for lack of foundation and merit shall be maintained for a period of three years, after which time they may be destroyed.

(d) Records of Grievances in which Complaints have been filed and then dismissed shall be maintained for a period of five years after final disposition of the complaint, after which time they may be destroyed.

(e) Records of Grievances against attorneys that have resulted in a reprimand by the Committee on Inquiry or the Disciplinary Review Board or probation, a reprimand, censure, suspension, or disbarment of the attorney shall be maintained until the death of the attorney, after which time they may be destroyed.

(9) Make a semiannual summary report to the Court of all disciplinary matters for each six-month period. Such report shall include the following information:

(a) Number of members complained against.

(b) The general nature of the Grievances.

(c) The disposition or status thereof and such other matters as the Court may, from time to time, request.

(d) A copy of the portion of the report relating to each Committee on Inquiry shall be submitted to the Chairperson of that Committee on Inquiry.

(10) Assist the Court in any disciplinary matter then pending before the Court, if requested.

RULE 9. PROCEDURE

Committee on Inquiry - Counsel for Discipline - Disciplinary Review Board

(A) All allegations of misconduct must be filed with the office of the Counsel for Discipline. All allegations of misconduct received by any other person shall be transmitted forthwith to the Counsel for Discipline. Upon receipt of information indicating an abuse of alcohol or drugs by a member or the existence of a mental health or gambling problem, the Counsel for Discipline shall release such information to the Nebraska Lawyers Assistance Program. The release of this information shall not be a violation of the confidentiality requirements of Rule 18.

(B) All investigations, whether upon allegations of misconduct or otherwise, shall normally be initiated by the Counsel for Discipline.

(C) When it appears to the Counsel for Discipline that allegations of misconduct do not have merit or that the allegations, if true, would not constitute grounds for discipline, he or she may decline to investigate and shall so advise the Complainant in writing with a proper explanation. In making a determination, the Counsel for Discipline may make such preliminary inquiry regarding the underlying facts as he or she deems appropriate. This may include requests for information from the Complainant and the member. All doubts shall be resolved in favor of an investigation. A declination by the Counsel for Discipline to investigate and dismissal pursuant to this rule are not appealable to the Committee on Inquiry or the Disciplinary Review Board.

(D) If it appears to the Counsel for Discipline that allegations of misconduct may have merit and, if true, would constitute grounds for discipline, he or she shall notify the member against whom the allegations are directed that the member is the subject of a Grievance, and within fifteen days of its receipt furnish the member a copy thereof by certified mail, return receipt requested, at the member's last known address.

(E) Upon receipt of notice of a Grievance from the Counsel for Discipline, the member against whom the Grievance is directed shall prepare and submit to the Counsel for Discipline, in writing, within fifteen working days of receipt of such notice, an appropriate response to the Grievance, or a response stating that the member refuses to answer substantively and explicitly asserting constitutional or other grounds therefor. For good cause, the Counsel for Discipline may grant additional time for the filing of a response.

(F) If, upon conclusion of any investigation, the Counsel for Discipline determines there are not reasonable grounds for discipline of a member against whom a Grievance is directed, he or she shall dismiss the Grievance and shall so advise the Complainant in writing with a proper explanation. The Counsel for Discipline shall further advise such Complainant that an appeal may be taken to the Disciplinary Review Board pursuant to Rule 14(A).

(G) If, upon conclusion of any investigation, the Counsel for Discipline determines there are reasonable grounds for discipline of a member against whom a Grievance is made, he or she shall reduce the Grievance to a Complaint specifying with particularity the facts which constitute the basis thereof and the grounds for discipline which appear to have been violated. The Complaint shall be forwarded by the Counsel for Discipline to the member by regular mail at the member's last known address. The member shall have ten working days from the date the Complaint is mailed to submit an additional written explanation of the facts or circumstances for inclusion in the Counsel for Discipline's investigative file. The Complaint and either the investigation file, or a copy thereof, shall then be immediately forwarded to the proper Committee on Inquiry.

(H) Upon receipt of the Complaint and file from the Counsel for Discipline, the Chairperson of the Committee on Inquiry shall appoint an Inquiry Panel pursuant to Rule 7(F) which shall within thirty days review the Complaint and either:

(1) Determine that the Complaint, if true, would not constitute grounds for discipline and dismiss the Complaint.

(2) Determine that there are not reasonable grounds for discipline of the Respondent, and dismiss the Complaint.

(3) Determine that there are reasonable grounds for discipline of the Respondent but that no public interest would be served by the institution of a Formal Charge. The Panel thereupon shall prepare and issue to the Respondent a private reprimand which shall be made a permanent part of the file in the office of the Counsel for Discipline, and this reprimand shall be received as evidence in any subsequent disciplinary proceeding against the Respondent only after a finding of misconduct in the subsequent disciplinary proceeding.

(4) Determine that there are reasonable grounds for discipline of the Respondent and that a public interest would be served by the filing of a Formal Charge. The Counsel for Discipline shall thereafter prepare and sign Formal Charges for filing with the Court. The Formal Charge shall be made in the name of the State of Nebraska on the relation of the Counsel for Discipline of the Nebraska Supreme Court.

(I) The Respondent or the Counsel for Discipline may appeal the actions of the Inquiry Panel to the Disciplinary Review Board in conformity with Rules 6(D)(5) and (6) and 14(D).

Rule 9(C) and (D) amended March 13, 1998; Rule 9(A) and (B) amended February 28, 2001.

RULE 10. PROCEDURE

Nebraska Supreme Court

(A) Proceedings for discipline of members shall be considered civil in their nature and for the purpose of protecting the public and the good name of the members, and may be instituted against any person who has been licensed to practice in the courts of the State of Nebraska.

(B) Proceedings for discipline of members may be instituted and prosecuted in the name of the State of Nebraska on the relation of the Counsel for Discipline of the Nebraska Supreme Court without leave of court.

(C) Proceedings shall be initiated by the Counsel for Discipline filing a Formal Charge setting forth the grounds thereof with reasonable definiteness. The Formal Charge shall be filed with the Clerk who shall then docket the cause as an original proceeding in the Court. No initial filing fee shall be charged in these actions.

(D) Upon the filing in the Court of a Formal Charge as contemplated and provided for by these rules against any member, Counsel for Discipline shall prosecute the Formal Charge against the Respondent. If the Court is advised by Counsel for Discipline by written notice or by a motion filed by the Respondent that, for reasons specified therein, a conflict exists or Counsel for Discipline cannot otherwise carry out such duty, the Court within ten days, in its discretion, may appoint any member to prosecute the Formal Charge.

(E) The Counsel for Discipline or any member so appointed may within thirty days, in his or her discretion, prepare and file an amended Formal Charge. Within five days after the time fixed for filing an amended Formal Charge, service shall be made upon the Respondent as provided for in paragraph (G) below.

(F) If the Counsel for Discipline or the member so appointed has in his or her possession evidence which, in his or her opinion, warrants any additional Charge or Charges, the Counsel for Discipline or the member so appointed may incorporate such additional Charge or Charges in the Formal Charge and prosecute the same, despite the fact that they may not have been presented to the Committee on Inquiry or the Disciplinary Review Board.

(G) Service upon the Respondent may be had by serving upon him or her a copy of the Formal Charge or any amended Formal Charge and notice of the time for answer in the same manner as service of summons is had in civil proceedings in the district courts of the State, in which case it shall be proved by the official return of the officer making such service. Service shall be deemed to have been waived if the Respondent shall sign a written receipt for a copy of the Formal Charge and notice. Service may likewise be had by the mailing by the Clerk of a certified copy of said Formal Charge and notice by certified mail, return receipt requested, to the Respondent at his or her last known address; and in that event the official return card of the United States mail, signed by the Respondent, acknowledging receipt of the envelope containing the

copy of said Formal Charge and notice, shall be deemed sufficient proof of service. In the event that it shall appear by affidavit that personal service cannot be had upon the Respondent and that letters to the Respondent's last known address are returned unclaimed, service may be had upon the Respondent by publication of notice for two successive weeks in some legal newspaper published in the county wherein the Respondent last resided. Such notice shall state that Formal Charge for disciplinary action has been filed in the Court against the Respondent and shall give the date of filing and the time within which Respondent is required to answer.

(H) The answer of the Respondent shall be filed within thirty days after service of summons and a copy of the Formal Charge or within thirty days after service by publication, as herein provided, shall have been completed. For good cause shown the Court may extend the time to answer.

(I) If no answer be filed within the time limited therefor, or if the answer raises no issue of fact or of law, the matter may be disposed of by the Court on its own motion or on a motion for judgment on the pleadings, but in either case there shall be an opportunity for oral argument prior to entry of an order of disbarment by the Court.

(J) Upon the filing of an answer raising an issue of fact, the Court shall refer the matter to a member as referee. It shall be the duty of such referee to fix an early date for hearing, notify the relator and the Respondent or their respective attorneys of record, and without delay to hear such testimony as may be introduced under the pleadings. The referee shall have all powers of a referee in civil actions in the courts of Nebraska. The referee shall observe the rules of evidence, discovery rules, and motion practice applicable in civil actions in the district courts of the State of Nebraska. The standard of proof in hearings before the referee shall be clear and convincing. The referee shall have a competent reporter present who shall take in shorthand or by any mechanical device and transcribe in typewriting all oral evidence adduced at the hearing had before the referee. The referee may continue the hearing from time to time as circumstances may require, but shall not delay his or her proceedings unless justice and equity so require. The referee shall make a written report within four months of the referee's appointment, unless extended by order of the Court, stating his or her findings of fact and recommendations. The typewritten record of the proceedings shall have attached to it all of the exhibits offered at the hearing, and shall be certified by the referee. The referee shall promptly transmit to the Court the referee's report, together with such record so certified, and shall transmit a copy of the report to the Respondent.

(i) When the transcription of oral evidence, exclusive of exhibits, exceeds 250 pages in length, the reporter shall prepare one or more write-protected 3½-inch computer disks containing the transcription of proceedings. Such disks shall be formatted in Microsoft Word, or, if such formatting cannot be accomplished, in ASCII text. An adhesive label shall be affixed to each disk legibly identifying the case caption, docket and page or case numbers, disk number (1 of 2, etc.), the format utilized, and the name of the reporter. The first line of the label shall be left blank. Such disk(s) shall be transmitted to the Court by the referee at the same time that the typewritten record of proceedings and any attached exhibits are filed in the Court. Such disk(s) shall be for the exclusive use of the Supreme Court and authorized court personnel. Any reporter who lacks the technological capability to comply with this requirement shall include in the transcription of oral evidence a separate certificate so stating.

(ii) In addition to the written report of the referee, he or she shall also prepare one or more write-protected 3½-inch computer disks containing the report. Such disks shall be formatted in Microsoft Word, or, if such formatting cannot be accomplished, in ASCII text. An adhesive label shall be affixed to each disk legibly identifying the case caption, docket and page or case numbers, disk number (1 of 2, etc.), the format utilized, and the name of the referee. The first line of the label shall be left blank. The referee shall transmit such disk(s) to the Court at the same time that the referee's written report is filed in the Court. Such disk(s) shall be for the exclusive use of the Supreme Court and authorized court personnel. Any referee who lacks the technological capability to comply with this requirement shall include in the report a separate certificate so stating.

(K) Upon the filing of an answer raising an issue of law only, the Court may, in its discretion, refer the matter to a member as referee for such action in relation thereto as the Court may by its order of reference direct.

(L) Within ten days after the filing of the report of the referee, any party thereto may file written exceptions to such report. If no exceptions are filed, the Court, in its discretion, may consider the findings final and conclusive, and on motion shall enter such order as the evidence and law require.

(M) If exceptions be filed to the findings or report of the referee, briefs and arguments shall be filed and oral arguments made in the Court as required by the rules of the Court in civil cases. The party filing exceptions to the findings and report of the referee shall serve and file his or her brief within thirty days after the filing of such report and the brief of the adverse party shall be served and filed within thirty days thereafter. The case shall thereupon be placed upon the Court call for hearing.

(N) The Court may disbar, suspend, censure, or reprimand the Respondent, place him or her on probation, or take such other action as shall by the Court be deemed appropriate. All orders of public discipline shall be forwarded by the Clerk to the membership secretary of the Nebraska State Bar Association.

(O) Any party thereto may file a motion for rehearing at any time within twenty days from the filing of the opinion or rendition of the judgment of the Court.

(P) Costs of these actions may be taxed by the Court as the Court shall see fit.

(Q) The Counsel for Discipline shall prosecute any case referred to him or her by the Court for prosecution.

(R) No application for modification of judgment pursuant to Rule 4 of these rules shall be made prior to the expiration of one year after the final order in such proceedings shall have been entered except in cases where the only service upon Respondent has been by publication, and no appearance has been made by Respondent, and except where the application is made under the terms of Neb. Rev. Stat. §§ 25-2001 to 25-2009.

(S) No application for reinstatement from an order of suspension shall be made prior to the expiration of the period of suspension unless otherwise provided by the Court in said order.

(T) No application for reinstatement from an order of disbarment shall be made prior to the expiration of five years after the final order in such proceedings shall have been entered.

(U) A member seeking reinstatement must inform the Counsel for Discipline of all prior discipline taken against him or her in any jurisdiction.

(V) Copies of every such application shall be furnished the Relator, the Counsel for Discipline, the current Chairperson of the Committee on Inquiry for the District which exercised original jurisdiction, and the Chairperson of the Disciplinary Review Board, any one or more of whom may appear and resist such application. Any other persons may likewise appear upon obtaining leave of the Court and make such resistance. Within twenty days thereafter, the Counsel for Discipline and the District Committee on Inquiry, by its Chairperson, shall each file a written statement recommending the application be granted or denied and the reasons therefor. The Court may deny such application without a hearing if justice and equity require it. If the application or the showing in resistance thereto shall require the taking of evidence, the matter may be referred to a referee and the proceedings shall be the same as in the case of original disciplinary proceedings.

RULE 11. DISABILITY INACTIVE STATUS

Incompetency or Incapacity

(A) Upon a Grievance that a member is incapacitated from continuing the practice of law by reason of physical or mental illness, or because of addiction to drugs or intoxicants, the appropriate Committee on Inquiry, with the assistance of the Counsel for Discipline, may prepare and submit to the Court an application requesting that the member be placed on disability inactive status. Such application shall be signed by the Chairperson of such Committee, and shall set forth grounds clearly indicating a temporary suspension of the member is necessary and proper.

(B) Upon the filing of such application the Court shall provide for notice to the member who shall have the right of representation by counsel selected by the member or appointed by the Court, if it should appear to the Court the member may not be competent to do so. Notice shall be by service of the application by any means permitted with respect to service of formal charges under Rule 10(G), except that service may not be accomplished by publication.

(C) The Court shall take or direct, consistent with fundamental fairness and due process, such action as it deems necessary and proper to determine whether the member is incapacitated from continuing the practice of law, including a direction for an examination of the member by such qualified medical experts as the Court shall designate at the cost of the member.

(D) If, upon due consideration of the matter, the Court concludes the member is incapacitated from continuing to practice law, it shall enter an order placing the member on disability inactive status on the grounds of such disability until further order of the Court, and any pending disciplinary proceeding against the member shall be held in abeyance. Members on disability inactive status shall not be required to pay annual dues or disciplinary assessments to the Nebraska State Bar Association.

(E) If, in the course of a proceeding under this rule, the Court shall determine the member is not incapacitated from practicing law, it shall take such action as it deems proper and advisable, including a direction for the resumption of any disciplinary proceedings being held in abeyance.

(F) Any member on disability inactive status under the provisions of this rule shall be entitled to apply for reinstatement by filing with the Court an application supported by clear and convincing evidence the member's disability has been removed and the member is capable of resuming the practice of law. Upon such application, the Court may take or direct such actions as its deems necessary and proper to determine if the disability of such member has been removed, including a direction for an examination of the member by such qualified medical experts as the Court shall designate. The Court may direct the expense of such an examination shall be paid by the member.

(G) The filing of an application for reinstatement by a member suspended under this rule shall be deemed to constitute a waiver of any physician-patient privilege with respect to any treatment of the member during the period of his or her disability. The member shall be required to disclose the name of every psychiatrist, psychologist, physician, and hospital or institution by whom, or in which, the member has been examined or treated since his or her placement on disability inactive status, and the member shall furnish to the Court written consent and waiver to each such person and institution to furnish such information and records as requested by court-appointed medical experts.

Rule 11(B) amended September 11, 2002; Rule 11(H) deleted September 11, 2002.

RULE 12. TEMPORARY SUSPENSION

Continuing Damage to the Public and Members, Nonpayment of Support Orders, or Conviction of a Crime

(A) Upon a Grievance that a member is engaging in conduct that, if allowed to continue until final disposition of disciplinary proceedings, will cause serious damage to the public and members, or upon certification or notice that a member is delinquent on or is failing to pay a court-ordered obligation under a support order, or when a member has been convicted of a serious crime, the appropriate Committee on Inquiry with the assistance of the Counsel for Discipline may prepare and submit to the Court an application for the temporary suspension of the member from the practice of law until final disposition of any pending disciplinary proceedings. Such application shall be signed by the Chairperson of the Committee and shall set forth grounds clearly indicating that a temporary suspension of the member is necessary and proper.

(B) Upon the filing of such application for temporary suspension, the Court shall provide for notice to the member who shall have the right of representation by counsel selected by the member or appointed by the Court, if it should appear to the Court the member may not be competent to do so. Notice shall be by service of the application by any means permitted with respect to service of formal charges under Rule 10(G).

(C) The Court shall take or direct, consistent with fundamental fairness and due process, such action as it deems necessary and proper to determine if the member should be suspended pending the final disposition of the disciplinary proceedings.

(D) If, upon due consideration of the matter, the Court concludes the member should be suspended pending final disposition of the disciplinary proceedings, it shall enter an order suspending the member until the further order of the Court.

(E) Any member suspended under the provisions of this rule shall be entitled to apply for termination of the temporary suspension by filing with the Court an application supported by clear and convincing evidence that the member is no longer engaging in conduct which, if allowed to continue until final disposition of any disciplinary proceedings, would cause serious continuing damage to the public and members, and that there is no reasonable likelihood that such conduct will recur.

(F) Any temporary suspension order issued under this rule shall automatically terminate at the final disposition of the disciplinary proceedings or upon application to and order of the Court that the reason for the temporary suspension of the member no longer exists.

Rule 12 amended September 9, 1999; Rule 12(B) amended September 11, 2002.

RULE 13. CONDITIONAL ADMISSION OF GRIEVANCE,
COMPLAINT, OR FORMAL CHARGE

(A) At any time prior to the Clerk's entering a Formal Charge against a Respondent on the docket of the Court, the Respondent may file with the Clerk a conditional admission of a Grievance or of a Complaint in exchange for a stated form of consent judgment of discipline as to all or a part of the Grievance or Complaint pending against him or her as determined to be appropriate by the Counsel for Discipline and the appropriate Committee on Inquiry; such conditional admission is subject to approval by the Court. The conditional admission shall include a written statement that the Respondent knowingly admits or knowingly does not challenge or contest the truth of the matter or matters conditionally admitted and waives all proceedings against him or her in connection therewith. If a tendered conditional admission is not finally approved as above provided, it may not be used as evidence against the Respondent in any way.

(B) At any time after the Clerk has entered a Formal Charge against a Respondent on the docket of the Court, the Respondent may file with the Clerk a conditional admission of the Formal Charge in exchange

for a stated form of consent judgment of discipline as to all or part of the Formal Charge pending against him or her as determined to be appropriate by the Counsel for Discipline or any member appointed to prosecute on behalf of the Counsel for Discipline; such conditional admission is subject to approval by the Court. The conditional admission shall include a written statement that the Respondent knowingly admits or knowingly does not challenge or contest the truth of the matter or matters conditionally admitted and waives all proceedings against him or her in connection therewith. If a tendered conditional admission is not finally approved as above provided, it may not be used as evidence against the Respondent in any way.

(C) No publicity will be given to any such conditional admission of a Grievance, Complaint, or Formal Charge described in (A) and (B) above until approval of the conditional admission by the Court.

Rule 13(A) - (C) amended January 24, 2002.

RULE 14. RIGHT OF APPEAL

(A) Complainant may appeal to the Disciplinary Review Board a dismissal of the Grievance by the Counsel for Discipline. Allegations of misconduct dismissed by the Counsel for Discipline pursuant to Rule 9(C) are not appealable to the Committee on Inquiry or the Disciplinary Review Board. Except on a showing of good cause, notice of appeal shall be made in writing to the Chairperson of the Disciplinary Review Board within thirty days after notification of such dismissal. Said Board may then take such action as it deems appropriate.

(B) In cases where the Counsel for Discipline prepares a Complaint and files it with the appropriate Committee on Inquiry pursuant to Rule 9(G), the Counsel for Discipline shall notify the Complainant by mail of the findings of the Committee on Inquiry.

(C) If the Committee on Inquiry Panel dismisses the Complaint pursuant to Rule 9(H), the Counsel for Discipline may appeal the decision to the Disciplinary Review Board. Except on a showing of good cause, notice of appeal shall be made in writing to the Chairperson of the Disciplinary Review Board within thirty days after notification of the dismissal of the Complaint by the Committee on Inquiry. In the event of an appeal, the Chairperson of the Disciplinary Review Board shall obtain from such Committee on Inquiry the Complaint, investigative file of the Counsel for Discipline, and any report prepared by the Committee.

(D) Either the Respondent or the Counsel for Discipline may appeal to the Disciplinary Review Board a reprimand issued to the Respondent by the Committee on Inquiry upon written application filed with the Chairperson of the Disciplinary Review Board within thirty days of issuance of the reprimand. Either the Respondent or the Counsel for Discipline may appeal to the Court the action of the Disciplinary Review Board.

Rule 14(A), (C), and (D) amended Dec. 13, 1995; Rule 14(A) amended February 28, 2001.

RULE 15. VOLUNTARY SURRENDER OF LICENSE

(A) Once a Grievance, a Complaint, or a Formal Charge has been filed, suggested, or indicated against a member, the member may voluntarily surrender his or her license.

(1) The voluntary surrender of license shall state in writing that the member knowingly admits or knowingly does not challenge or contest the truth of the suggested or indicated Grievance, Complaint, or Formal Charge and waives all proceedings against him or her in connection therewith.

(2) A voluntary surrender of license shall not terminate such Grievance, Complaint, or Formal Charge unless an appropriate order is entered by the Court.

Rule 15 amended March 14, 2001.

**RULE 16. NOTIFICATION REQUIREMENTS BY
DISBARRED OR SUSPENDED MEMBER**

(A) Whenever a member is disbarred or suspended from the practice of law or surrenders his or her license under Rule 15 hereof, such member shall:

- (1) Notify in writing all of the member's present clients of such fact, and
- (2) Assist each client in obtaining a member of the client's choice to complete all matters being handled by him or her, and
- (3) Promptly refund all client funds and close all attorney trust accounts if the imposed sanction is greater than a 30-day suspension. A trust account may remain open if, after a reasonable search, the client or clients eligible to received funds cannot be located, and
- (4) Notify in writing all members and nonresident attorneys involved in pending legal or other matters being handled by the member of his or her altered status, and
- (5) Return to the Clerk the member's Nebraska State Bar Association membership card.
- (6) Within thirty days from the date of said disbarment, suspension, or voluntary surrender, file an affidavit with the Court, stating full compliance with the requirements of this rule and shall simultaneously submit evidence of full compliance.
- (7) Every order (judgment) of disbarment or suspension shall direct the Respondent to comply with this Rule 16.
- (8) The Clerk shall notify the Court, in writing, of the compliance or noncompliance of the Respondent with this Rule 16. Noncompliance shall be contempt of court.

Rule 16 amended November 10, 2004.

RULE 17. SUBPOENA POWER

(A) For investigative purposes, the Counsel for Discipline shall be empowered to issue writs of subpoena, including subpoena duces tecum, in the name of the State of Nebraska requiring the attendance and testimony of witnesses and parties and the production of records, books, and documents; to administer oaths to parties and witnesses; to take their sworn testimony or their unsworn statements; and to certify to the Court for appropriate action by the Court any refusal of a witness or party to comply with the requirements of a subpoena or subpoena duces tecum to testify, answer questions, or produce records, books, or documents.

(B) Such subpoena, including subpoena duces tecum described in this rule, may be served by certified mail, return receipt requested, by the Sheriff of any County of the State of Nebraska or by any person authorized by the Counsel for Discipline to do so.

(C) Any Respondent shall have the right to request writs of subpoena, including subpoena duces tecum, in the name of the State of Nebraska, by a written request therefor to the Referee, prior to ten days of any hearing. The Referee, with the assistance of the Clerk, shall, immediately, issue such subpoena or subpoena duces tecum and cause the same to be served in the same manner as provided in paragraph (B) of this rule; provided the testimony and evidence to be produced as a result of said subpoena or subpoena duces tecum shall be reasonably relevant and material to the matters on hearing. With said request the Respondent shall submit the last known address of the witnesses together with the witness and mileage fees for such witnesses in the same amount as are paid for witnesses in the district courts of Nebraska.

(D) Prior to the appointment of a Referee, the Disciplinary Review Board may quash or modify the subpoena if it is unreasonable or oppressive. The Referee, upon appointment, shall assume such authority.

Rule 17B amended November 12, 1997.

**RULE 18. PUBLICITY OF DISCIPLINARY PROCEEDINGS
AND SEQUESTRATION OF WITNESSES**

(A) The hearings, records, or proceedings of the Counsel for Discipline, the Committee on Inquiry, and the Disciplinary Review Board are confidential and shall not be made public except that the pendency, subject matter, and status of an investigation may be disclosed by the Committee on Inquiry involved or the Disciplinary Review Board if

- (1) the Respondent has waived confidentiality, either in writing or by public disclosure of information regarding the proceeding; or
- (2) the proceeding is based upon conviction of a crime.

(B) Unless the Respondent has waived confidentiality, either in writing or by public disclosure of information regarding the proceedings, willful violation of this rule shall be grounds for discipline.

(C) This rule is not intended to prohibit the exchange of confidential information with other agencies authorized by the Court to receive such information.

(D) The following provisions regarding the confidentiality of various disciplinary pleadings filed in the Supreme Court shall apply:

TYPE OF PLEADING FILED	BECOMES PUBLIC RECORD
(1) Formal Charges.	Upon filing.
(2) Application for Disability Inactive Status based upon competency or incapacity pursuant to Rule 11.	Shall not be made public until status is entered by the Court. If Application is denied, the case remains confidential.
(3) Application for Reinstatement pursuant to Rule 11.	Upon filing.

(4) Application for Temporary Suspension based upon continuing damage to the public or conviction of a serious crime.	Upon filing.
(5) Application for Reinstatement after Temporary Suspension due to Rule 12.	Upon filing.
(6) Conditional Admission of Complaint or Formal Charges.	Remains confidential until the Court approves the Conditional Admission.
(7) Appeal of Disciplinary Review Board decision to issue Private reprimand.	Remains confidential unless Formal Charges are entered with the Court.
(8) Voluntary Surrender of License.	Upon filing.
(9) Application for Reinstatement after Suspension or Disbarment.	Upon filing.

(E) The Counsel for Discipline may release confidential information to the Client Assistance Fund Claims Board of the Nebraska State Bar Association as needed to further the work of the Claims Board. Such information shall not be made public other than as necessary to discharge the duties of the Claims Board.

Rule 18E amended October 31, 2001.

RULE 19. TERMINATION OF DISCIPLINARY PROCEEDINGS

Neither unwillingness nor neglect of the Complainant to sign a Grievance or to assist in the prosecution of the Complaint, nor settlement, compromise, or restitution, shall, in itself, justify termination of any disciplinary proceedings.

RULE 20. RELATED CIVIL OR CRIMINAL LITIGATION

(A) Similarity of the substance of a Grievance, Complaint, or Formal Charge to the material allegations of pending criminal or civil litigation shall not in itself prevent or delay disciplinary proceedings against the member involved in such litigation.

(B) The acquittal of the member on criminal charges or a verdict or judgment in the member's favor in civil litigation involving material allegations similar in substance to a Grievance, Complaint, or Formal Charge shall not in and of itself justify termination of disciplinary proceedings predicated upon the same or substantially the same material allegations.

RULE 21. RECIPROCAL DISCIPLINE

(A) Upon being disciplined in another jurisdiction, a member shall promptly inform the Counsel for Discipline of the discipline imposed. Upon receipt by the Court of appropriate notice that a member has been disciplined in another jurisdiction, the Court may enter an order imposing the identical discipline, or greater or lesser discipline as the Court deems appropriate, or, in its discretion, suspend the member pending the imposition of final discipline in such other jurisdiction.

(B) In the event the discipline imposed in the other jurisdiction has been stayed, the entry of an order pursuant to the provisions of paragraph (A) of this rule shall be deferred until such stay expires.

Rule 21(A) amended June 25, 1997.

RULE 22. IMMUNITY AND PRIVILEGES

(A) Reports of alleged misconduct and Grievances submitted to the Counsel for Discipline, Committees on Inquiry, and the Disciplinary Review Board or testimony with respect thereto are confidential and shall be absolutely privileged and no lawsuit predicated thereon may be instituted.

(B) The Counsel for Discipline, his or her representatives, and members of the Disciplinary Review Board, Committees on Inquiry, and Advisory Committee; the director and any members of the Nebraska Lawyer's Assistance Program; and all others (whether or not members of the Association) whose assistance is requested by any of the foregoing in connection with the enforcement of these rules shall be immune from suit for any conduct in the course of their official duties under these rules.

(C) The Complainant and all witnesses shall be immune from suit for any testimony given in the course of any proceedings under these rules.

RULE 23. EXPENSES

(A) Actual costs and expenses necessarily incurred by the Counsel for Discipline, his or her representatives, the Committee on Inquiry or the Disciplinary Review Board in connection with any investigations or Inquiries, as provided by these rules and incurred prior to the filing of the Formal Charge in the Court, shall be paid by the Office of the Counsel for Discipline. If a private reprimand is issued to a member, the Court may enter judgment in favor of the Office of the Counsel for Discipline, for such costs and expenses upon request of and proof by the Counsel for Discipline.

(B) Upon request of and proof by the Counsel for Discipline, a disciplined member shall be required to reimburse the Office of the Counsel for Discipline for the actual costs and expenses necessarily incurred by the Counsel for Discipline, his or her representatives, the Committee on Inquiry, or the Disciplinary Review Board in connection with any investigations, hearings, or proceedings leading to the imposition of a sanction, if the disciplinary action is heard by the Nebraska Supreme Court. The Court may enter judgment for court costs and costs and expenses approved by the Court.

RULE 24. RULES ARE CUMULATIVE

These rules shall be cumulative and not exclusive.

RULE 25. ELIGIBILITY TO SERVE ON BOARD OR COMMITTEE

In determining eligibility to serve on any board or committee under these rules, an individual may be considered a resident of the district in which the individual either lives or maintains law offices. Provided, however, such offices must be the principal office for such individual and not merely a satellite office.

Rule 25 adopted November 23, 1994.

RULE 26. LAWYERS CONVICTED OF A CRIME

(A) For the purposes of Inquiry of a Complaint or Formal Charges filed as a result of a finding of guilt of a crime, a certified copy of a judgment of conviction constitutes conclusive evidence that the attorney committed the crime, and the sole issue in any such Inquiry should be the nature and extent of the discipline to be imposed.

(B) A lawyer shall promptly notify the Counsel for Discipline if he or she is found guilty of a serious crime and must provide proof of that adjudication.

Rule 26 adopted September 13, 1995.

RULE 27. EFFECTIVE DATE

The amendments to these rules shall become effective on January 1, 2001. Formal Charges under review by the Disciplinary Review Board on the above-mentioned date shall be immediately forwarded and filed with the Clerk. Charges pending before the Committees on Inquiry on the above-mentioned date that have not been the subject of an Inquiry shall proceed in accordance with these rules. Appeals pending before the Committees on Inquiry on the above-mentioned date shall proceed as if under the former rules with the exception that there shall not be an additional appeal to the Disciplinary Review Board.

Disciplinary Rules amended September 27, 1995; Disciplinary Rules amended October 17, 2000, effective January 1, 2001.

RULE 28. APPOINTMENT OF A TRUSTEE

In addition to any of the foregoing procedures within these rules relating to disability inactive status, disbarment, or suspension of an attorney, the following measures may be taken for the protection of client interests:

(A) Appointment of a Trustee. If an attorney (i) has been suspended by an order of the Court placing the member on disability inactive status pursuant to Rule 11; (ii) is shown to be unable to properly discharge his or her responsibilities to clients due to disability, disappearance, death, or abandonment of a law practice and there is no showing that an arrangement has been made for another lawyer to discharge the responsibilities; or (iii) has been disbarred or suspended pursuant to Rule 10 or 12 or has surrendered his or her license under Rule 15 and there has been a failure to comply with Rule 16 client notification requirements, the Court may appoint a lawyer to serve as trustee to inventory the files, sequester client funds, and take whatever other action seems indicated to protect the interests of the clients and other affected parties.

(1) Trustee Bound by Lawyer-Client Privilege. The trustee should be bound by the lawyer-client privilege with respect to the records of individual clients, except to the extent necessary to carry out the order of the Court.

(2) The trustee shall notify in writing all of the present clients of the disbarred or suspended member of the fact of such disbarment or suspension and shall also notify in writing all members and nonresident attorneys involved in pending legal or other matters being handled by the disbarred or suspended member of his or her altered status.

(3) The trustee shall receive compensation for his or her services as established by the Court and may be reimbursed for travel and other expenses incidental to the performance of his or her duties.

Rule 28 adopted September 11, 2002.

BANKRUPTCY RULES FOR NEBRASKA
DISTRICT AND COUNTY COURTS

1. 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 an involuntary bankruptcy petition, a Suggestion of Bankruptcy petition and either (1) a certified copy of the bankruptcy petition, (2) a copy of the bankruptcy petition bearing the filing stamp of the clerk of the bankruptcy court, or (3) a copy of a "Notice of Bankruptcy Case Filing" generated by the Bankruptcy Court's electronic filing system 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 one of the three bankruptcy documents noted immediately above, 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 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.

2. Request for Disbursements of Funds or Distribution of Property of or to a Party Named as a Debtor in a Bankruptcy Proceeding. In any civil case before the court in which a Suggestion of Bankruptcy and one of the three bankruptcy documents noted in Rule 1 above 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 a 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 that the funds or property has been exempted by the debtor in the bankruptcy proceedings or that the party named as the debtor in the bankruptcy petition, rather than the trustee in bankruptcy, is otherwise entitled to disbursement of such funds or distribution of such property. Such a showing shall be made by affidavit.

Rules 1 & 2 amended October 23, 2002.

CASE PROGRESSION STANDARDS

Trial or hearing on the merits of a case should be within the following time limits from date of filing:

DISTRICT COURT

Appeals	3 months
Criminal Cases	6 months
Domestic Relations Cases	9 months
Civil Cases-Nonjury	1 year
Civil Cases-Jury	18 months

COUNTY COURT

Misdemeanor and Traffic Offenses-Nonjury	60 days
Misdemeanor and Traffic Offenses-Jury	6 months
Civil Cases	6 months
Preliminary Hearings	As soon as possible but no more than 30 days

Final disposition of probate cases should be within 1 year from filing except when a federal estate tax return is required, and in that event 18 months. A longer interval may be approved where deemed necessary because of extraordinary eventualities, such as exceptionally complicated discovery, stabilization or injury in personal injury cases, or settlement of financial affairs in complex cases.

JUVENILE COURT

(1) Notwithstanding any federal or state law providing for a longer period, the juvenile shall not be held in detention for more than 48 hours without a probable cause hearing being conducted by the appropriate judicial authority.

(2) Adjudication hearings in dependent/neglect cases under Neb. Rev. Stat. § 43-247(3)(a) should be held within 90 days of filing of the petition, except in cases with exceptional complications, in which cases adjudication should be held within 180 days. Adjudication hearings in law violation cases should be held within 180 days of filing of the petition.

(3) A disposition hearing should be held within 60 days from the date of the adjudication hearing, unless good cause is shown.

(4) Review hearings for children in out-of-home placements should be held, on the record, every 6 months.

(1) through (4) adopted March 19, 1997.

NEBRASKA CHILD SUPPORT GUIDELINES

A. Introduction. The main principle behind these guidelines is to recognize the equal duty of both parents to contribute to the support of their children in proportion to their respective net incomes.

B. Temporary and Permanent Support. The guidelines are intended to be used for both temporary and permanent support determinations.

C. Rebuttable Presumption. The child support guidelines shall be applied as a rebuttable presumption. All orders for child support obligations shall be established in accordance with the provisions of the guidelines unless the court finds that one or both parties have produced sufficient evidence to rebut the presumption that the guidelines should be applied. All stipulated agreements for child support must be reviewed against the guidelines and if a deviation exists and is approved by the court, specific findings giving the reason for the deviation must be made. Findings must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines. Deviations must take into consideration the best interests of the child. In the event of a deviation, the reason for the deviation shall be contained in the findings portion of the decree or order, or worksheet 5 should be completed by the court and filed in the court file. Deviations from the guidelines are permissible under the following circumstances:

1. When there are extraordinary medical costs of either parent or child;

2. when special needs of a disabled child exist;

3. if total net income exceeds \$15,000 monthly, child support for amounts in excess of \$15,000 monthly may be more but shall not be less than the amount which would be computed using the \$15,000 monthly income unless other permissible deviations exist. To assist the court and not as a rebuttable presumption, the court may use the amount at \$15,000 plus: 10 percent of net income above \$15,000 for one, two, and three children; 12 percent of net income above \$15,000 for four children; 13 percent of net income for five children; and 14 percent of net income for six children.

4. for juveniles placed in foster care; or

5. whenever the application of the guidelines in an individual case would be unjust or inappropriate.

All orders for child support, including modifications, must include a basic income and support calculation worksheet 1, and if used, worksheet 2 or 3.

Paragraph C amended Dec. 23, 1992; paragraph C amended effective Jan. 1, 1996; paragraph C amended effective July 1, 2007.

D. Total Monthly Income. This is income of both parties derived from all sources, except all means-tested public assistance benefits which includes any earned income tax credit and payments received for children of prior marriages. This would include income that could be acquired by the parties through reasonable efforts. For instance, a court may consider as income

Nebraska Child Support Guidelines

the retained earnings in a closely-held corporation of which a party is a shareholder if the earnings appear excessive or inappropriate. All income should be annualized and divided by 12. For example, a party who receives a salary of \$200 gross per week would have an annualized gross income of \$10,400 (\$200 times 52) and a monthly income of \$866.67 (10,400 divided by 12). If the person is paid \$200 every 2 weeks, his or her annualized gross income would be \$5,200 (\$200 times 26) and monthly income would be \$433.33 (5,200 divided by 12).

The court may consider overtime wages in determining child support if the overtime is a regular part of the employment and the employee can actually expect to regularly earn a certain amount of income from working overtime. In determining whether working overtime is a regular part of employment, the court may consider such factors as the work history of the employee for the employer, the degree of control the employee has over work conditions, and the nature of the employer's business or industry.

Depreciation calculated on the cost of ordinary and necessary assets may be allowed as a deduction from income of the business or farm to arrive at an annualized total monthly income. After an asset is shown to be ordinary and necessary, depreciation, if allowed by the trial court, shall be calculated by using the "straight-line" method, which allocates cost of an asset equally over its useful duration or life. An asset's life should be determined with reference to the Class-lives and Recovery Periods Table created pursuant to 26 CFR § 1.167(a)-11. A party claiming depreciation shall have the burden of establishing entitlement to its allowance as a deduction.

Copies of at least 2 years' tax returns, financial statements, and current wage stubs should be furnished to the court and the other party to the action at least 3 days before any hearing requesting relief. Any party claiming an allowance of depreciation as a deduction from income shall furnish to the court and the other party copies of a minimum of 5 years' tax returns at least 14 days before any hearing pertaining to the allowance of the deduction.

If applicable, earning capacity may be considered in lieu of a parent's actual, present income and may include factors such as work history, education, occupational skills, and job opportunities. Earning capacity is not limited to wage-earning capacity, but includes moneys available from all sources.

Paragraph D amended Dec. 23, 1992; paragraph D amended effective Jan. 1, 1996; paragraph D amended effective Sept. 1, 2002.

E. Deductions. The following deductions should be annualized to arrive at monthly net income:

1. Taxes. Standard deductions applicable to the number of exemptions provided by law will be used to establish the amount of federal and state income taxes.

2. FICA. Social Security deductions, or any other mandatory contributions in lieu of Social Security deductions including any self-employment tax paid.

3. Retirement. Individual contributions, in a minimum amount required by a mandatory retirement plan. Where no mandatory retirement plan exists, a deduction shall be allowed for a continuation of actual voluntary retirement contributions not to exceed 4 percent of the gross income from employment or 4 percent from the net income from self-employment.

4. Child Support. Child support previously ordered for other children.

Nebraska Child Support Guidelines

5. Other Children. Subject to paragraph T, credit may be given for biological or adopted children for whom the obligor provides regular support.

Paragraph E amended effective Jan. 1, 1996; paragraph E amended effective Sept. 1, 2002; paragraph E amended effective July 1, 2007.

F. Monthly Support. The combined monthly net income of both parties from line 4 of worksheet 1 is compared to table 1. For example, if the combined monthly net income was \$1,500 and there were three children, we would find \$530 as the child support from table 1 (read across the table from \$1,500 to the "Three Children" column to find \$530).

Paragraph F amended effective Jan. 1, 1996; paragraph F amended Nov. 26, 2003, effective Jan. 1, 2004.

G. Parent's Monthly Share. This is the child support amount from line 7, worksheet 1 (or line 9 if applicable), multiplied by the percentage contribution of each parent from line 6, worksheet 1. In our example, if F had a monthly net income of \$1,000 and M had a monthly income of \$500, each parent's monthly share would be \$355.10 for F (.67 times \$530) and \$174.90 for M (.33 times \$530). F would be required to pay M \$355.10 per month in the event M was awarded custody of the children.

Paragraph G amended effective Jan. 1, 1996; paragraph G amended Nov. 26, 2003, effective Jan. 1, 2004; paragraph G amended effective July 1, 2007.

H. More Than One Child. If there is more than one child, the court's order should specify the amount of child support due for the children, with the amount recalculated and reduced as the obligation to support terminates for each child. The amount due for each possibility should be calculated separately from table 1. In our example, if M was awarded custody of the children, F would be required to pay \$355.10 (.67 times \$530) when there are three children, \$328.30 (.67 times \$490) when there are two children, and \$258.62 (.67 times \$386) when there is one child. See worksheet 4. The order should direct that child support continue only until each child reaches majority under Nebraska law, becomes emancipated, becomes self-supporting, marries, or dies, or until further order of the court.

Paragraph H amended Dec. 23, 1992; paragraph H amended effective Jan. 1, 1996; paragraph H amended Nov. 26, 2003, effective Jan. 1, 2004.

I. Minimum Support. It is recommended that even in very low income cases, a minimum support of \$50, or 10 percent of the obligor's net income, whichever is greater, per month be set. This will help to maintain information on such obligor, such as his or her address, employment, etc., and, hopefully, encourage such person to understand the necessity, duty, and importance of supporting his or her children.

Paragraph I amended Dec. 23, 1992; paragraph I amended effective Sept. 1, 2002.

Nebraska Child Support Guidelines

J. Visitation or Parenting Time Adjustments. Visitation or parenting time adjustments or direct cost sharing should be specified in the support order. If child support is not calculated under paragraph L, an adjustment in child support may be made at the discretion of the court when visitation or parenting time substantially exceeds alternating weekends and holidays and 28 days or more in any 90-day period. During visitation or parenting time periods of 28 days or more in any 90-day period, support payments may be reduced by up to 80 percent. The amount of any reduction for extended parenting time shall be specified in the court's order and shall be presumed to apply to the months designated in the order. Any documented substantial and reasonable long-distance transportation costs directly associated with visitation or parenting time may be considered by the court and, if appropriate, allowed as a deviation from the guidelines.

Paragraph J amended effective Jan. 1, 1996; paragraph J amended effective Sept. 1, 2002; paragraph J amended effective July 1, 2007.

K. Split Custody. Split custody is defined as each parent having physical custody of one or more of the children. Worksheet 2 shows how to do this calculation.

L. Joint Physical Custody. When a specific provision for joint physical custody is ordered and each party's parenting time exceeds 142 days per year, it is a rebuttable presumption that support shall be calculated using worksheet 3. When a specific provision for joint physical custody is ordered and one party's parenting time is 109 to 142 days per year, the use of worksheet 3 to calculate support is at the discretion of the court. If child support is determined under this paragraph, all reasonable and necessary direct expenditures made solely for the child(ren) such as clothing and extracurricular activities may be allocated between the parents, as determined by the court, but shall not exceed the proportion of the obligor's parental contributions (worksheet 1, line 6). For purposes of these guidelines, a "day" shall be generally defined as including an overnight period.

Paragraph L amended effective July 1, 2007.

M. Alimony. These guidelines intend that spousal support be determined from income available to the parties after child support has been established.

N. Child-Care Expenses. Child-care expenses are not specifically computed into the guidelines amount and are to be considered independently of any amount computed by use of these guidelines. Care expenses for the child for whom the support is being set, which are due to employment of either parent or to allow the parent to obtain training or education necessary to obtain a job or enhance earning potential, shall be allocated to the obligor parent as determined by the court, but shall not exceed the proportion of the obligor's parental contribution (worksheet 1, line 6) and shall be added to the basic support obligation computed under these guidelines. The value of the federal income tax credit for child care shall be subtracted from actual costs to arrive at a figure for net child-care expenses. The Court may impute the value of the federal childcare tax credit using worksheet 6 if the parent incurring the childcare expense has monthly gross income above \$2,100 for one child; \$2,500 for two children; \$2,600 for three children; \$2,700 for four children; \$2,800 for five children; and \$2,900 for six children. The value shall be imputed at 25 percent of the childcare expense, not to exceed \$62.50 per month for one child and \$125 per month for two or more children.

Nebraska Child Support Guidelines

Paragraph N amended effective Jan. 1, 1996; paragraph N amended effective Sept. 1, 2002; paragraph N amended effective July 1, 2007.

O. Child(ren)'s Health Insurance and Nonreimbursed Health Care Expenses. The child support order shall address how the parents will provide for the child(ren)'s health care needs through health insurance as well as the nonreimbursed reasonable and necessary child(ren)'s health care costs that are not included in table 1 that are provided for in subparagraph 2.

1. Health Insurance. The increased cost to the parent for health insurance for the child(ren) of the parent shall be prorated between the parents. When worksheet 1 is used, it shall be added to the monthly support from line 7, then prorated between the parents to arrive at each party's share of monthly support on line 10 of worksheet 1. The parent requesting an adjustment for health insurance premiums must submit proof of the cost for health insurance coverage of the child(ren). The parent paying the premium receives a credit against his or her share of the monthly support.

2. Health Care. Children's health care expenses are specifically included in the guidelines amount of up to \$480 per child per year. Children's health care needs are to be met by requiring either parent to provide health insurance as required by state law. All nonreimbursed reasonable and necessary children's health care costs in excess of \$480 per child per year shall be allocated to the obligor parent as determined by the court, but shall not exceed the proportion of the obligor's parental contribution (worksheet 1, line 6).

Paragraph O amended effective Jan. 1, 1996; paragraph O amended effective Sept. 1, 2002; paragraph O amended Nov. 26, 2003, effective Jan. 1, 2004; paragraph O amended effective July 1, 2007.

P. Review. The State Court Administrator shall review the Nebraska Child Support Guidelines not less than every 4 years, beginning in October 1993, and recommend revisions, if any, to the Nebraska Supreme Court. In addition, the Supreme Court will review reports submitted to it by the Child Support Advisory Commission.

Paragraph P amended effective Jan. 1, 1996; paragraph P amended effective Sept. 1, 2002; paragraph P amended effective July 1, 2007.

Q. Modification. Application of the child support guidelines which would result in a variation by 10 percent or more, but not less than \$25, upward or downward, of the current child support obligation, child care obligation, or health care obligation, due to financial circumstances which have lasted 3 months and can reasonably be expected to last for an additional 6 months, establishes a rebuttable presumption of a material change of circumstances.

Paragraph Q amended effective Jan. 1, 1996; paragraph Q amended effective Sept. 1, 2002.

R. Basic Subsistence Limitation. A parent's support, child care, and health care obligation shall not reduce his or her net income below the minimum of \$851 net monthly for one person, or the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. § 9902(2), except minimum support may be ordered as defined in paragraph I above.

Nebraska Child Support Guidelines

Paragraph R (previously Q) adopted Dec. 23, 1992; amended effective Jan. 1, 1996; amended September 25, 1996; amended March 26, 1997; amended March 18, 1998; amended April 21, 1999; amended March 15, 2000; amended April 18, 2001; amended effective Sept. 1, 2002; amended February 26, 2003; amended March 10, 2004; amended March 9, 2005; amended March 1, 2006.

S. Limitation on Increase. Under no circumstances shall there be an increase in support due from the obligor solely because of an increase in the income of the obligee.

Paragraph S effective Sept. 1, 2002.

T. Limitation on Decrease. An obligor shall not be allowed a reduction in an existing support order solely because of the birth, adoption, or acknowledgment of subsequent children of the obligor; however, a duty to provide regular support for subsequent children may be raised as a defense to an action for an upward modification of such existing support order.

Paragraph T effective Sept. 1, 2002.

BASIC NET INCOME AND SUPPORT CALCULATION

	Mother	Combined	Father
1. Total monthly income from all sources (except payments received for children of prior marriages and all means-tested public assistance benefits)*	_____		_____
2. Deductions**			
a. Taxes***	_____		_____
b. FICA	_____		_____
c. Retirement	_____		_____
d. Child support previously ordered for other children	_____		_____
e. Regular support for other children	_____		_____
f. Total deductions	_____		_____
3. Monthly net income (line 1 minus line 2f)	_____		_____
4. Combined monthly net income		_____	
5. Combined annual net income (line 4 times 12)		_____	
6. Percent contribution of each parent (line 3, each parent, divided by line 4) ****	_____		_____
7. Monthly support from table 1		_____	
8. Health insurance premium*****	_____		_____
9. Total obligation (line 7 plus 8)		_____	
10. Each parent's monthly share (line 9, times line 6, for each parent)	_____		_____
11. Each parent's credit for health premium actually paid (line 8)	_____		_____
12. Each parent's final share of the obligation (line 10 minus line 11)	_____		_____

Nebraska Child Support Guidelines

* Court will require copies of last 2 years' tax returns to verify "total income" figures and copies of present wage stubs to verify the pattern of present wage earnings, except where a party is claiming an allowance of depreciation as a deduction from income, in which case a minimum of 5 years' tax returns shall be required. Income should be annualized and divided by 12 to arrive at monthly amounts.

** All claimed deductions should be annualized and divided by 12 to arrive at monthly amounts.

*** Deductions for taxes will be based on the annualized income and the number of exemptions provided by law.

**** In the event of substantial fluctuations of annual earnings of either party during the immediate past 3 years, the income may be averaged to determine the percent contribution of each parent as shown in item 6. The calculation of the average income shall be attached to this worksheet.

***** The parent requesting an adjustment for health insurance premiums must submit proof of the cost of the premium for the child(ren).

Worksheet 1 amended Dec. 23, 1992; worksheet 1 amended effective Jan. 1, 1996; worksheet 1 amended effective Sept. 1, 2002; worksheet 1 amended effective July 1, 2007; worksheet 1 amended October 24, 2007.

SPLIT CUSTODY CALCULATION

1.

Child's Name	Custody (F or M)	Show combined monthly share from line 7, worksheet 1, divided by total number of children	Show each parent's share (apply percent from line 6, worksheet 1)	
			Father	Mother
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

- 2. Total amount owed to father by mother
(mother's share from above for children
in father's custody) _____
- 3. Total amount owed to mother by father
(father's share from above for children
in mother's custody) _____
- 4. Support to be paid by mother/father
(difference between lines 2 and 3)
_____ (mother/father)

Additional Adjustment for Child(ren)'s health insurance premium

	Father	Combined	Mother
5. Child(ren) health insurance premium* (from line 8, worksheet 1)	_____	_____	_____
6. Combined health insurance premium(s)		_____	
7. Each parent's share of premium (line 6 from worksheet 1 times line 6 above)	_____		_____
8. Amount of premium paid (line 5)	_____		_____

Nebraska Child Support Guidelines

9. Amount owed to other parent for premium
(line 7 minus line 8, if negative amount enter \$0) _____
- 10.a. Which parent owes basic support on line 4? _____
(mother/father)
- 10.b. Which parent owes support for health insurance on
line 9? _____
(mother/father)
- 10.c. Does the same parent owe support on lines 10a and 10b? _____
(Yes/No)
11. Total support to be paid by parent on line 10a
(if YES on line 10c, line 4 plus line 9; if NO
on line 10c, line 4 minus line 9) _____

* The parent requesting an adjustment for health insurance premiums must submit proof of the cost of the premium for the child(ren).

Worksheet 2 amended effective July 1, 2007; worksheet 2 amended October 24, 2007.

CALCULATION FOR JOINT PHYSICAL CUSTODY

	Mother	Father
1. Each parent's percent contribution (% from line 6, worksheet 1)	_____	_____
2. Monthly support obligation from table 1 (from line 7, worksheet 1)	_____	_____
3. Joint physical support obligation (line 2 times 1.5)	_____	_____
4. Each parent's share (line 1 times line 3)	_____	_____
5. Number of days annually child(ren) is in custody of each parent	_____	_____
6. Percentage of year child(ren) is in custody of each parent (line 5 divided by 365)	_____	_____
7. Mother's obligation to father (line 4 mother column, times % on line 6 father column)	_____	_____
8. Father's obligation to mother (line 4 father column, times % on line 6 mother column)	_____	_____
9. Father/mother obligation for support (difference between lines 7 and 8)	_____	_____
	(mother/father)	

Additional Adjustment for Child(ren)'s health insurance premium

	Mother	Combined	Father
10. Child(ren)'s health insurance premium* (from line 8, worksheet 1)	_____	_____	_____
11. Combined health insurance premium(s)		_____	

Nebraska Child Support Guidelines

12. Each parent's share of premium
(line 1 times line 11) _____
13. Amount of premium paid
(line 10) _____
14. Amount owed to other parent for premium
(line 12 minus line 13, if negative
amount enter \$0) _____
- 15.a. Which parent owes basic support on line 9?
_____ (mother/father)
- 15.b. Which parent owes support for health insurance
on line 14?
_____ (mother/father)
- 15.c. Does the same parent owe support on
lines 15a and 15b?
_____ (Yes/No)
16. Total support to be paid by parent on line 15a
(if YES on line 15c, line 9 plus line 14;
if NO on line 15c, line 9 minus line 14)

* The parent requesting an adjustment for health insurance premiums must submit proof of the cost of the premium for the child(ren).

Worksheet 3 amended effective July 1, 2007; worksheet 3 amended October 24, 2007.

NUMBER OF CHILDREN CALCULATION

				Mother	Combined	Father
1. Percent contribution of each Parent (line 6 from worksheet 1)				_____		_____
2. Health insurance premium (line 8 from worksheet 1)				_____	_____	_____
Number of Children	(column A) Table Amount	(column B) Total Obligation (column A plus Combined line 2)	(column C) Mother's Monthly Share of Total Obligation (column B times mother's line 1)	(column D) Father's Monthly Share of Total Obligation (column B times father's line 1)	(column E) Mother's Final Share of Obligation (column C minus mother's line 2)	(column F) Father's Final Share of Obligation (column D minus father's line 2)
3. Six	_____	_____	_____	_____	_____	_____
4. Five	_____	_____	_____	_____	_____	_____
5. Four	_____	_____	_____	_____	_____	_____
6. Three	_____	_____	_____	_____	_____	_____
7. Two	_____	_____	_____	_____	_____	_____
8. One	_____	_____	_____	_____	_____	_____

The court order should specify the amount due for each possibility and the amount due should be decreased as the number of supported children decreases.

Worksheet 4 amended October 24, 2007.

IMPUTATION OF CHILDCARE TAX CREDIT

This worksheet may be used with paragraph N. The value of the childcare tax credit is to be subtracted from actual childcare expenses.

1. Number of Children _____
2. Monthly Gross Income of Parent Incurring the Childcare Expense _____
3. Is the amount from line 2 less than...

\$2,100 and there is one child?	_____	(YES/NO)
\$2,500 and there are two children?	_____	(YES/NO)
\$2,600 and there are three children?	_____	(YES/NO)
\$2,700 and there are four children?	_____	(YES/NO)
\$2,800 and there are five children?	_____	(YES/NO)
\$2,900 and there are six children?	_____	(YES/NO)

If “YES” is the answer to any of the questions above, STOP here. The childcare tax credit is \$0.

4. Monthly Childcare Expenses* _____
5. Tax Credit Before Cap
(line 4 times 0.25)** _____
6. Imputed Monthly Tax Credit
(if there is one child, lesser of line 5 and \$62.50;
if there are two or more children, lesser of line 5 and \$125)*** _____

* These are childcare expenses for the child for whom the support is being set, which expenses are due to employment of either parent or to allow the parent to obtain training or education necessary to obtain a job or enhance earning potential as defined in section N.

** For example, if Monthly Childcare Expenses (line 4) are \$400, line 5 would be \$100 ($\$400 \times 0.25 = \100).

*** Continue with the example above where monthly childcare expenses (line 4) are \$400 and the tax credit before cap (line 5) is \$100. If there is one child, the lesser of line 5 and \$62.50 would be \$62.50 and this amount would be inserted on line 6. This would be the imputed value of the childcare tax credit; hence, the net childcare expenses as defined under section N would be \$337.50 per month (\$400 minus \$62.50 equals \$337.50). If there are two or more children, the lesser of line 5 and \$125 would be \$100 and this amount would be inserted on line 6. In this two-child case, the net childcare expenses as defined under section N would be \$300 per month (\$400 minus \$100 equals \$300).

Worksheet 6 adopted effective July 1, 2007.

Nebraska Child Support Guidelines

INCOME SHARES FORMULA
TABLE 1

COMBINED MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
\$500	\$50	\$50	\$50	\$50	\$50	\$50
\$550	\$50	\$50	\$50	\$50	\$50	\$50
\$600	\$50	\$50	\$50	\$50	\$50	\$50
\$650	\$50	\$50	\$50	\$50	\$50	\$50
\$700	\$50	\$50	\$50	\$50	\$50	\$50
\$750	\$50	\$50	\$50	\$50	\$50	\$50
\$800	\$50	\$50	\$50	\$50	\$50	\$50
\$850	\$50	\$50	\$50	\$50	\$50	\$50
\$900	\$150	\$160	\$170	\$180	\$190	\$200
\$950	\$175	\$188	\$200	\$213	\$225	\$238
\$1,000	\$200	\$215	\$230	\$245	\$260	\$275
\$1,050	\$225	\$243	\$260	\$278	\$295	\$313
\$1,100	\$250	\$270	\$290	\$310	\$330	\$350
\$1,150	\$275	\$298	\$320	\$343	\$365	\$388
\$1,200	\$300	\$325	\$350	\$375	\$400	\$425
\$1,250	\$325	\$353	\$380	\$408	\$435	\$463
\$1,300	\$337	\$380	\$410	\$440	\$470	\$500
\$1,350	\$349	\$408	\$440	\$473	\$505	\$538
\$1,400	\$362	\$435	\$470	\$505	\$540	\$575
\$1,450	\$374	\$463	\$500	\$538	\$575	\$613
\$1,500	\$386	\$490	\$530	\$570	\$610	\$650
\$1,550	\$398	\$518	\$560	\$603	\$645	\$688
\$1,600	\$411	\$545	\$590	\$635	\$680	\$725
\$1,650	\$423	\$573	\$620	\$668	\$715	\$763
\$1,700	\$435	\$600	\$650	\$700	\$750	\$800
\$1,750	\$447	\$628	\$680	\$733	\$785	\$838
\$1,800	\$459	\$655	\$710	\$765	\$820	\$875
\$1,850	\$471	\$672	\$740	\$798	\$855	\$913
\$1,900	\$483	\$689	\$770	\$830	\$890	\$950
\$1,950	\$495	\$706	\$800	\$863	\$925	\$988
\$2,000	\$507	\$723	\$830	\$895	\$960	\$1,025
\$2,050	\$519	\$740	\$860	\$928	\$995	\$1,063
\$2,100	\$531	\$757	\$888	\$960	\$1,030	\$1,100
\$2,150	\$543	\$774	\$908	\$993	\$1,065	\$1,138
\$2,200	\$555	\$790	\$929	\$1,025	\$1,100	\$1,175
\$2,250	\$566	\$807	\$951	\$1,058	\$1,135	\$1,213
\$2,300	\$578	\$824	\$972	\$1,090	\$1,170	\$1,250

Nebraska Child Support Guidelines

COMBINED MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
\$2,350	\$590	\$841	\$993	\$1,123	\$1,205	\$1,288
\$2,400	\$602	\$859	\$1,014	\$1,155	\$1,240	\$1,325
\$2,450	\$613	\$877	\$1,036	\$1,187	\$1,275	\$1,363
\$2,500	\$619	\$896	\$1,057	\$1,202	\$1,310	\$1,400
\$2,550	\$631	\$914	\$1,078	\$1,218	\$1,345	\$1,438
\$2,600	\$643	\$932	\$1,099	\$1,240	\$1,376	\$1,475
\$2,650	\$656	\$950	\$1,120	\$1,261	\$1,400	\$1,512
\$2,700	\$668	\$968	\$1,142	\$1,283	\$1,424	\$1,538
\$2,750	\$681	\$986	\$1,163	\$1,304	\$1,448	\$1,564
\$2,800	\$693	\$1,004	\$1,184	\$1,326	\$1,472	\$1,590
\$2,850	\$702	\$1,017	\$1,198	\$1,347	\$1,496	\$1,615
\$2,900	\$712	\$1,029	\$1,212	\$1,368	\$1,519	\$1,641
\$2,950	\$721	\$1,042	\$1,226	\$1,389	\$1,543	\$1,666
\$3,000	\$730	\$1,055	\$1,240	\$1,411	\$1,566	\$1,692
\$3,050	\$740	\$1,067	\$1,254	\$1,432	\$1,590	\$1,717
\$3,100	\$749	\$1,080	\$1,268	\$1,453	\$1,613	\$1,742
\$3,150	\$759	\$1,093	\$1,282	\$1,473	\$1,636	\$1,767
\$3,200	\$770	\$1,105	\$1,296	\$1,494	\$1,659	\$1,792
\$3,250	\$781	\$1,116	\$1,308	\$1,515	\$1,682	\$1,817
\$3,300	\$792	\$1,129	\$1,319	\$1,535	\$1,705	\$1,842
\$3,350	\$803	\$1,144	\$1,334	\$1,556	\$1,728	\$1,866
\$3,400	\$814	\$1,159	\$1,352	\$1,576	\$1,751	\$1,891
\$3,450	\$825	\$1,175	\$1,369	\$1,597	\$1,773	\$1,915
\$3,500	\$835	\$1,190	\$1,386	\$1,617	\$1,796	\$1,940
\$3,550	\$846	\$1,205	\$1,404	\$1,637	\$1,818	\$1,964
\$3,600	\$853	\$1,220	\$1,421	\$1,658	\$1,841	\$1,988
\$3,650	\$859	\$1,235	\$1,438	\$1,678	\$1,863	\$2,013
\$3,700	\$866	\$1,250	\$1,455	\$1,698	\$1,885	\$2,037
\$3,750	\$872	\$1,265	\$1,472	\$1,717	\$1,907	\$2,061
\$3,800	\$879	\$1,280	\$1,489	\$1,737	\$1,929	\$2,084
\$3,850	\$885	\$1,294	\$1,506	\$1,757	\$1,951	\$2,108
\$3,900	\$892	\$1,309	\$1,523	\$1,777	\$1,973	\$2,132
\$3,950	\$898	\$1,324	\$1,538	\$1,795	\$1,993	\$2,153
\$4,000	\$905	\$1,338	\$1,548	\$1,806	\$2,006	\$2,168
\$4,050	\$911	\$1,348	\$1,558	\$1,818	\$2,020	\$2,182
\$4,100	\$918	\$1,357	\$1,568	\$1,830	\$2,033	\$2,196
\$4,150	\$924	\$1,366	\$1,579	\$1,842	\$2,046	\$2,210
\$4,200	\$930	\$1,375	\$1,589	\$1,854	\$2,059	\$2,225
\$4,250	\$937	\$1,383	\$1,599	\$1,866	\$2,072	\$2,239

Nebraska Child Support Guidelines

COMBINED MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
\$4,300	\$943	\$1,392	\$1,609	\$1,877	\$2,085	\$2,253
\$4,350	\$950	\$1,401	\$1,619	\$1,889	\$2,098	\$2,267
\$4,400	\$956	\$1,410	\$1,629	\$1,901	\$2,111	\$2,281
\$4,450	\$963	\$1,419	\$1,639	\$1,913	\$2,125	\$2,295
\$4,500	\$969	\$1,428	\$1,649	\$1,924	\$2,138	\$2,309
\$4,550	\$976	\$1,436	\$1,659	\$1,936	\$2,151	\$2,324
\$4,600	\$982	\$1,445	\$1,669	\$1,948	\$2,164	\$2,338
\$4,650	\$989	\$1,454	\$1,679	\$1,959	\$2,177	\$2,352
\$4,700	\$995	\$1,463	\$1,689	\$1,971	\$2,190	\$2,366
\$4,750	\$1,002	\$1,471	\$1,699	\$1,983	\$2,203	\$2,380
\$4,800	\$1,008	\$1,480	\$1,709	\$1,994	\$2,216	\$2,394
\$4,850	\$1,015	\$1,489	\$1,719	\$2,006	\$2,228	\$2,408
\$4,900	\$1,021	\$1,498	\$1,729	\$2,018	\$2,241	\$2,422
\$4,950	\$1,027	\$1,506	\$1,738	\$2,029	\$2,254	\$2,436
\$5,000	\$1,034	\$1,515	\$1,748	\$2,041	\$2,267	\$2,450
\$5,050	\$1,040	\$1,524	\$1,758	\$2,052	\$2,280	\$2,463
\$5,100	\$1,047	\$1,532	\$1,768	\$2,064	\$2,293	\$2,477
\$5,150	\$1,053	\$1,541	\$1,778	\$2,075	\$2,306	\$2,491
\$5,200	\$1,060	\$1,550	\$1,788	\$2,087	\$2,318	\$2,505
\$5,250	\$1,066	\$1,558	\$1,797	\$2,098	\$2,331	\$2,519
\$5,300	\$1,072	\$1,567	\$1,807	\$2,110	\$2,344	\$2,533
\$5,350	\$1,079	\$1,576	\$1,817	\$2,121	\$2,357	\$2,546
\$5,400	\$1,085	\$1,584	\$1,827	\$2,133	\$2,369	\$2,560
\$5,450	\$1,092	\$1,593	\$1,837	\$2,144	\$2,382	\$2,574
\$5,500	\$1,098	\$1,602	\$1,846	\$2,155	\$2,395	\$2,588
\$5,550	\$1,104	\$1,610	\$1,856	\$2,167	\$2,407	\$2,601
\$5,600	\$1,111	\$1,619	\$1,866	\$2,178	\$2,420	\$2,615
\$5,650	\$1,117	\$1,627	\$1,875	\$2,189	\$2,433	\$2,629
\$5,700	\$1,124	\$1,636	\$1,885	\$2,201	\$2,445	\$2,642
\$5,750	\$1,130	\$1,644	\$1,895	\$2,212	\$2,458	\$2,656
\$5,800	\$1,136	\$1,653	\$1,904	\$2,223	\$2,470	\$2,670
\$5,850	\$1,143	\$1,662	\$1,914	\$2,235	\$2,483	\$2,683
\$5,900	\$1,149	\$1,670	\$1,923	\$2,246	\$2,496	\$2,697
\$5,950	\$1,155	\$1,679	\$1,933	\$2,257	\$2,508	\$2,710
\$6,000	\$1,162	\$1,687	\$1,943	\$2,268	\$2,520	\$2,724
\$6,050	\$1,168	\$1,696	\$1,952	\$2,280	\$2,533	\$2,737
\$6,100	\$1,175	\$1,704	\$1,962	\$2,291	\$2,545	\$2,751
\$6,150	\$1,181	\$1,713	\$1,971	\$2,302	\$2,558	\$2,764
\$6,200	\$1,187	\$1,721	\$1,981	\$2,313	\$2,570	\$2,778

Nebraska Child Support Guidelines

COMBINED MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
\$6,250	\$1,194	\$1,729	\$1,990	\$2,324	\$2,583	\$2,791
\$6,300	\$1,200	\$1,738	\$2,000	\$2,335	\$2,595	\$2,804
\$6,350	\$1,206	\$1,746	\$2,009	\$2,346	\$2,607	\$2,818
\$6,400	\$1,213	\$1,755	\$2,019	\$2,357	\$2,620	\$2,831
\$6,450	\$1,219	\$1,763	\$2,028	\$2,368	\$2,632	\$2,844
\$6,500	\$1,225	\$1,772	\$2,037	\$2,379	\$2,644	\$2,858
\$6,550	\$1,232	\$1,780	\$2,047	\$2,390	\$2,656	\$2,871
\$6,600	\$1,238	\$1,788	\$2,056	\$2,401	\$2,669	\$2,884
\$6,650	\$1,244	\$1,797	\$2,065	\$2,412	\$2,681	\$2,897
\$6,700	\$1,250	\$1,805	\$2,075	\$2,423	\$2,693	\$2,911
\$6,750	\$1,257	\$1,813	\$2,084	\$2,434	\$2,705	\$2,924
\$6,800	\$1,263	\$1,822	\$2,093	\$2,445	\$2,717	\$2,937
\$6,850	\$1,269	\$1,830	\$2,103	\$2,456	\$2,729	\$2,950
\$6,900	\$1,276	\$1,838	\$2,112	\$2,467	\$2,742	\$2,963
\$6,950	\$1,282	\$1,847	\$2,121	\$2,478	\$2,754	\$2,976
\$7,000	\$1,288	\$1,855	\$2,130	\$2,488	\$2,766	\$2,989
\$7,050	\$1,294	\$1,863	\$2,139	\$2,499	\$2,778	\$3,002
\$7,100	\$1,301	\$1,871	\$2,149	\$2,510	\$2,790	\$3,015
\$7,150	\$1,307	\$1,880	\$2,158	\$2,521	\$2,802	\$3,028
\$7,200	\$1,313	\$1,888	\$2,167	\$2,531	\$2,814	\$3,041
\$7,250	\$1,320	\$1,896	\$2,176	\$2,542	\$2,826	\$3,054
\$7,300	\$1,326	\$1,904	\$2,185	\$2,553	\$2,837	\$3,067
\$7,350	\$1,332	\$1,912	\$2,194	\$2,563	\$2,849	\$3,080
\$7,400	\$1,338	\$1,921	\$2,203	\$2,574	\$2,861	\$3,093
\$7,450	\$1,344	\$1,929	\$2,212	\$2,585	\$2,873	\$3,105
\$7,500	\$1,351	\$1,937	\$2,221	\$2,595	\$2,885	\$3,118
\$7,550	\$1,357	\$1,945	\$2,230	\$2,606	\$2,897	\$3,131
\$7,600	\$1,363	\$1,953	\$2,239	\$2,616	\$2,908	\$3,144
\$7,650	\$1,369	\$1,961	\$2,248	\$2,627	\$2,920	\$3,156
\$7,700	\$1,376	\$1,969	\$2,257	\$2,637	\$2,932	\$3,169
\$7,750	\$1,382	\$1,977	\$2,266	\$2,648	\$2,943	\$3,182
\$7,800	\$1,388	\$1,986	\$2,275	\$2,658	\$2,955	\$3,194
\$7,850	\$1,394	\$1,994	\$2,284	\$2,669	\$2,967	\$3,207
\$7,900	\$1,400	\$2,002	\$2,293	\$2,679	\$2,978	\$3,220
\$7,950	\$1,406	\$2,010	\$2,302	\$2,690	\$2,990	\$3,232
\$8,000	\$1,413	\$2,018	\$2,310	\$2,700	\$3,002	\$3,245
\$8,050	\$1,419	\$2,026	\$2,319	\$2,710	\$3,013	\$3,257
\$8,100	\$1,425	\$2,034	\$2,328	\$2,721	\$3,025	\$3,270
\$8,150	\$1,431	\$2,042	\$2,337	\$2,731	\$3,036	\$3,282

Nebraska Child Support Guidelines

COMBINED MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
\$8,200	\$1,437	\$2,050	\$2,346	\$2,741	\$3,047	\$3,294
\$8,250	\$1,443	\$2,058	\$2,354	\$2,751	\$3,059	\$3,307
\$8,300	\$1,450	\$2,065	\$2,363	\$2,762	\$3,070	\$3,319
\$8,350	\$1,456	\$2,073	\$2,372	\$2,772	\$3,082	\$3,331
\$8,400	\$1,462	\$2,081	\$2,380	\$2,782	\$3,093	\$3,344
\$8,450	\$1,468	\$2,089	\$2,389	\$2,792	\$3,104	\$3,356
\$8,500	\$1,474	\$2,097	\$2,398	\$2,802	\$3,116	\$3,368
\$8,550	\$1,480	\$2,105	\$2,406	\$2,812	\$3,127	\$3,380
\$8,600	\$1,486	\$2,113	\$2,415	\$2,822	\$3,138	\$3,393
\$8,650	\$1,492	\$2,121	\$2,423	\$2,833	\$3,149	\$3,405
\$8,700	\$1,498	\$2,128	\$2,432	\$2,843	\$3,161	\$3,417
\$8,750	\$1,504	\$2,136	\$2,440	\$2,853	\$3,172	\$3,429
\$8,800	\$1,511	\$2,144	\$2,449	\$2,863	\$3,183	\$3,441
\$8,850	\$1,517	\$2,152	\$2,457	\$2,872	\$3,194	\$3,453
\$8,900	\$1,523	\$2,159	\$2,466	\$2,882	\$3,205	\$3,465
\$8,950	\$1,529	\$2,167	\$2,474	\$2,892	\$3,216	\$3,477
\$9,000	\$1,535	\$2,175	\$2,482	\$2,902	\$3,227	\$3,489
\$9,050	\$1,541	\$2,183	\$2,491	\$2,912	\$3,238	\$3,501
\$9,100	\$1,547	\$2,190	\$2,499	\$2,922	\$3,249	\$3,513
\$9,150	\$1,553	\$2,198	\$2,508	\$2,932	\$3,260	\$3,525
\$9,200	\$1,559	\$2,206	\$2,516	\$2,941	\$3,271	\$3,537
\$9,250	\$1,565	\$2,213	\$2,524	\$2,951	\$3,282	\$3,548
\$9,300	\$1,571	\$2,221	\$2,532	\$2,961	\$3,293	\$3,560
\$9,350	\$1,577	\$2,229	\$2,541	\$2,971	\$3,303	\$3,572
\$9,400	\$1,583	\$2,236	\$2,549	\$2,980	\$3,314	\$3,583
\$9,450	\$1,589	\$2,244	\$2,557	\$2,990	\$3,325	\$3,595
\$9,500	\$1,595	\$2,251	\$2,565	\$2,999	\$3,336	\$3,607
\$9,550	\$1,601	\$2,259	\$2,573	\$3,009	\$3,346	\$3,618
\$9,600	\$1,607	\$2,266	\$2,581	\$3,019	\$3,357	\$3,630
\$9,650	\$1,613	\$2,274	\$2,590	\$3,028	\$3,368	\$3,641
\$9,700	\$1,619	\$2,281	\$2,598	\$3,038	\$3,378	\$3,653
\$9,750	\$1,625	\$2,289	\$2,606	\$3,047	\$3,389	\$3,664
\$9,800	\$1,631	\$2,296	\$2,614	\$3,057	\$3,399	\$3,676
\$9,850	\$1,637	\$2,304	\$2,622	\$3,066	\$3,410	\$3,687
\$9,900	\$1,643	\$2,311	\$2,630	\$3,075	\$3,420	\$3,699
\$9,950	\$1,648	\$2,319	\$2,638	\$3,085	\$3,431	\$3,710
\$10,000	\$1,654	\$2,326	\$2,645	\$3,094	\$3,441	\$3,721
\$10,050	\$1,660	\$2,333	\$2,653	\$3,103	\$3,452	\$3,733
\$10,100	\$1,666	\$2,341	\$2,661	\$3,113	\$3,462	\$3,744

Nebraska Child Support Guidelines

COMBINED MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
\$10,150	\$1,672	\$2,348	\$2,669	\$3,122	\$3,472	\$3,755
\$10,200	\$1,678	\$2,355	\$2,677	\$3,131	\$3,483	\$3,766
\$10,250	\$1,684	\$2,363	\$2,685	\$3,140	\$3,493	\$3,777
\$10,300	\$1,690	\$2,370	\$2,692	\$3,149	\$3,503	\$3,789
\$10,350	\$1,696	\$2,377	\$2,700	\$3,159	\$3,514	\$3,800
\$10,400	\$1,701	\$2,385	\$2,708	\$3,168	\$3,524	\$3,811
\$10,450	\$1,707	\$2,392	\$2,716	\$3,177	\$3,534	\$3,822
\$10,500	\$1,713	\$2,399	\$2,723	\$3,186	\$3,544	\$3,833
\$10,550	\$1,719	\$2,406	\$2,731	\$3,195	\$3,554	\$3,844
\$10,600	\$1,725	\$2,413	\$2,739	\$3,204	\$3,564	\$3,854
\$10,650	\$1,731	\$2,421	\$2,746	\$3,213	\$3,574	\$3,865
\$10,700	\$1,736	\$2,428	\$2,754	\$3,222	\$3,584	\$3,876
\$10,750	\$1,742	\$2,435	\$2,761	\$3,231	\$3,594	\$3,887
\$10,800	\$1,748	\$2,442	\$2,769	\$3,239	\$3,604	\$3,898
\$10,850	\$1,754	\$2,449	\$2,776	\$3,248	\$3,614	\$3,908
\$10,900	\$1,759	\$2,456	\$2,784	\$3,257	\$3,624	\$3,919
\$10,950	\$1,765	\$2,463	\$2,791	\$3,266	\$3,633	\$3,930
\$11,000	\$1,771	\$2,470	\$2,799	\$3,275	\$3,643	\$3,940
\$11,050	\$1,777	\$2,477	\$2,806	\$3,283	\$3,653	\$3,951
\$11,100	\$1,782	\$2,484	\$2,813	\$3,292	\$3,663	\$3,962
\$11,150	\$1,788	\$2,491	\$2,821	\$3,301	\$3,672	\$3,972
\$11,200	\$1,794	\$2,498	\$2,828	\$3,309	\$3,682	\$3,983
\$11,250	\$1,800	\$2,505	\$2,835	\$3,318	\$3,692	\$3,993
\$11,300	\$1,805	\$2,512	\$2,842	\$3,326	\$3,701	\$4,003
\$11,350	\$1,811	\$2,519	\$2,850	\$3,335	\$3,711	\$4,014
\$11,400	\$1,817	\$2,526	\$2,857	\$3,344	\$3,720	\$4,024
\$11,450	\$1,822	\$2,533	\$2,864	\$3,352	\$3,730	\$4,034
\$11,500	\$1,828	\$2,540	\$2,871	\$3,360	\$3,739	\$4,045
\$11,550	\$1,834	\$2,547	\$2,878	\$3,369	\$3,749	\$4,055
\$11,600	\$1,839	\$2,553	\$2,885	\$3,377	\$3,758	\$4,065
\$11,650	\$1,845	\$2,560	\$2,892	\$3,386	\$3,767	\$4,075
\$11,700	\$1,851	\$2,567	\$2,899	\$3,394	\$3,777	\$4,085
\$11,750	\$1,856	\$2,574	\$2,906	\$3,402	\$3,786	\$4,095
\$11,800	\$1,862	\$2,580	\$2,913	\$3,410	\$3,795	\$4,105
\$11,850	\$1,868	\$2,587	\$2,920	\$3,419	\$3,804	\$4,115
\$11,900	\$1,873	\$2,594	\$2,927	\$3,427	\$3,813	\$4,125
\$11,950	\$1,879	\$2,601	\$2,934	\$3,435	\$3,823	\$4,135
\$12,000	\$1,884	\$2,607	\$2,941	\$3,443	\$3,832	\$4,145
\$12,050	\$1,890	\$2,614	\$2,948	\$3,451	\$3,841	\$4,155

Nebraska Child Support Guidelines

COMBINED MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
\$12,100	\$1,895	\$2,620	\$2,955	\$3,459	\$3,850	\$4,165
\$12,150	\$1,901	\$2,627	\$2,961	\$3,467	\$3,859	\$4,174
\$12,200	\$1,907	\$2,634	\$2,968	\$3,475	\$3,868	\$4,184
\$12,250	\$1,912	\$2,640	\$2,975	\$3,483	\$3,877	\$4,194
\$12,300	\$1,918	\$2,647	\$2,981	\$3,491	\$3,885	\$4,203
\$12,350	\$1,923	\$2,653	\$2,988	\$3,499	\$3,894	\$4,213
\$12,400	\$1,929	\$2,660	\$2,995	\$3,507	\$3,903	\$4,223
\$12,450	\$1,934	\$2,666	\$3,001	\$3,514	\$3,912	\$4,232
\$12,500	\$1,940	\$2,673	\$3,008	\$3,522	\$3,921	\$4,242
\$12,550	\$1,945	\$2,679	\$3,014	\$3,530	\$3,929	\$4,251
\$12,600	\$1,951	\$2,686	\$3,021	\$3,538	\$3,938	\$4,260
\$12,650	\$1,956	\$2,692	\$3,027	\$3,545	\$3,946	\$4,270
\$12,700	\$1,961	\$2,698	\$3,034	\$3,553	\$3,955	\$4,279
\$12,750	\$1,967	\$2,705	\$3,040	\$3,561	\$3,963	\$4,288
\$12,800	\$1,972	\$2,711	\$3,046	\$3,568	\$3,972	\$4,298
\$12,850	\$1,978	\$2,717	\$3,053	\$3,576	\$3,980	\$4,307
\$12,900	\$1,983	\$2,724	\$3,059	\$3,583	\$3,989	\$4,316
\$12,950	\$1,989	\$2,730	\$3,065	\$3,591	\$3,997	\$4,325
\$13,000	\$1,994	\$2,736	\$3,072	\$3,598	\$4,006	\$4,334
\$13,050	\$1,999	\$2,742	\$3,078	\$3,605	\$4,014	\$4,343
\$13,100	\$2,005	\$2,748	\$3,084	\$3,613	\$4,022	\$4,352
\$13,150	\$2,010	\$2,755	\$3,090	\$3,620	\$4,030	\$4,361
\$13,200	\$2,015	\$2,761	\$3,096	\$3,627	\$4,038	\$4,370
\$13,250	\$2,021	\$2,767	\$3,102	\$3,635	\$4,047	\$4,379
\$13,300	\$2,026	\$2,773	\$3,108	\$3,642	\$4,055	\$4,388
\$13,350	\$2,031	\$2,779	\$3,115	\$3,649	\$4,063	\$4,396
\$13,400	\$2,037	\$2,785	\$3,121	\$3,656	\$4,071	\$4,405
\$13,450	\$2,042	\$2,791	\$3,126	\$3,663	\$4,079	\$4,414
\$13,500	\$2,047	\$2,797	\$3,132	\$3,670	\$4,087	\$4,422
\$13,550	\$2,052	\$2,803	\$3,138	\$3,677	\$4,095	\$4,431
\$13,600	\$2,058	\$2,809	\$3,144	\$3,684	\$4,102	\$4,439
\$13,650	\$2,063	\$2,815	\$3,150	\$3,691	\$4,110	\$4,448
\$13,700	\$2,068	\$2,821	\$3,156	\$3,698	\$4,118	\$4,456
\$13,750	\$2,073	\$2,827	\$3,162	\$3,705	\$4,126	\$4,465
\$13,800	\$2,079	\$2,833	\$3,167	\$3,712	\$4,133	\$4,473
\$13,850	\$2,084	\$2,839	\$3,173	\$3,719	\$4,141	\$4,482
\$13,900	\$2,089	\$2,845	\$3,179	\$3,725	\$4,149	\$4,490
\$13,950	\$2,094	\$2,850	\$3,184	\$3,732	\$4,156	\$4,498
\$14,000	\$2,099	\$2,856	\$3,190	\$3,739	\$4,164	\$4,506

Nebraska Child Support Guidelines

COMBINED MONTHLY INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
\$14,050	\$2,105	\$2,862	\$3,195	\$3,745	\$4,171	\$4,514
\$14,100	\$2,110	\$2,868	\$3,201	\$3,752	\$4,179	\$4,522
\$14,150	\$2,115	\$2,873	\$3,207	\$3,759	\$4,186	\$4,531
\$14,200	\$2,120	\$2,879	\$3,212	\$3,765	\$4,193	\$4,539
\$14,250	\$2,125	\$2,885	\$3,217	\$3,772	\$4,201	\$4,546
\$14,300	\$2,130	\$2,890	\$3,223	\$3,778	\$4,208	\$4,554
\$14,350	\$2,135	\$2,896	\$3,228	\$3,784	\$4,215	\$4,562
\$14,400	\$2,141	\$2,902	\$3,234	\$3,791	\$4,222	\$4,570
\$14,450	\$2,146	\$2,907	\$3,239	\$3,797	\$4,229	\$4,578
\$14,500	\$2,151	\$2,913	\$3,244	\$3,803	\$4,236	\$4,586
\$14,550	\$2,156	\$2,918	\$3,249	\$3,810	\$4,244	\$4,593
\$14,600	\$2,161	\$2,924	\$3,254	\$3,816	\$4,251	\$4,601
\$14,650	\$2,166	\$2,929	\$3,260	\$3,822	\$4,257	\$4,609
\$14,700	\$2,171	\$2,935	\$3,265	\$3,828	\$4,264	\$4,616
\$14,750	\$2,176	\$2,940	\$3,270	\$3,834	\$4,271	\$4,624
\$14,800	\$2,181	\$2,945	\$3,275	\$3,840	\$4,278	\$4,631
\$14,850	\$2,186	\$2,951	\$3,280	\$3,846	\$4,285	\$4,638
\$14,900	\$2,191	\$2,956	\$3,285	\$3,852	\$4,292	\$4,646
\$14,950	\$2,196	\$2,961	\$3,290	\$3,858	\$4,298	\$4,653
\$15,000	\$2,201	\$2,967	\$3,295	\$3,864	\$4,305	\$4,660

Table 1 amended effective Jan. 1, 1996; table 1 amended March 26, 1997; table 1 amended April 18, 2001; table 1 amended Nov. 26, 2003, effective Jan. 1, 2004; table 1 amended March 10, 2004; table 1 amended March 1, 2006; Table 1 amended effective July 1, 2007.

Nebraska Child Support Guidelines readopted Nov. 8, 1995, to become effective Jan. 1, 1996.

NEBRASKA SUPREME COURT
CHILD SUPPORT GOALS AND RULES

GOALS

The Supreme Court establishes the following goals for the rules relating to the establishment and enforcement of child support and paternity:

1. The collection of a greater proportion of the child support owed to custodial parents.
2. The entry and enforcement of support orders within the time guidelines established by federal law.
3. The assurance that the Nebraska court system complies with federal rules and regulations relating to the establishment and enforcement of child support and paternity.

RULES

I. Expedited Process.

The expedited judicial process established in these rules is mandatory for all court matters related to the establishment and enforcement of child support and paternity. The following time standards apply in actions to establish support orders and, if necessary, paternity.

A. In all cases needing support order establishment regardless of whether paternity has been established, action to establish support orders must be completed from the date of service to the time of disposition within the following timeframes:

1. Seventy-five percent of such cases shall be completed within 6 months of service of process.
2. Ninety percent of such cases shall be completed within 12 months of service of process.

Note: In cases for the purpose of paternity and support order establishment that use long-arm jurisdiction and disposition occurs within 12 months of service of process on the alleged father or noncustodial parent, the case may be counted as a success within the 6-month tier of the timeframe, regardless of when disposition occurs in the 12-month period following the service of process.

II. Requirements and Time Limits.

A. Each clerk of the district court shall maintain records of payments for each child support order entered by the court in any pending case. Such records shall be created within 2 business days after the filing of the order in the clerk's office. The records shall show payments due, payments made, and the current arrearage. The records shall be updated within 1 business day after the day the payment is due and the day a payment is received. Interest may be calculated either each month or only when requested by the court or a party.

B. The clerk of the district court shall issue summons within 1 business day after receiving a request for summons. Summons shall be delivered immediately for service unless the court has been requested to issue an ex parte order which may be served with the summons. The clerk shall deliver summons for service no later than 3 business days after issuance.

C. The clerk of the district court shall determine whether a copy of the order has been furnished to the parties or their attorneys. If the clerk determines no copies have been furnished, the clerk shall mail copies to their last known mailing address by first class mail.

Goals and Rules amended May 17, 1995.

RULES RELATING TO
STATEWIDE CHILD SUPPORT REFEREES

I. Intent.

The Supreme Court finds that matters related to the establishment, modification, enforcement, and collection of child or spousal support and to paternity should be handled by the court in an expeditious manner so that parties may obtain needed orders and other action as quickly as possible. It is determined that the appointment of statewide child support referees is necessary to aid the district courts in meeting the case progression standards established by Supreme Court rule and federal law.

II. Appointment.

Each referee shall be appointed by order of the judges of the Supreme Court and shall be an attorney in good standing admitted to the practice of law in the State of Nebraska. The referee shall be sworn or affirmed, and the oath for judicial officer shall be administered. The referee may be removed at any time by the Supreme Court.

III. Duties.

The referee shall, in all judicial districts in this state, hear matters pertaining to (1) the establishment, modification, enforcement, and collection of child or spousal support and (2) paternity. The referee shall have the power to administer all necessary oaths, supervise pretrial preparation pursuant to the rules of discovery, grant continuances and adjournments, recommend the appointment of counsel for indigent parties, and carry out any other duties permitted by law as directed by the district court. The functions performed by the referee under expedited processes shall at a minimum include (1) taking testimony and establishing a record, (2) evaluating evidence and making recommendations to establish and enforce orders, (3) accepting voluntary acknowledgment of support liability and stipulated agreements setting the amount of support and accepting voluntary acknowledgment of paternity, and (4) recommending default orders if absent parents fail to respond within the time specified by law. Priority shall be given to those judicial districts which have not been granted an exemption from the federal requirement to implement expedited processes.

IV. Safeguards.

Under the expedited processes established by this court rule:

- (1) The parties must be provided a copy of the recommendation of the referee and the ratified order;
- (2) To be enforceable, the referee's recommendations must be entered as an order by a judge;
- (3) If a case involves complex issues requiring judicial resolution, a temporary support obligation shall be recommended under these expedited processes and the unresolved issues shall be referred to the district court.

V. Hearings.

A hearing before a child support referee shall be conducted in the same manner as a hearing before a district court. Testimony in such matters shall be preserved by tape recording or other prescribed measures and shall be in accordance with prescribed standards. Transcripts of all hearings shall be available upon request, and all costs of preparing the transcript shall be paid by the party for whom it is prepared.

VI. Findings and Recommendations.

Upon the hearing of a matter, the child support referee shall prepare in writing his or her findings and recommendations to the parties or their attorneys and submit a report to the district court containing findings of fact and recommendations and any and all exceptions.

VII. Judicial Review.

In all cases referred by a child support referee, the parties shall have the right to take exception within 14 days to the findings and recommendations of the referee and to have a review by the district court before final disposition. Upon receiving the findings and recommendations, the district court shall conduct a review on the report of the referee and in the court's discretion may ratify or modify the recommendations of the referee and enter judgment based thereon, with the rights of appeal and to move for rehearing reserved to all parties.

VIII. Case Progression.

Actions to establish or enforce support obligations shall be completed in accordance with state and federal law.

Adopted May 20, 1992.

TABLE OF CONTENTS
FOR
RULES RELATING TO OFFICIAL COURT REPORTERS

<u>Rule</u>	<u>Page</u>
1. Appointment of Reporter	8.1
2. Oath of Office	8.1
3. Duties of Reporter	8.1
4. General Qualifications	8.2
5. Place of Residence of Reporter	8.2
6. Principal Office Location of Judge and Reporter	8.2
7. Assignment of Reporter	8.2
8. Reporter Acting When Another Judge Presides	8.3
9. Reimbursement for Travel Expenses	8.3
10. Custody of Trial Records and Documents	8.3
11. Freelance Activities	8.3
12. Employment of Substitute Reporter	8.5
13. Leave	8.5
14. Overtime	8.5
15. Nebraska Official Court Reporters Association	8.6
16. Preparation and Delivery of Bill of Exceptions or Transcription by Another Reporter	8.6
17. Other Related Policies	8.7
18. Per-Page Compensation	8.7
..... APPENDIX 1: Court Reporter Monthly Timesheet	8.8
..... Index to Rules Relating to Official Court Reporters	8.10

RULES RELATING TO OFFICIAL COURT REPORTERS

1. APPOINTMENT OF REPORTER:

A. Each judge of the district and separate juvenile court shall appoint or, with approval from the State Court Administrator, shall contract with one official court reporter to make, preserve, transcribe, and deliver the record of the trial and other proceedings over which said judge presides. Such an official court reporter is an at-will employee of the Nebraska Supreme Court, subject to the Court's general administrative authority pursuant to art. V, § 1 of the Nebraska Constitution, and serves at the pleasure of the appointing judge and the Nebraska Supreme Court, unless otherwise discharged from employment as provided in Rule 4D.

B. If the office of the appointing judge is vacated, and the Judicial Resources Commission declares that a judicial vacancy exists in the affected district, the official reporter shall continue in office until either reappointment or the appointment of a successor official reporter.

C. If the office of the appointing judge is vacated and the Judicial Resources Commission determines that a judicial vacancy does not exist in the affected district, the official reporter in such district shall vacate his or her position 90 days from the date of such determination by the commission.

Rule 1A through C amended February 28, 1996; Rule 1A amended June 5, 2002.

2. OATH OF OFFICE: An official reporter shall take the oath of office provided for judicial officers.

3. DUTIES OF REPORTER: The official reporter is charged with a duty to comply with any Supreme Court rule relating to official court reporters and with the duty of making, preserving, transcribing, and delivering a verbatim record of all proceedings in the court to which he or she is appointed in accordance with Neb. Ct. R. of Prac. 5. Failure to comply with such rules may result in disciplinary action, including termination, by either the appointing judge or the Nebraska Supreme Court. In addition, the official reporter shall perform any other duties assigned by the appointing judge and shall:

A. On order of the trial judge, make and file in the clerk's office a typewritten transcription of any trial or proceedings, or any part thereof, without expense to any party to the suit; such transcription shall be a part of the records in the case. The court reporter shall receive from the appropriate governmental unit the compensation specified below in Rule 18 for any such transcription ordered by a judge.

B. Upon request of counsel or any party to a suit, furnish to such counsel or party, as expeditiously as possible, a typewritten transcription of any trial or proceedings, or any portion thereof. The reporter shall receive the compensation specified below in Rule 18 for any such transcription, except that when expedited, daily, or real-time delivery is requested, the reporter and the requesting party may mutually agree to an amount to be paid for delivery of such transcription. Counsel or any party shall make satisfactory arrangements with the reporter for payment. All work involved with the preparation of such transcription shall be considered freelance activity subject to Rule 11.

C. Upon request of any person not a party to a suit, if so approved by the trial judge, furnish to such person, as expeditiously as possible, a typewritten transcription of any trial or proceedings, or any portion thereof. All work involved with the preparation of such transcription shall be considered freelance activity subject to Rule 11. The compensation and payment therefor shall be as prescribed in Rule 3B.

D. All verbatim transcriptions shall be certified by the reporter to be true and correct.

Rule 3A, B, and C amended June 19, 1996; Rule 3 amended June 5, 2002; Rule 3A and B amended June 22, 2005; Rule 3B amended February 15, 2006.

4. GENERAL QUALIFICATIONS:

A. An official reporter shall be competent in the making, preserving, transcribing, and delivery of a verbatim record of trial and other proceedings through the use of either pen or machine shorthand or the use of multi-track recorders supplemented by logging procedures.

B. One's professional competence to serve as an official reporter shall be demonstrated by having passed an examination conducted by such entities as the State Court Administrator may from time to time designate, which tests one's reporting skills and knowledge of spelling, grammar, and the reporting craft. The skills portion of the examination shall require the reporter, in the case of one using pen or machine shorthand, to report and transcribe, and in the case of one using a multi-track recorder to record and transcribe, each of three items of dictation consisting of (1) literary material, (2) jury instructions, and (3) two-voice testimony. Each dictation segment shall be of five minutes duration. In the case of one using pen or machine shorthand, the literary material must be reported at a rate of not less than 180 words per minute, the jury charge at not less than 200 words per minute, and the two-voice testimony at not less than 225 words per minute. All of the dictated material must be transcribed with 95 percent accuracy in a period of not more than three and one-half hours, during which time a dictionary may be used. In grading this portion of the test, a maximum of 45 errors is permitted on the literary material, a maximum of 50 errors is permitted on the jury charge, and a maximum of 57 errors is permitted on the two-voice testimony. The knowledge portion of the examination shall consist of not less than 100 written multiple-choice questions and must be passed with a score of not less than 70 percent in a period of time as determined by the examiner, but no more than 90 minutes per 100 questions. A dictionary may not be used during this portion of the examination.

C. No applicant for a position as an official reporter may hereafter be initially appointed or reappointed following the taking of office by a judge succeeding the judge making the initial appointment unless the applicant shall first have met the above testing requirements.

D. After employment, an official reporter may be required to undergo reexamination through testing substantially similar to that described in Rule 4B any time upon the request of the appointing judge, the Nebraska Court of Appeals, or the Nebraska Supreme Court. Failure to pass the reexamination shall constitute cause for the immediate discharge of the official reporter from employment.

Rule 4B, amended February 23, 2006.

5. PLACE OF RESIDENCE OF REPORTER: The place of residence of the official reporter shall be determined by the appointing judge.

6. PRINCIPAL OFFICE LOCATION OF JUDGE AND REPORTER: Each judge, in a district where the judge and official reporter do not reside in the same county, shall designate, if a multicounty district, a courthouse in the judicial district to serve as the principal office location for the judge and a courthouse in the judicial district to serve as the principal office location for the reporter.

7. ASSIGNMENT OF REPORTER:

A. With the approval of the official reporter's appointing judge, any other official reporter may be assigned by the State Court Administrator to perform an official reporter's duties on a temporary basis in any court in the state.

B. Any official reporter so assigned on a temporary basis shall receive, in addition to his or her regular salary, reimbursement for all necessary and actual expenses incurred, in conformance with the

travel policies of the Administrative Office of the Courts. Mileage in such instances will be paid to and from the place of residence of the assigned reporter.

8. **REPORTER ACTING WHEN ANOTHER JUDGE PRESIDES:** Unless otherwise directed by the appointing judge, the official reporter shall serve as such in all matters heard by another judge when acting in place of the appointing judge, and shall perform in relation to such matters all the duties required by law or these rules.

9. **REIMBURSEMENT FOR TRAVEL EXPENSES:** Each official reporter shall be reimbursed for actual and necessary expenses incurred in the performance of his or her official duties. Reimbursement shall be in accordance with the travel policies of the Administrative Office of the Courts.

10. **CUSTODY OF TRIAL RECORDS AND DOCUMENTS:**

A. All shorthand notes, tape recordings, log sheets, or any other material used in making the record in court shall remain in the custody of the official reporter until such time as the reporter's employment is terminated, or until he or she is disabled or incapacitated. Upon the occurrence of any of the above, control of all such materials shall then be transferred to the clerk of the district court. All reporter notes created after July 1, 1988, shall be marked on the first page with the reporter's name, date(s) of proceedings, case title(s), docket number(s), and "Criminal" if criminal cases were reported. Notes which contain criminal cases are to be separated and stored in separate filing equipment or storage boxes. Containers for permanent storage shall be marked with the year, type of notes (criminal or civil), and name of reporter. The official reporter may, with the approval of the clerk of the district court, transfer permanent storage containers to the clerk of the district court at any time. Responsibility for the retrieval, research, and refiling of the notes contained in the storage files shall lie with the reporter or his or her successor(s). Custody of any such materials may be assumed at any time by the judge in the event of failure on the part of the reporter to prepare and deliver a transcript of proceedings or to timely prepare and file a bill of exceptions on appeal to the Supreme Court or Court of Appeals.

B. Except as it shall become necessary to include exhibits in bills of exceptions being prepared in connection with appeals to the Supreme Court or Court of Appeals, all exhibits shall be retained by the official reporter until a matter is terminated, at which time responsibility for the safekeeping of such exhibits shall pass to the clerk of the district court, unless otherwise ordered by a district judge pursuant to law. Likewise, the responsibility for the safekeeping of all exhibits shall pass to the clerk of the district court upon a reporter's termination of employment, for whatever reason.

C. Upon the transfer of responsibility for the safekeeping of exhibits from the official reporter to the clerk of the district court, the reporter shall insure that all exhibits in each case are grouped together and shall state thereon the caption of the case, docket and page or case number, the date or dates of the trial or proceedings, and the name of the reporter. The reporter shall prepare in each case, for the signature of the clerk of the district court, a receipt acknowledging responsibility for the safekeeping of such materials. The original of the receipt shall be retained by the clerk.

11. **FREELANCE ACTIVITIES:**

A. Freelance reporting activities shall mean the reporting or transcription by an official reporter of oral statements or proceedings of any nature whatsoever, other than those required by these rules, those specifically requested by the judge who appointed the reporter, or for said judge's substitute, or by the State Court Administrator.

B. Except as provided for by these rules, an official reporter may engage in freelance reporting activities during normal working hours if, and only if, the reporter takes leave without pay and said activities are determined by the judge who appointed the reporter to be in the interest of the public, provided, however:

(1) The taking of leave without pay shall not be required if the freelance activity occurs during a reporter's lunch hour, while the reporter is on vacation leave, or while the reporter is taking compensatory time off.

(2) Freelance reporting activities shall not be performed during any period in which the reporter is granted an extension to complete and file a bill of exceptions except for those activities related to the specific bill of exceptions for which the extension has been granted.

(3)(i) Freelance reporting activities shall not be performed when the presence of the official reporter is required by these rules, by the judge who appointed the reporter, by said judge's substitute, or by a judge to whom the reporter has been assigned by the State Court Administrator, except, however transcription described in Rule 3B and C may be performed during this time if the appointing judge or judge's substitute determines such transcription is in the best interest of the public, and the time spent at such transcription is not in conflict with any other duties of the court reporter.

(ii) If the reporter's full-time presence is not required by the appointing judge or judge's substitute during normal working hours, the reporter may, without taking leave without pay, engage in transcription described in Rule 3B or C only.

C. All other outside employment during normal working hours is prohibited.

D. An official reporter shall neither provide nor cause to be provided any public office space to any of the reporter's employees or associates.

E. An official reporter shall not use any publicly-owned supplies or equipment in connection with any freelance reporting activity. Provided, however, that permission to utilize state-owned equipment for purposes outside the scope of official court reporting duties may be given by the Supreme Court if: (1) the equipment is to be used for purposes of recording proceedings of other public entities; (2) operation of the recording equipment by the reporter will not be during working hours nor in any other way interfere with the reporter's official responsibilities; and (3) payment of \$10 to the State of Nebraska, through the office of the State Court Administrator, is made from any such public entity for each day or any part thereof that the equipment is used.

F. All leave without pay taken for the purpose of engaging in freelance activity shall be recorded on the monthly timesheet. The amount of income and the leave earnings on the following month's paycheck shall be adjusted to reflect any time recorded on the timesheet as leave without pay. Hours spent in transcription preparation under Rule 11B(3) during normal working hours shall be recorded on the monthly timesheet (Appendix 1).

G. An official reporter shall not be eligible for injury leave or workers' compensation benefits for injury sustained while on leave without pay.

H. An official reporter shall not evade the provisions of this rule by employing a substitute court reporter to perform any official duty.

12. EMPLOYMENT OF SUBSTITUTE REPORTER:

A. In the event of illness or disability of an official reporter, and where it would appear to not be practical or feasible to reassign another official reporter on a temporary basis, the judge of the ill or disabled reporter, with the approval of the State Court Administrator, may designate a reporter having passed an examination at least as stringent as that described in Rule 4B to act as a substitute reporter, at state expense.

B. The preparation of any bill of exceptions or transcript by any such substitute reporter shall be subject to the same rules and regulations as those governing permanently employed official reporters.

C. Payment to such temporarily employed substitute reporter shall be on a per diem basis, and payment will be made only for the actual days such substitute reporter was required by the judge to be in attendance upon the court. Per diem payment may not be in excess of that figure which the ill or disabled reporter's gross monthly salary amounts to if computed on a per diem basis.

D. No substitute reporter shall be entitled to sick leave or any other benefits ordinarily available to the reporter for whom he or she is substituting.

E. Actual and necessary expenses, including mileage reimbursement, shall be paid to such substitute reporter under the same terms and conditions as those payments are then being made to the reporter for whom he or she is substituting.

F. Any additional reimbursements to a substitute reporter may only be made with the prior approval of the State Court Administrator.

13. LEAVE: All leave, including holiday leave, vacation leave, sick leave, funeral leave, family leave, military leave, civil leave, injury leave, and workers' compensation disability leave, shall be taken as provided in the authorized leave policies of the Nebraska Supreme Court Personnel Policies and Procedures. Provided, however, that an official reporter shall take vacation at the same time as or at the discretion of the appointing judge. If the official reporter is permitted to take vacation at a time other than when the appointing judge takes vacation and the services of a substitute reporter are required by such judge, it shall be the obligation of the official reporter taking vacation to arrange for the services of a substitute reporter at no cost to the State, unless otherwise determined by the State Court Administrator. The substitute reporter must have passed an examination at least as stringent as that described in Rule 4B. The arrangement may not be implemented unless first approved by the State Court Administrator.

14. OVERTIME: Overtime shall be earned and compensated for as provided in the overtime policies in the Nebraska Supreme Court Personnel Policies and Procedures, except as otherwise provided by the Court Reporter Fair Labor Amendments of 1995, 29 U.S.C. § 270(o)(6) and these rules. Except in cases of emergency, no overtime shall be approved during a workweek in which the reporter has engaged in freelance transcription under Rule 11B(3).

Any hours spent performing "freelance" transcription of court proceedings shall not be counted as "hours worked" for purposes of the overtime provisions of the Fair Labor Standards Act if:

(1) the reporter is being paid not less than maximum per page rate established by Rule 18, or the per page rate freely negotiated between the reporter and the party requesting the transcript (other than the judge who presided over the proceedings), and

(2) the hours spent performing such duties are outside the hours such reporter performs other work (including hours for which the court requires the reporter's attendance) pursuant to the employment relationship with the court; e.g., leave without pay, lunch hours, vacation leave, compensatory time off, or

time where the reporter's attendance at any designated workplace is not required by the appointing judge, the judge's substitute, or the State Court Administrator.

Rule 14 adopted June 19, 1996; rule 14(1) amended June 22, 2005.

15. NEBRASKA OFFICIAL COURT REPORTERS ASSOCIATION: There shall be an organization called the Nebraska Official Court Reporters Association, which shall consist of all official reporters. This organization shall have as its purpose the improvement of court reporting in this state, by providing a forum for the exchange of ideas and to educate all reporters to more adequately and expeditiously handle the reporting needs of this state. The association shall adopt bylaws consistent with these rules, providing for the election of a president and such other officers as the association determines appropriate. The association shall have at least one meeting per year unless such annual meeting is canceled or suspended by order or direction of the Nebraska Supreme Court.

If the judge who appointed the reporter requires the presence of an official reporter during the time of the educational seminar, a substitute may be designated to replace the official reporter while attending the seminar. This shall be at state expense.

Rule 14 renumbered to 15 June 19, 1996; Rule 15 amended September 10, 1998; Rule 15 amended March 19, 2003; Rule 15 amended February 1, 2006.

16. PREPARATION AND DELIVERY OF BILL OF EXCEPTIONS OR TRANSCRIPTION BY ANOTHER REPORTER:

A. In the event a bill of exceptions or transcription of a trial or proceeding is required after the official reporter who reported the same has left his or her position, but who retains residency in this state, such bill of exceptions or transcription shall be prepared by that person, under the same requirements, time limitations, and rate of compensation as that in existence for official reporters.

B. In the event a bill of exceptions or transcription of some trial or proceeding is required after the official reporter who reported the same has left his or her position, and who no longer is a resident of this state, such bill of exceptions or transcription shall be prepared by the successor reporter, provided the same method of recording court proceedings is employed by such successor reporter.

C. There shall be established within the Nebraska Official Court Reporters Association a committee of reporters whose function will be, in the event the provisions of Rule 16A and B cannot be implemented, to prepare any bill of exceptions or transcription required.

D. In the event a bill of exceptions or transcription of some trial or proceeding is required, but the official reporter who reported the same is temporarily ill or disabled to the extent that delivery of the same would be unduly delayed, then the provisions of Rule 16C shall become effective.

E. In cases where a bill of exceptions or transcription is prepared by an official reporter who did not make the actual record in court, the certificate shall set forth that the bill of exceptions or transcription was prepared from the record made by the unavailable reporter, and that the bill of exceptions or transcription is full, true, and correct to the best of the preparing reporter's ability to compile such bill of exceptions or transcription.

Rule 15 renumbered to 16 June 19, 1996.

17. **OTHER RELATED POLICIES:** The workplace harassment policy, the drug-free workplace policy, and travel policies apply to all official court reporters. Copies of these policies are available through the State Court Administrator's Office and are also printed in the Nebraska Supreme Court Personnel Policies & Procedures manual.

Rule 18 adopted February 10, 1999; Rule 17 deleted and Rule 18 renumbered to 17 November 22, 2000.

18. **PER-PAGE COMPENSATION:** Effective June 8, 2005, the per-page fee to which a court reporter is entitled, as prescribed by the Supreme Court pursuant to Neb. Rev. Stat. § 25-1140.09, shall be \$3.25 per page for an original copy of a bill of exceptions and 50 cents per page for each additional copy, with numbering to begin with the cover page.

Rule 18 adopted June 22, 2005.

Rules Relating to Official Court Reporters amended Feb. 1, 1995.

Leave Codes:

See the Nebraska Supreme Court Personnel Policies and Procedures handbook for the following leave explanations:

V=Vacation	S=Sick	H=Holiday
F=Funeral	M=Military	C=Civil

Other Codes:

OTE=Overtime Earned	CTT=Compensatory Time Taken	LWP=Leave Without Pay
TPANR=Transcript preparation/attendance not required		
TPON=Transcript preparation/on site		
(1) Judge request (Rule 3A)		
(2) Other party request (Rule 3B and C)		

Code Definitions:

OVERTIME EARNED (OTE) - Time worked in excess of the designated work week. Paid leave time (vacation, sick, etc., with the exception of holiday leave), time when the reporter's presence is not required, and leave without pay for freelance work, shall not be considered as hours worked. An employee must work, not just get paid for, 40 hours of required work during the designated work week before any time can be considered as overtime.

COMPENSATORY TIME TAKEN (CTT) - Time taken off from work, earned at a time and one-half basis, as a result of overtime (as defined above).

LEAVE WITHOUT PAY (LWP) - Time taken off during the designated work day required to engage in freelance activity other than transcription preparation pursuant to Rule 3B and C.

TRANSCRIPT PREPARATION/ATTENDANCE NOT REQUIRED (TPANR) - Any time spent during the normal working hours as described in Rule 11B(3)(ii) engaged in the preparation of transcription pursuant to Rule 3B and C.

TRANSCRIPTION PREPARATION/ON SITE AND ATTENDANCE REQUIRED (TPON) - Any time spent during the normal working hours as described in Rule 11(b)(3)(i) engaged in the preparation of transcription pursuant to Rule 3A, B, or C.

Note: Include either (1) or (2) below when recording this code:

- (1) Judge request (Rule 3A)
- (2) Other party request (Rule 3B and C).

Other Information:

DESIGNATED WORK WEEK - 8:00 a.m. on Monday to 8:00 a.m. the following Monday.

DESIGNATED WORK DAY - The normal daily work schedule that has been set for the reporter by the judge.

INDEX
FOR
RULES RELATING TO OFFICIAL COURT REPORTERS

	<u>RULE NO.</u>	<u>PAGE</u>
Another judge presiding	8	8.3
Another reporter, preparation of bill of exceptions by	16	8.6
Appointment	1A, 4C	8.1, 8.2
Assignment to court other than that of appointing judge	7	8.2
Association, Nebraska Official Court Reporters	15	8.6
 Bill of Exceptions		
Preparation of	1A	8.1
Prepared by another reporter	16	8.6
Certification of transcription	3D	8.1
Per-page compensation for	18	8.7
 Competence		
Examination for	4B	8.2
Reexamination for	4D	8.2
Custody of trial records and documents	10	8.3
Discharge	1A, 4D	8.1, 8.2
District court judge, appointment of official reporter	1A	8.1
Documents and trial records, custody of	10	8.3
Duties	3	8.1
Equipment, public, use of	11E	8.4
Examination for competence	4B, 4D	8.2
Expenses, travel, reimbursement	9	8.3
Family leave	13	8.5
Freelance activities	3B, 11, 14	8.1, 8.3, 8.5
Funeral leave	13	8.5
Incompetency, discharge for	4D	8.2
Judge, district court, appointment of official reporter	1A	8.1
Judge, juvenile court, appointment of official reporter	1A	8.1
Judge presiding, other than appointing judge	8	8.3
Juvenile court judge, appointment of official reporter	1A	8.1
 Leave		
Family	13	8.5
Funeral	13	8.5
Sick	13	8.5
Vacation	13	8.5
Without pay	11B, 11F, 11G	8.4
Location, principal office	6	8.2
Mileage, reimbursement	9	8.3

	<u>RULE NO.</u>	<u>PAGE</u>
Nebraska Official Court Reporters Association	15	8.6
Oath of office	2	8.1
Office		
Oath of	2	8.1
Principal location of	6	8.2
Other reporter, preparation of bill of exceptions	16	8.6
Other than appointing judge presiding	8	8.3
Overtime	14	8.5
Per-page compensation	18	8.7
Place of residence	5	8.2
Policies		
Drug-free workplace policy	17	8.7
Travel policy	17	8.7
Workplace harassment policy	17	8.7
Principal location	6	8.2
Proceedings		
Verbatim reporting of	1A, 3	8.1
Transcription of	1A, 3	8.1
Public supplies or equipment, use of	11E	8.4
Qualifications	4	8.2
Reappointment by successor judge	1B, 4C	8.1, 8.2
Reexamination for competence	4D	8.2
Reimbursement of mileage	9	8.3
Reimbursement of travel expenses	9	8.3
Residence	5	8.2
Sick leave	13	8.5
Space, public use of	11E	8.4
Substitute reporter	7, 11H	8.2, 8.4
Supplies, public, use of	11E	8.4
Temporary assignment	7	8.2
Tenure	1	8.1
Transcription		
Proceedings	1A, 4	8.1, 8.2
Certification of	3D	8.1
Trial		
Verbatim reporting of	1, 4	8.1, 8.2
Transcription of	1A, 4	8.1, 8.2
Records and documents, custody of	10	8.3
Vacation leave	13	8.5
Without pay, leave	13	8.5

NEBRASKA DISCOVERY RULES FOR ALL CIVIL CASES
PROMULGATED BY THE NEBRASKA SUPREME COURT

Effective January 1, 1983

PROMULGATING ORDER

Pursuant to the provisions of Neb. Rev. Stat. § 25-1273.01, the Supreme Court does hereby promulgate the following discovery rules in civil cases, effective as of January 1, 1983.

These rules shall, as written, apply in the district courts, and in all other courts of Nebraska to the extent not inconsistent with other statutes. Rules 26 and 37 are applicable to county courts as to actions pending in those courts on the effective date of these rules.

COMMENT ON CIVIL DISCOVERY RULES

These discovery rules follow the structure of the current discovery portion of the Federal Rules of Civil Procedure, but the content of the Nebraska rules is not always that of the federal rules. The federal rules were used for the structure because they are well known, being used in federal court and in many state courts, and because Nebraska originally followed the federal pattern when discovery was adopted in Nebraska in 1951. The committee considered the text of current Nebraska statutes, the current federal rules, recently proposed federal rules, and certain rules used in other states, and recommended the language that appears best for Nebraska practice. The federal rule numbers were retained for ease of comparison with the law of other jurisdictions.

(The preceding comment and comments following each rule were adopted from the comments of the Supreme Court Committee on Practice and Procedure submitted to the Supreme Court in October 1981.)

DISCOVERY RULES TABLE OF CONTENTS

(The numbering system of the Federal discovery rules for civil cases has been adopted.)

Rule 26	General Provisions	9.3
Rule 27	Depositions Before Action or Pending Appeal	9.6
Rule 28	Persons Before Whom Depositions May Be Taken	9.8
Rule 29	Stipulations Regarding Discovery Procedure	9.9
Rule 30	Depositions Upon Oral Examination	9.9
Rule 31	Depositions Upon Written Questions	9.13
Rule 32	Use of Depositions In Court Proceedings	9.14
Rule 33	Interrogatories to Parties	9.16
Rule 34	Production of Documents and Things and Entry Upon Land For Inspection and Other Purposes	9.17
Rule 34A	Discovery from a Nonparty without a Deposition	9.17
Rule 35	Physical and Mental Examination of Persons	9.20
Rule 36	Requests for Admission	9.20
Rule 37	Failure to Make Discovery: Sanctions	9.22

DISCOVERY RULES

Rule 26. General Provisions Governing Discovery.

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise under subdivision (c) of this rule, the frequency of use of these methods is not limited.

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his or her attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his or her case and that he or she is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivisions (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result,

(i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and

(ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the district court in the district where the deposition is to be taken, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition after being sealed be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his or her response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his or her response with respect to any question directly addressed to

(A) the identity and location of persons having knowledge of discoverable matters, and

(B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he or she is expected to testify, and the substance of his or her testimony.

(2) A party is under a duty seasonably to amend a prior response if he or she obtains information upon the basis of which

(A) he or she knows that the response was incorrect when made,

or

(B) he or she knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court or by agreement of the parties.

(f) Service of Discovery Papers. Except as otherwise ordered by the court, every discovery paper and every motion relating to discovery and response thereto required to be served upon a party shall be served upon each of the parties not in default for failure to appear.

(g) Filing of Discovery Materials. Discovery materials that do not require action by the court shall not be filed with the court. All such materials, including notices of deposition, depositions, certificates of filing a deposition, interrogatories, answers and objections to interrogatories, requests for documents or to permit entry upon land and responses or objections to such requests, requests for admissions and responses or objections to such requests, subpoenas for depositions or other discovery and returns of service of subpoenas, and related notices shall be maintained by the parties.

Discovery materials shall be filed with the court only when ordered by the court or when required by law. If the original of a deposition is not in the possession of a party who intends to offer it in evidence at a hearing, that party may give notice to the party in possession of it that the deposition will be needed at the hearing. Upon receiving such notice the party in possession of the deposition shall either make it available to the party who intends to offer it or produce it at the hearing.

Rule 26(g) amended December 12, 2001.

COMMENTS TO RULE 26

26(a) This subsection provides a catalog of the discovery devices, and is new to Nebraska law. Although there is no limit on the frequency of use of these methods, the limit on interrogatory questions in Rule 33 will restrict the extent of discovery by interrogatory.

26(b)(1) and (2) The definition of the scope of discovery in subsection (1) follows former Neb. Rev. Stat. § 25-1267.02 (Repealed 1982). The provision of subsection (2) was taken from the federal rules and follows the rule established in *Walls v. Horback*, 189 Neb. 479, 203 N.W.2d 490 (1973).

26(b)(3) Subsection (3) provides for protection of material often described as an attorney's work product, and follows the language of the federal rule. Prior Nebraska law on discovery of work product was established in *Haarhues v. Gordon*, 180 Neb. 189, 141 N.W.2d 856 (1966). A provision similar but not identical to the second paragraph of subsection (3) was found in Neb. Rev. Stat. § 25-1222.02 (Repealed 1982). That section, however, applied only to statements by parties and provided only the sanction of exclusion at trial. The language found in subsection (3) was adopted to maintain uniformity of language, to authorize a wider range of sanctions, and to cover statements by parties and nonparties.

26(b)(4) Subsection (4) on experts presents in the expanded language of the federal rules the idea found in former Neb. Rev. Stat. § 27-705(2) (Repealed 1982). The committee recommended repeal of that section, a part of the Nebraska Evidence Rules, because it is a discovery procedure better codified here in the discovery rules.

26(c) This provision on sanctions is substantially similar to former Neb. Rev. Stat. §§ 25-1267.22 and 25-267.31 (Repealed 1982), but is expanded to include all kinds of discovery and not just depositions and interrogatories.

26(d) This is a new provision identical to the federal rules; it would not appear to change current Nebraska practice.

26(e) This provision on supplementation of discovery was added to the federal rules in 1970 and is now adopted for the first time in Nebraska. The proposed language follows the federal rule, except that in subsection (e)(3) the federal language allowing imposition of the duty to supplement by a request for supplementation was rejected.

26(f) A provision on service of discovery papers is necessary because Nebraska law prior to the adoption of these rules did not cover the topic. This is a nonuniform addition to the language of the federal rules because such a provision is in Rule 5(a) of the federal rules, while Nebraska has no similar rule.

26(g) This rule has been adopted because the routine filing of discovery material has unnecessarily overcrowded court files. Parties are now required to keep possession of the discovery material and file it only upon court order or when required by law. Discovery materials used to support or resist a motion for summary judgment shall not be filed separately; § 25-1332 (Amended 2001) makes clear that the court may consider them only if they are admitted as evidence.

Comments to Rule 26(g) amended December 12, 2001.

Rule 27. Depositions Before Action or Pending Appeal.

(a) Before Action.

(1) Petition. A person who desires to perpetuate his or her own testimony or that of another person regarding any matter that may be cognizable in any court of this state may file a petition verified by affidavit of the petitioner or his or her attorney in the district court in the district of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show:

(i) The petitioner expects to be a party to an action cognizable in a court of this state but is presently unable to bring it or cause it to be brought;

(ii) the subject matter of the expected action and his or her interest therein;

(iii) the facts which he or she desires to establish by the proposed testimony and his or her reasons for desiring to perpetuate it;

(iv) the names or a description of the persons he or she expects will be adverse parties and their addresses so far as known; and

(v) the names and addresses of the persons to be examined and the substance of the testimony which he or she expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty days before the date of hearing the notice shall be served in the manner provided for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court shall order service by publication in the manner provided in Rule 30(b)(1)(B), and shall appoint, for persons not served in the manner provided for service of summons, an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Neb. Rev. Stat. § 25-309 shall apply.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written questions. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a district court in this state, in accordance with the provisions of Rule 32(a).

(b) Pending Appeal. If an appeal has been taken from a judgment of a district court, the appellate court, upon motion filed therein and notice and service thereof as if the action was pending in the district court, may remand the motion to the district court for consideration and ruling, may itself overrule the motion, or, if the appellate court finds that the perpetuation of the testimony is proper to avoid failure or delay of justice, may itself enter an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court. The motion shall show

(1) the names and addresses of persons to be examined and the substance of the testimony which he or she expects to elicit from each;

(2) the reasons for perpetuating their testimony.

(c) Perpetuation by Action. This rule does not limit the power of a court to entertain an action to perpetuate testimony.

Rule 27(b) amended January 14, 1998.

COMMENT TO RULE 27

The language of rule 27 is substantially similar to federal rule 27 and to former Neb. Rev. Stat. §§ 25-1267.08 to 25-1267.13 (Repealed 1982).

Rule 28. Persons Before Whom Depositions May Be Taken.

(a) Within this State. Within this State depositions may be taken before a judge or clerk of the Supreme Court or district court, a county judge, clerk magistrate, notary public, or any person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(b) Elsewhere Within the United States. Within other states of the United States or within a territory or insular possession subject to the jurisdiction of the United States depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(c) In Foreign Countries. In a foreign country, depositions may be taken

(1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or

(2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his or her commission to administer any necessary oath and take testimony, or

(3) pursuant to a letter rogatory.

A commission or a letter rogatory shall be issued on application and notice on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

(d) Disqualification for Interest. The officer before whom the deposition is taken and the person recording the testimony shall not be a relative, employee, or attorney of any of the parties, nor a relative or employee of such attorney, nor financially interested in the action.

(e) Depositions for Use in Foreign Jurisdictions. When the deposition of any person is to be taken in this state pursuant to the laws of another state or of the United States or of another country for use in proceedings there, witnesses may be compelled to appear and testify in the same manner and by the same process and proceedings as may be employed for the purpose of taking testimony in proceedings pending in this state. The district court for the county where the deponent is found may make such orders as could be made if the deposition were intended for use in this jurisdiction, having due regard for the laws and rules of such foreign jurisdiction.

COMMENT TO RULE 28

Subsection (a) follows former Neb. Rev. Stat. § 25-1267.14 (Repealed 1982), with the deletion of mayors and master commissioners as unnecessary. Subsection (b) does not follow former Nebraska statutes; the language of federal rule 28(a) was adopted to describe the officer by reference to the laws of the sister state or of the United States. Subsection (c) is new language on depositions in foreign countries and is taken from federal rule 28(b) which sets out all possible ways of taking depositions outside the United States. Subsection (d) follows the language of Neb. Rev. Stat. § 25-1267.17 (Repealed 1982), by applying the disqualification rule to both the officer and the person recording the testimony, if those are not the same person. Subsection (e) follows the language of former Neb. Rev. Stat. § 25-1267.18 (Repealed 1982), in establishing a procedure for taking a deposition in Nebraska for use in another state.

Rule 29. Stipulations Regarding Discovery Procedure.

Unless the court orders otherwise, the parties may by written or otherwise recorded stipulation:

- (1) Provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and
- (2) Modify the procedures provided by these rules for other methods of discovery.

COMMENT TO RULE 29

This provision is essentially new. It again authorizes the common practice of stipulations on discovery. It follows federal rule 29, but does not exclude certain subjects from stipulations as does the federal language. Similar language was originally included in former Neb. Rev. Stat. § 25-1267.19 (Repealed 1982), but had been dropped prior to the repeal of that section as the section had been amended several times to cover a different topic.

Rule 30. Depositions Upon Oral Examination.

(a) When Depositions May Be Taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of thirty days after service of summons, except that leave is not required:

- (1) If a defendant has served a notice of taking a deposition or otherwise sought discovery,
or
- (2) If special notice is given as provided in subdivision (b)(2) of this rule.

The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of Examination: General Requirements; Special Notice; Nonstenographic Recording; Production of Documents and Things; Deposition of Organization.

(1)(A) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or her or the particular class or group to which he or she belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(B) When the party against whom the deposition is to be used is unknown or is one whose whereabouts cannot be ascertained he or she may be notified of the taking of the deposition by publication. The publication must be made once in some newspaper printed in the county where the action is pending, if there be any printed in such county, and if not, in some newspaper printed in this

state of general circulation in that county. The publication must contain all that is required in a written notice and must be made at least ten days prior to the deposition. Publication may be proved in the manner prescribed in Neb. Rev. Stat. § 25-520. A copy of the written notice shall be filed with the clerk before publication.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice:

(A) States that the person to be examined is about to go out of the State of Nebraska and will be unavailable for examination in the State of Nebraska unless his or her deposition is taken before expiration of the thirty-day period, and

(B) Sets forth facts to support the statement.

The plaintiff's attorney shall sign the notice, and his or her signature constitutes a certification by him or her that to the best of his or her knowledge, information, and belief the statement and supporting facts are true.

If a party shows that when he or she was served with notice under subdivision (b)(2) he or she was unable through the exercise of diligence to obtain counsel to represent him or her at the taking of the deposition the deposition may not be used against him or her.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The notice required by subdivision (1) shall state the manner in which the testimony will be recorded and preserved. The court may make any order necessary to assure that the record of the testimony will be accurate and trustworthy.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in his or her notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing, or the court may upon motion order, that a deposition be taken by telephone. For the purposes of these rules a deposition taken by telephone is taken in the district and at the place where the deponent is to appear to answer questions.

(8)(A) A party taking a deposition may have the testimony recorded by videotape. The notice of deposition shall specify that a videotape deposition is to be taken.

(B) Upon the request of any of the parties, the officer before whom a videotape deposition is taken shall provide, at the cost of the party making the request, a copy of the deposition in the form of a videotape, an audio recording, or a written transcript.

(C) When the videotape deposition has been taken, the videotape shall be shown immediately to the witness for examination, unless such showing and examination are waived by the witness and the parties. Any changes in form or substance which the witness desires to make shall be recorded on the videotape with a statement by the witness on such tape of the reasons given by him or her for making such changes.

(D) The officer before whom the videotape deposition is taken shall cause to be attached to the original videotape recording a certificate that the witness was duly sworn or affirmed by him or her and that the videotape recording is a true record of the testimony given by the witness. If the witness has not waived the right to a showing and examination of the videotape deposition, the witness shall also sign the certification.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Nebraska Evidence Rules. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his or her direction and in his or her presence, record the testimony of the witness. The testimony shall be recorded in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed. All objections made at time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he or she shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to Terminate or Limit Examination. At any time during the taking of the deposition on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the district court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him or her, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification; Delivery; Storage.

(1) The officer shall certify on the deposition that the witness was truly sworn by him or her and that the deposition is a true record of the testimony of the witness. Unless otherwise ordered by the court, he or she shall then deliver the deposition to the party taking the deposition, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them, he or she may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if he or she affords to all parties fair opportunity to verify the copies by comparison with the originals or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the originals be annexed to the deposition, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice to all other parties that it has been delivered by the officer before whom taken.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him or her and his or her attorney in attending, including reasonable attorney fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him or her and the witness because of such failure does not attend, and if another party attends in person or by attorney because he or she expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by him or her and his or her attorney in attending, including reasonable attorney fees.

Rule 30(f)(1) amended December 12, 2001.

COMMENTS TO RULE 30

30(a) This subsection is substantially the same as the federal rule. It is also similar to former Neb. Rev. Stat. § 25-1267.01 (Repealed 1982). Changes from the earlier statute include the addition of the special notice defined in subdivision (b)(2) and the plaintiff's waiting time is expanded from 20 to 30 days.

30(b) This section is based on former Neb. Rev. Stat. §§ 25-1267.19 to 25-1267.21 (Repealed 1982). Subdivision (1)(A) eliminates the particular requirements of time contained in the former sections as unnecessary. It is similar to the present federal rule 30(b)(1). Subdivision (1)(B) follows the language of current law allowing published notice of the taking of a deposition.

Subdivision (2) has been adapted from the federal rule. Subdivision (4) follows the language of former Neb. Rev. Stat. § 25-1267.19 (Amended 1979) (Repealed 1982). Subdivision (6) is a new provision that was added to the federal rules in 1970 that is very useful when taking a deposition of a corporation or organization.

Subdivision (7) is based on a similar provision adopted in the federal rules in 1980. Subdivision (8) is adapted from former Neb. Rev. Stat. § 25-1267.45 (Repealed 1982); it has been shortened substantially because some of the subjects currently covered by the statute are either covered elsewhere in the rules or are better left to the control of the trial judge.

30(c) The language of this subsection is substantially the same as the federal rule and former Neb. Rev. Stat. §§ 25-1267.03 and 25-1267.23 (Repealed 1982). The requirement in former § 25-1267.23 that the testimony be taken stenographically has been dropped in accordance with the 1979 amendment of former Neb. Rev. Stat. § 25-1267.19 (Repealed 1982).

30(d) This is substantially the same as the federal rule and former Neb. Rev. Stat. § 25-1267.24 (Repealed 1982).

30(e) This is substantially similar to the federal rule and former Neb. Rev. Stat. § 25-1267.25 (Repealed 1982), except that subsection (2) of that section has been dropped as unnecessary because a court order is not required to take the testimony by nonstenographic means.

30(f) The former Nebraska statute was Neb. Rev. Stat. § 25-1267.26 (Repealed 1982). Additional language from the federal rule provides a procedure for handling documents and things produced during a deposition. The deposition will not be filed with the court but will be sent

to the party taking the deposition. Subsection (f)(3) requires notice to other parties that the deposition has been received; Rule 26(g) provides that a certificate of completion will not be filed with the court. The party taking the deposition will have to preserve the original in order to be able to file it when required to do so under Rule 26(g).

30(g) The language of this subsection follows former Neb. Rev. Stat. § 25-1267.27 (Repealed 1982), with the addition of a specific mention of attorney fees.

Comments to Rule 30(f) amended December 12, 2001.

Rule 31. Depositions Upon Written Questions.

(a) **Serving Questions; Notice.** After commencement of the action, any party may take the testimony of any person including a party by deposition upon written questions. The attendance of witnesses may be compelled by subpoena. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating:

(1) The name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or her or the particular class or group to which he or she belongs, and

(2) The name or descriptive title and address of the officer before whom the deposition is to be taken.

A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within thirty days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ten days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may, for cause shown, enlarge or shorten the time.

(b) **Officer to Take Responses and Prepare Record.** A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and deliver the deposition, attaching thereto the copy of the notice and the questions received by him or her.

(c) The party taking the deposition shall give prompt notice to all other parties that it has been delivered by the officer before whom taken.

COMMENT TO RULE 31

This rule substantially follows the federal rule and former Neb. Rev. Stat. §§ 25-1267.28 to 25-1267.30 (Repealed 1982). The time periods for serving questions are longer than under former Nebraska law.

Rule 32. Use of Depositions in Court Proceedings.

(a) Use of Depositions. Any part or all of a deposition, so far as admissible under the Nebraska Evidence Rules applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness or for any purpose permitted by the Nebraska Evidence Rules.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association, or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) That the witness is dead; or

(B) That the witness is at a greater distance than one hundred miles from the place of trial or hearing, or out of the state, or beyond the subpoena power of the court, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(D) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) That such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; or

(F) Upon application and notice prior to the taking of the deposition, that circumstances exist such as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him or her to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts relevant to the issues.

Substitution of parties does not affect the right to use depositions previously taken; and when an action has been brought in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest all depositions lawfully taken in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Nebraska Evidence Rules.

(b) Objections to Admissibility. Subject to the provisions of subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying; or if the trial court directs, such objections may be heard and determined prior to trial.

(c) (Not Used).

(d) Effect of Errors and Irregularities in Deposition.

(1) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition.

(A) Objections to the competency of a witness or to the competency or relevancy of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time. In a deposition recorded and preserved by nonstenographic means, such objections shall be made to the court before the trial or hearing, or such objections will be waived unless otherwise ordered by the court.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the depositions.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within ten days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or recorded, or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

COMMENTS TO RULE 32

32(a) This section is based upon former Neb. Rev. Stat. § 25-1267.04 (Repealed 1982). Under subsection (3)(B) the witness must be at least 100 miles away in order to use the deposition in district court because Neb. Rev. Stat. § 25-1227 (Cum. Supp. 1982) establishes 100 miles as the maximum distance a witness must ordinarily travel for a civil trial in district court. For county or municipal court the subpoena power is limited to the county, so a deposition could be used for a witness outside the county but within 100 miles. Subdivision (3)(E) allows use of a deposition under exceptional circumstances; under subdivision (3)(F) the court may authorize use of the deposition in the absence of exceptional circumstances if the application is made before the deposition is taken. This is a further expansion of the idea in former § 25-1267.04(3)(f), but it is no longer restricted to audio-visual or videotape.

32(b) No substantial change from the federal rules or former Neb. Rev. Stat. §§ 25-1267.05 and 25-1267.36 (Repealed 1982).

32(c) Not used because the topic is covered by the Nebraska Evidence Rules.

32(d) No substantial change from the federal rules or former Neb. Rev. Stat. §§ 25-1267.32 and 25-1267.35 (Repealed 1982).

Rule 33. Interrogatories to Parties.

(a) Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available

to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons upon that party. Unless otherwise permitted by the court for good cause shown, no party shall serve upon any other party more than fifty interrogatories. Each question, subquestion, or subpart shall count as one interrogatory.

Each interrogatory shall be repeated and answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty days after the service of the interrogatories, except that a defendant may serve answers or objections within forty-five days after service of the summons upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the Nebraska Evidence Rules.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(c) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail as to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

COMMENTS TO RULE 33

33(a) This subsection differs from the federal rules and former Neb. Rev. Stat. §§ 25-1267.37 and 25-1267.38 (Repealed 1982) by imposing a limit of 50 interrogatories upon any party, unless the court permits more for good cause shown. Because interrogatories are particularly subject to being abused or improperly used, this discovery device has been limited unless a party can show that the complexity of the case requires the use of additional interrogatories.

33(b) This subsection expands former Neb. Rev. Stat. § 25-1267.38 (Repealed 1982) and follows the federal rules by allowing interrogatories that involve opinions. This follows the federal rule by eliminating an unnecessary restriction on interrogatories. The overall limit on interrogatories and consequent elimination of extensive sets of interrogatories should minimize any chance for abuse.

33(c) This follows the federal rule; it is a procedure for handling discovery from voluminous records that is necessary for certain large cases. No Nebraska statutory section served as precedent for this subsection of the rules.

Rule 34. Production of Documents and Things and Entry Upon Land For Inspection and Other Purposes.

(a) Scope. Any party may serve on any other party a request:

(1) To produce and permit the party making the request, or someone acting on his or her behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody, or control of the party upon whom the request is served; or

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within thirty days after the service of the request, except that a defendant may serve a response within forty-five days after service of the summons upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

COMMENT TO RULE 34

This rule follows the federal rule and changes former Nebraska law, Neb. Rev. Stat. § 25-1267.39 (Repealed 1982), by allowing production by notice instead of by court order. Many such examinations can be handled without need of a motion and order, so the proposal eliminates unnecessary steps. Rule 37 still allows a party to seek an order if that step is necessary.

34A. Discovery from a Nonparty without a Deposition.

(a) Procedure.

(1) Scope. Any party may, by subpoena without a deposition:

(A) require the production for inspection and copying of designated books, papers, documents, or tangible things (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated if

necessary by the owner or custodian into reasonably usable form) that are in the possession, custody, or control of a person who is not a party and within the scope of Rule 26(b); or

(B) obtain entry upon designated land or other property within the scope of Rule 26(b) that is in the possession or control of a person who is not a party for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

(2) Notice. A party intending to serve a subpoena pursuant to this rule shall give notice in writing to every other party to the action at least 10 days before the subpoena will be issued. The notice shall state the name and address of the person who will be subpoenaed, the time and place for production or inspection, and that the subpoena will be issued on or after a stated date. A designation of the materials sought to be produced shall be attached to or included in the notice.

Such notice may be given by a party other than a plaintiff at any time. Such notice may not be given by a plaintiff until the time at which Rule 30(a) would permit a plaintiff to take a deposition.

(3) Issuance. A subpoena may be issued pursuant to this rule, either by a request to the clerk of the court or by an attorney authorized to do so by statute, at any time after all parties have been given the notice required by subsection (2). The subpoena shall identify all parties who were given notice that it would be issued and the date upon which each of them was given notice. A subpoena pursuant to this rule shall include or be accompanied by a copy of this rule.

(4) Time, manner, and return of service. A subpoena pursuant to this rule shall be served either personally by any person not interested in the action or by registered or certified mail not less than 10 days before the time specified for compliance. The person making personal service shall make a return showing the manner of service to the party for whom the subpoena was issued.

(b) Protection of Other Parties.

(1) Objection Before Issued. Before the subpoena is requested or issued any party may serve a written objection on the party who gave notice that it would be issued. The objection shall specifically identify any intended production or inspection that is protected by an applicable privilege, that is not within the scope of discovery, or that would be unreasonably intrusive or oppressive to the party. No subpoena shall demand production or inspection of any material or premises identified in the objection. If the objection specifically objects that the person served with the subpoena should not have the option to deliver or mail copies of documents or things directly to a party, the subpoena shall not be issued unless all parties to the lawsuit mutually agree on the method for delivery of the copies.

(2) Order. The party who gave notice that a subpoena would be issued may apply to the court in which the action is pending for an order with respect to any discovery for which another party has served a written objection. Upon hearing after notice to all parties the court may order that the subpoena be issued or not issued or that discovery proceed in a different manner, may enter any protective order authorized by Rule 26(c), and may award expenses as authorized by Rule 37(a)(4).

(3) Protective Order. After a subpoena has been issued any party may move for a protective order under Rule 26(c).

(c) Protection of the Person Served with a Subpoena.

(1) Avoiding Burden and Expense. A party or an attorney who obtains discovery pursuant to this rule shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court by which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings of the person subject to the subpoena and reasonable attorney fees.

(2) Responding to the Subpoena.

(A) A person served with a subpoena pursuant to this rule shall permit inspection and copying either where the documents or tangible things are regularly kept or at some other reasonable place designated by that person. If the subpoena states that the person served has an option to deliver or mail legible copies of documents or things instead of inspection, that person may condition the preparation of the copies on the advance payment of the reasonable cost of copying.

(B) A person served with a subpoena pursuant to this rule may, within 10 days after service of the subpoena, serve upon the party for whom the subpoena was issued a written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party for whom the subpoena was issued shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court. If an objection has been made, the party for whom the subpoena was issued may, upon notice to all other parties and the person served with the subpoena, move at any time in the district court in the county in which the subpoena is served for an order to compel compliance with the subpoena. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from complying with the command.

(3) Protections. On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(A) fails to allow reasonable time for compliance,

(B) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(C) subjects a person to undue burden.

(d) Duties in Responding to Subpoena.

(1) Production. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) Objection. When information subject to a subpoena is withheld on an objection that it is privileged, not within the scope of discovery, or otherwise protected from discovery, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the party who requested the subpoena to contest the objection.

(e) Coordination.

(1) Copies. If the party for whom the subpoena was issued creates or obtains copies of documents or things, that party shall make available a duplicate of such copies at the request of any other party upon advance payment of the reasonable cost of making the copies.

(2) Inspection. If a notice of intent to serve a subpoena designates that the subpoena will require entry upon land or other property for the purposes permitted by subsection (1)(B), any other party shall, upon request to the party who gave the notice, be named in the subpoena as also attending at the same time and place.

COMMENT TO RULE 34A

Authority to issue a subpoena pursuant to this rule is governed by Neb. Rev. Stat. § 25-1273 (Supp. 2001). The procedure is similar to the practice for nonparty nondeposition discovery under Fed. R. Civ. P. 45, with certain topics such as the time of prior notice and coordination of the disclosure more specifically defined. This procedure is optional, so a party may elect to use a deposition or any other available discovery procedure instead.

Rule 34A and Comment adopted December 12, 2001; Rule 34A(c)(2)(B) amended May 19, 2004.

Rule 35. Physical and Mental Examination of Persons.

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by one or more physicians, or other persons licensed or certified under the laws to engage in a health profession, or to produce for examination the person in his or her custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examining Physician.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to him or her a copy of a detailed written report of the examining physician setting out his or her findings, including results of all tests made, diagnoses, and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he or she is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report, the court may exclude his or her testimony if offered at the trial.

(2) (Not used).

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule.

COMMENTS TO RULE 35

35(a) This rule follows the federal rule and expands former Neb. Rev. Stat. § 25-1267.40 (Repealed 1982). A person under the control of a party is now included in this rule. The court may order more than one examination. The health professions that require a license or certificate are defined in Neb. Rev. Stat. § 71-102.

35(b) This section follows the federal rules and establishes a useful procedure for exchange of medical reports. Subdivision (b)(2) of the federal rule is not used because the Nebraska Evidence Rules contain a direct waiver of the privilege. See Neb. Rev. Stat. § 27-504.

Rule 35(b) comment amended February 26, 1997; Rule 35(a) and 35(a) comment amended November 21, 2001.

Rule 36. Requests for Admission.

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons upon that party.

Each matter of which an admission is requested shall be separately set forth by the party making the request, and shall be repeated by the responding party in the answer or objection thereto. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his or her attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five days after service of the summons upon him or her. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer or deny only a part of the matter of which an admission is requested, he or she shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he or she states that he or she has made reasonable inquiry and that the information known or readily obtainable by him or her is insufficient to enable him or her to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he or she may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he or she cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him or her in maintaining his or her action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by him or her for any other purpose nor may it be used against him or her in any other proceeding.

COMMENTS TO RULE 36

36(a) This section follows the federal rule and adds to former Neb. Rev. Stat. § 25-1267.41 (Repealed 1982) by providing a procedure for determining the sufficiency of answers or objections.

36(b) This section follows the federal rule, and includes language controlling the effect and withdrawal of admissions. The former law was Neb. Rev. Stat. § 25-1267.42 (Repealed 1982).

Rule 37. Failure to Make Discovery: Sanctions.

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. An application for an order to a party may be made to the court in which the action is pending, or alternatively, on matters relating to a deposition, to the district court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the district court in the district where the deposition is being taken.

(2) Motion. If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he or she applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply with Order.

(1) Sanctions by Court in District Where Deposition is Taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the district court in the district in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him or her from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring him or her to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that he or she is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or her, or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he or she may, within 30 days of so proving, apply to the court for an order requiring the other party to pay him or her the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that:

(1) The request was held objectionable pursuant to Rule 36(a), or

(2) The admission sought was of no substantial importance, or

(3) The party failing to admit had reasonable ground to believe that he or she might prevail on the matter, or

(4) There was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails

(1) To appear before the officer who is to take his or her deposition, after being served with a proper notice, or

(2) To serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or

(3) To serve a written response to a request for inspection submitted under Rule 34, after proper service of the request,

the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule.

In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or her or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

Rule 37(c) amended July 23, 1997.

COMMENTS TO RULE 37

37(a) This section follows the federal rule and changes former Nebraska law by including requests to produce as proper for a motion to compel discovery. The language on imposition of expenses for unjustified discovery demands or unjustified refusals to comply with discovery has been changed from former Nebraska law to reduce judicial reluctance to impose sanctions. The former Nebraska section was Neb. Rev. Stat. § 25-1267.43 (Repealed 1982).

37(b) This section follows the federal rule and former Nebraska law, and adds to former law an explicit statement that a failure to obey an order may be punished as a contempt of the court. The former Nebraska statute was Neb. Rev. Stat. § 25-1267.44 (Repealed 1982).

37(c) This section follows the federal rule and changes the former Nebraska law to make it clear that expenses include attorney fees and to more fully define the conditions under which costs shall not be imposed. The former Nebraska section Neb. Rev. Stat. § 25-1267.44(3) (Repealed 1982).

37(d) This section follows both the federal rule and former Nebraska law, adding a provision allowing sanctions for failure to respond to a demand to produce under Rule 34 because that procedure now operates without an initial court order. The former Nebraska statute was Neb. Rev. Stat. § 25-1267.44(4) (Repealed 1982).

RULES RELATING TO COURT INTERPRETERS

SCOPE AND EFFECTIVE DATE

These rules become effective on September 20, 2000, and will, as amended, govern the use of interpreters in all courts of the State of Nebraska.

Scope and Effective Date amended September 17, 2003.

RULE 1. INTERPRETER REGISTER

The State Court Administrator will publish and maintain a statewide register of interpreters which will consist of the following:

A. Certified Court Interpreters: Court interpreters who have satisfied all certification requirements pursuant to Rule 3 of the Rules Relating to Court Interpreters.

B. Registered Court Interpreters. Noncertified court interpreters who have not satisfied the requirements of Rule 3 of the Rules Relating to Court Interpreters, but have either completed an interpreter orientation program sponsored by the State Court Administrator or achieved a passing score on a written examination administered by the State Court Administrator.

C. Other Court Interpreters. Noncertified court interpreters who have not satisfied the requirements of Rule 1A or 1B.

D. Sign Language Court Interpreters. Sign language interpreters who possess either a Level I or Level II classification awarded by the Nebraska Commission for the Deaf and Hard of Hearing, as set forth below: (Level I - Interpreters who hold at least one of the following RID certificates: Specialist Certificate: Legal (SC:L), NIC Master, NIC Advanced, CI/CT, CSC. Deaf interpreters who hold CLIP-R or CDI) or (Level II – Interpreters who hold RID NIC, RID CI, RID CT, NAD 4 or 5, QAST 4/4 or higher. Deaf interpreters who hold the Nebraska Specialist Intermediary License).

Rule 1A – 1D amended September 17, 2003; Rule 1D amended January 4, 2007, effective July 1, 2007.

RULE 2. APPOINTMENT OF INTERPRETERS

A. Use of Certified Court Interpreter. Whenever an interpreter is required to be appointed by a court, the court will first attempt to appoint a certified court interpreter who is listed on the statewide register of interpreters if one is reasonably available.

B. Use of Registered Court Interpreter on Statewide Register. If the court has made diligent efforts to obtain a certified court interpreter as required by Rule 2A of the Rules Relating to Court Interpreters and found none to be available, the court may appoint a registered noncertified court interpreter who is otherwise competent to interpret in the courts.

C. Use of Other Court Interpreter. If the court has made diligent efforts to obtain a certified court interpreter or a registered court interpreter and found none to be available, the court may appoint a court interpreter who is otherwise competent to interpret in the courts.

D. To determine whether a certified or registered interpreter is reasonably available, reasonable advance attempts must be made to arrange for the presence of a certified interpreter prior to the use of a registered interpreter, and then, for the presence of a registered interpreter prior to the use of an interpreter who is not certified or registered.

E. Number of Interpreters. For any proceeding that is scheduled for more than one-half day, two language interpreters should be appointed. For any proceeding that is scheduled for more than one hour, two sign interpreters should be appointed.

F. Rebuttable Presumption. There is a rebuttable presumption that an interpreter must be appointed if an interpreter is requested or it is shown that the party is having difficulty in communicating.

G. All interpreters shall be at least 18 years old, shall have read the Code of Professional Responsibility for Interpreters, and shall take the Interpreter Oath prior to interpreting in the Nebraska Courts or the Nebraska State Probation System.

See Appendix 1 for Code and Interpreter Oath.

Rule 2B – 2D amended September 17, 2003; Rule 2D moved to 2G on January 4, 2007, effective July 1, 2007; Rule 2D – 2F adopted January 4, 2007, effective July 1, 2007.

RULE 3. CERTIFIED COURT INTERPRETER REQUIREMENTS

A certified court interpreter will be able to interpret simultaneously and consecutively and provide sight translation from English to the language of the non-English-speaking person or from the language of that person into English. An interpreter will be eligible for certification upon establishing to the satisfaction of the State Court Administrator that he or she has:

A. Reached the age of 18;

B. No past convictions or pending criminal charges, either felony or misdemeanor, which are deemed by the Supreme Court to evidence moral turpitude, dishonesty, fraud, deceit, or misrepresentation;

C. Achieved a passing score on a written examination administered by the State Court Administrator; and

D. Achieved a passing score on legal interpreting competency examination (Consortium oral certification examination) administered or approved by the State Court Administrator. If an interpreter shall have received a passing score of 70 percent on any of the three segments of a previous Consortium oral certification examination that was administered within the last 3 calendar years, the passing grade shall be honored and the applicant shall not be required to repeat that segment of a current examination.

E. In addition, any interpreter possessing a Federal Court Certified Court Interpreter Certificate, a Court Interpreter Certification Certificate from any state which is a member of the National Center for State Court's Consortium for State Court Interpreter Certification, or a sign language Specialist Certificate Legal (SC:L) for interpreters that are fully certified (CI, CT, CSC, or CDI) or provisional legal certificate (CLIP) is recognized as a certified court interpreter.

Rule 3C – 3E amended September 17, 2003.

RULE 4. EXAMINATION FOR INTERPRETER CERTIFICATION

A. Complete Application. An applicant who has passed the written examination of Rule 4C and desires certification in a particular language will file with the State Court Administrator an approved application form and pay the applicable examination fee established by the State Court Administrator.

B. Evaluation of Application. The State Court Administrator will evaluate the application and

determine if the applicant meets the initial qualification requirements of Rule 3 of the Rules Relating to Court Interpreters.

C. **Written Examination.** The written examination to qualify to take the oral examination of Rule 4D shall require no fee and shall consist of three parts: general English language vocabulary, court-related terms and usage, and ethics and professional conduct. The written examination will be administered at such times and places as the State Court Administrator may designate. The State Court Administrator shall waive this requirement for any interpreter who has previously taken the oral interpreter competency examination of Rule 4D.

D. **Oral Examination.** Examinations for interpreter certification in specific languages will be administered at such times and places as the State Court Administrator may designate.

E. **Scope of Examination.** Applicants for interpreter certification in a spoken or sign language may be tested on any combination of the following:

1. Sight interpretation,
2. Consecutive interpretation, and
3. Simultaneous interpretation.

F. **Results of Examination.** The results of the examination will be mailed by regular mail to the applicant's most recent address.

G. **Confidentiality.** All information relating to the examination is treated as confidential by the State Court Administrator and test administrators except that statistical information relating to the examinations and applicants may be released at the discretion of the State Court Administrator.

Rule 4A – 4G amended September 17, 2003.

RULE 5. SUSPENSION OR REVOCATION OF CERTIFICATION

A. **Grounds for Revocation or Suspension of Certification.** Unprofessional or unethical conduct that violates the Code of Professional Responsibility for Interpreters or a conviction of a criminal misdemeanor or felony may be grounds for suspension or revocation of certification and removal from the statewide register of interpreters. A disposition other than acquittal, e.g., pretrial diversion, of any criminal charge filed will not preclude an action by the State Court Administrator with respect to the interpreter's certification.

See Appendix 1 for Code and Interpreter Oath.

B. **Incompetence.** The State Court Administrator may remove any interpreter from the statewide register of interpreters for incompetence provided the interpreter is allowed an opportunity to be heard to dispute such finding.

C. **Complaints.** All complaints of alleged unprofessional and unethical conduct by interpreters shall be in writing and will be investigated by the State Court Administrator or a person appointed by the State Court Administrator. Each complaint will be reviewed to determine if there is sufficient cause to believe that the interpreter has engaged in unprofessional or unethical conduct. If sufficient cause exists, the State Court Administrator may suspend or revoke the certification of an interpreter and remove the interpreter's name from the statewide register of interpreters. If a violation is by a registered, noncertified interpreter, the State Court Administrator may suspend or remove the interpreter's name from the

statewide register of interpreters.

Rule 5B amended September 17, 2003.

APPENDIX 1

CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS

PREAMBLE

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or a speech or hearing impairment. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier. As officers of the court, interpreters help ensure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

APPLICABILITY

This Code shall guide and be binding upon all persons, agencies, and organizations who administer, supervise use of, or deliver interpreting services to the judiciary.

CANON 1: ACCURACY AND COMPLETENESS

Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.

CANON 2: REPRESENTATION OF QUALIFICATIONS

Interpreters shall accurately and completely represent what their training and pertinent experience is and any certification they may have.

CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

CANON 4: PROFESSIONAL DEMEANOR

Interpreters shall conduct themselves in a manner consistent with the formality and civility of the court and shall draw as little attention to themselves as possible.

CANON 5: CONFIDENTIALITY

Interpreters shall keep confidential all privileged and other confidential information.

CANON 6: RESTRICTION OF PUBLIC COMMENT

Interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

CANON 7: SCOPE OF PRACTICE

Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

CANON 8: ASSESSING AND REPORTING INABILITIES TO PERFORM

Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment completely, they shall immediately convey that reservation to the appropriate judicial authority.

CANON 9: DUTY TO REPORT ETHICAL VIOLATIONS

Interpreters shall report to the proper judicial authority any effort to encourage a lack of compliance with any law, any provision to this Code, or any other official policy governing court interpreting and legal translating.

CANON 10: PROFESSIONAL DEVELOPMENT

Interpreters shall strive to continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interactions with colleagues and specialists in related fields.

INTERPRETER OATH

I, _____, swear or affirm that I will, to the best of my skill and judgment, after my appointment as interpreter, make a true _____ (Language) _____ interpretation of all court proceedings, probation activities, or any other proceeding into a language which the party understands and that I will in the English language repeat the party's statements to the court or jury.

GRANDPARENTS VISITATION

A petition for grandparent visitation pursuant to Neb. Rev. Stat. § 43-1803 shall be so captioned and shall contain the information required by statute. In other respects, the form of the petition and the form of all subsequent pleadings shall comply with the Nebraska Rules of Pleading in Civil Actions.

Adopted June 25, 1986; amended December 11, 2002.

DISTRICT COURT PRETRIAL PROCEDURE

PRETRIAL PROCEDURE: FORMULATING ISSUES.

In any civil action in the District Court after issues have been joined the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:

- (1) The simplification of issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of witnesses with a view of avoiding improper cumulative testimony;
- (5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
- (6) Such other matters as may aid in the disposition of the action.

The court shall at the time of the pretrial hearing make a record of the proceedings which recites the action taken at the conference, the amendments allowed to the pleadings, and the amendments made by the parties as to any of the matters considered, and which limit the issues for trial to those not disposed of by admissions or agreements of counsel; that counsel shall forthwith acknowledge their assent thereto, or, in the alternative, state into the record any and all objections they may have thereto; and such order when entered controls the subsequent cause of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pretrial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to nonjury actions or extend it to all actions.

COUNTY COURT GENERAL RULES

Rule 1

CONDUCT IN THE COURTROOM

All statements and communications by counsel will be clearly and audibly made from the counsel table. While court is in session, counsel shall not leave their places at the counsel table for a conference at the bench unless permitted by the judge to do so. Counsel shall address witnesses, other counsel, and prospective jurors by their surnames. Counsel shall not comment on answers given by witnesses. Arguments by counsel shall be addressed to the court and not to each other. Counsel shall orally identify themselves on the record in open court.

Rule 1 amended September 1991.

Rule 2

ATTORNEYS AND COURTROOM DECORUM

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.

Rule 3

ATTIRE

Attorneys shall be attired in ordinary business wear.

Rule 4

STIPULATIONS

All stipulations and private agreements or understandings of counsel or of parties to a suit, unless made in open court during the trial, must be reduced to writing and signed by the parties or counsel for the parties making the same.

Rule 5

RECORDING OF SMALL CLAIMS
COURT PROCEEDINGS

All proceedings in Small Claims Court shall be tape-recorded, and such proceedings shall be preserved for a period of 9 months from the date of such proceedings. Requests for a transcription of such tape-recording shall be made and paid for as in all other county court cases.

Rule 5 amended November 10, 2004.

Rule 6

WITHDRAWAL OF COUNSEL

Upon timely application and good cause shown, counsel shall be permitted to withdraw from a matter in which there has been filed with the application an affidavit which recites that counsel has served a copy of the application upon the client and all parties and which further recites the client's current address.

Rule 6 amended November 1991.

Rule 7

APPLICATION FOR FEES

Before the claim of any attorney appointed by the court is allowed in criminal and juvenile matters, such attorney shall make a written application for fees, positively verified, stating time and expenses in the case. Counsel shall also state in the application that counsel has not received and has no contract for the payment of any compensation by such defendant or anyone in the defendant's behalf, or, if counsel has received any fee or has a contract for the payment of same, shall disclose the same fully so that the proper credit may be taken on counsel's application. The application shall be filed with the clerk. If a hearing is required, the time and date of hearing shall be set by court order.

Rule 8

PLEADINGS

All pleadings presented for filing with the county court shall comply with the rules as required for filing any matters with the Nebraska Supreme Court as to size, weight, color, and form.

Rule 9

IDENTIFICATION OF PLEADINGS

A pleading offered for filing shall plainly show the caption of the case, the description and designation of its contents, and in whose behalf the same is filed. All pleadings subsequent to the pleading initiating the proceeding shall also show the case number.

Rule 10

COPIES OF PLEADINGS

Upon the initial filing of a civil action, there shall be presented to the clerk clear and legible duplicate copies of each pleading, together with all exhibits, in sufficient number to provide one copy for each adverse party. After the filing of the initial pleading, copies of all other pleadings shall be served upon or mailed to all opposing parties or their counsel, and the pleading shall contain the certificate of counsel stating the date and

manner thereof, the address to which said service was mailed or delivery was made, and that said service was made upon all attorneys of record and any party appearing pro se.

Rule 10 amended September 1991.

Rule 11

IDENTIFICATION OF ATTORNEY

The name, address, Nebraska attorney identification number, and telephone number of the attorney handling the matter shall be typed on each pleading except for original charging documents in traffic, criminal, and juvenile matters.

Rule 11 adopted November 1990.

Rule 12

AMENDMENTS

Amendments to pleadings may be allowed within the discretion of the court. In no instance shall an amendment to a pleading be made by interlineation or otherwise except by leave of the court. A party who has obtained leave to amend a pleading but fails to do so within the time limit shall be considered as electing to abide by the former pleading.

Rule 13

PUBLIC RECORDS

In all cases where books, files, records, or parts thereof belonging to or taken from the records of public offices are offered in evidence or are marked for identification to be offered at a pretrial conference, it shall be the duty of the party offering the same to furnish copies of the same to the court reporter or judge and to opposing counsel. All exhibits marked at a pretrial conference for later admission shall be retained by the counsel intending to offer them and counsel shall be responsible for their production at the time of trial.

Rule 14

COSTS

Except for criminal cases, juvenile cases, and proceedings in habeas corpus cases wherein a poverty affidavit is filed and approved by the court, costs shall be payable when actions are commenced and thereafter when liability for additional costs accrues. Counsel are responsible to the clerks for costs incurred at their request.

Rule 15

WAIVER OF PRELIMINARY HEARINGS

To insure a complete record and for the protection of all concerned, the personal right of a preliminary hearing may be waived by the defendant *on the record* only in the presence of a judge and the defendant's attorney, if any.

Rule 16

BAIL

When any person shall be taken into custody and charged with any misdemeanor, the sheriff or the jailer may admit such person to bail in an amount not in excess of that prescribed by the bond schedule furnished by the judges of that court, conditioned for his or her appearance in this court to answer the offense charged. In unusual cases, the sheriff or jailer may consult a judge of this court about the bond; a judge's verbal order setting such person's bond shall supersede the bond schedule.

Rule 17

MOTIONS

For purposes of these rules, the word "motion" shall include demurrers, special appearances, and all requests for an order of the court. "Serve" shall mean transmittal by personal service or by ordinary mail not less than 10 days prior to date of hearing.

Rule 18

SUBMISSION

If oral argument is waived or the moving party fails to appear when the motion is set for argument, the motion shall be considered submitted. Failure to appear or serve a memorandum brief will not be considered as a confession of the motion.

Rule 19

DISMISSAL DOCKET

As soon as practical after January 1 of each year and July 1 of each year, the clerk shall prepare a list of all pending civil and criminal cases in which no action has been taken for at least 6 months prior thereto. The court shall examine the list and, in those cases in which it is deemed proper, shall enter an order to show cause why such cases should not be dismissed for want of prosecution. A written response to the order to show cause must be filed in the action and a copy of the same provided to other counsel and the judges of the courts within 30 days, or said action shall be dismissed.

Rule 20

INTERROGATORIES

Interrogatories shall be in the format prescribed by Nebraska Discovery Rule 33.

Rule 21

PRETRIAL CONFERENCES

The rules of the district court in the same county shall govern the procedure for pretrial conferences.

Rule 22

CRIMINAL COMPLAINTS

All complaints filed in the county court in criminal matters shall have noted thereon the citation of the statute under which said complaint is brought together with the citation of the section prescribing the penalty and class of offense.

Rule 23

DEMAND FOR JURY TRIALS

In misdemeanor cases, demands for a jury trial must be made within 10 days following entry of a not guilty plea.

Rule 24

INSTRUCTIONS

The rules of the district court in the same county shall govern the procedure for instructions to the jury.

Rule 25

ARGUMENTS TO JURY

The rules of the district court in the same county shall govern the procedure for arguments to the jury.

Rule 26

IDENTIFICATION OF EXHIBITS

The rules of the district court in the same county shall govern the procedure for identification of exhibits.

Rule 27

EXHIBIT PROCEDURE

The rules of the district court in the same county shall govern the procedure for exhibits.

Rule 28

WITHDRAWAL OR DESTRUCTION

After a judgment in a civil or probate case has become final, the exhibit(s) shall be claimed by the party to whom they belong. Any exhibit(s) not claimed and withdrawn within 60 days after judgment has become final may be destroyed or otherwise disposed of by the custodian after attorneys of record and parties appearing pro se in the case have been given written notice by the clerk. Said notice shall be by ordinary mail, postage prepaid, to the last known address as reflected in the particular file. The written notice shall provide the recipient a period of 30 days after the date of said written notice within which to claim the exhibit(s) pertaining to said file.

Rule 28 amended September 1991.

Rule 29

RETURN OF EXHIBITS

Upon the final disposition of a case and after the time for making an appeal has expired, the trial judge may, upon application for motion of the parties or upon the court's own motion, direct the reporter or the clerk having custody thereof to return to the offering party any exhibits and to make a receipt therefor to be filed as a pleading in the case.

Rule 30

RECORD OF WITHDRAWAL OR DESTRUCTION

A receipt specifying the exhibits withdrawn shall be filed in the case by the party withdrawing them. Exhibits destroyed or otherwise disposed of will be accounted for by a statement prepared and filed by the custodian showing the date such action was taken and the date notice of intention to do so was given to the attorneys of record.

Rule 31

DUTIES OF PROSECUTING ATTORNEYS

Unless upon good cause shown the court in its discretion has ruled otherwise, the prosecuting attorney shall be present at all arraignments in all cases, all bond settings in felony cases, and all first hearings in juvenile cases. No trial of any such case will be conducted without the prosecuting entity being represented by a prosecutor. The court will not act as a prosecutor, nor will any law enforcement representative or any other

nonattorney be permitted to act as a prosecutor. In all cases, the prosecuting attorney shall obtain the defendant's criminal history and provide the same to the court and the defendant prior to the setting of any bond or the imposing of any sentence.

Rule 31 amended April 1998.

Rule 32

DEFAULT JUDGMENTS

In cases where the defendant fails to answer, demur, or otherwise plead, the plaintiff may, after the day on which said action shall be set for answer, take default judgment upon a verified petition, affidavits, or sworn testimony establishing a claim. No judgment will be entered on a negotiable instrument unless the original is surrendered for cancellation to the court.

Rule 32 amended September 1987.

Rule 33

NOTICE OF INTERESTED PERSON DUTY

In all probate matters, it shall be the duty of the petitioner or applicant for probate of a will or appointment of a personal representative, guardian, or conservator to show in the petition or the application the names, relationship to the subject of the petition or application, and last known post office address of all interested persons. If any interested person is known by the petitioner, applicant, or the attorney for either to be incompetent or a minor, such fact shall be disclosed to the court.

Rule 34

OTHER CHILDREN

In matters of decedents' estates, if the surviving spouse is not the parent of all the children of the deceased, such fact shall be stated in the petition or application filed at the commencement of the proceeding.

Rule 35

CREDITOR-DEBTOR INFORMATION

If the person nominated as personal representative, guardian, or conservator is indebted to the estate or is a creditor of the estate, it shall be his or her duty and the duty of his or her attorney to so inform the court in writing before the appointment is made.

Rule 36

CONTINUANCES

Probate matters shall be presented to the judge for action at the time fixed by the order for hearing. In all cases where the matter is not heard at the time fixed by the original order or by an order of continuance, and it is desired to have the matter continued to a specific time rather than from day to day as a matter of law pursuant to statute, a written order of continuance shall be prepared by the attorney, presented to the court, and filed at the time the continuance is obtained.

Rule 37

CLAIMS OF PERSONAL REPRESENTATIVES,
GUARDIANS, AND CONSERVATORS

I. Personal Representatives; Individual Claims. No personal representative who has individual claims of his or her own which arose against the decedent prior to the death of the decedent shall pay the claims in excess of an aggregate amount of \$250 without first specifically informing the court of his or her adverse interest and obtaining the approval of the court.

II. Guardian or Conservator; Individual Claims. No guardian or conservator who has individual claims of his or her own (other than compensation governed by Rule 43) against the estate of the ward or protected person shall pay the claims which aggregate in excess of \$250 without first specifically informing the court of his or her adverse interest and obtaining the approval of the court.

III. Form of Order. Any order entered pursuant to Rule 37(I) and (II) shall provide that any person aggrieved by payment of the claim may petition the court for a formal review of the claim.

Rule 37 amended September 1987.

Rule 38

REPORT OF FEES TO PERSONAL REPRESENTATIVE

In all probate matters where an interlocutory or final report is filed, or an account of administration to distributees is made in closing an estate by a sworn statement, or a schedule of distribution is filed with the court and any such document reports payment of any fee paid or to be paid to a personal representative, guardian, conservator, or attorney, the document must specify whether the fee was by agreement of the parties or was fixed by the court.

Rule 39

TIME FOR INCREASE IN BONDS

Where the amount of a personal representative's, guardian's, or conservator's bond has been fixed on the basis of known or anticipated assets only, and there is a subsequent material increase in the value of the assets or an increase is anticipated, the judge shall be promptly informed of such fact and an adequate bond to cover the

increased responsibility of the personal representative, guardian, or conservator shall be furnished and filed if required by the judge.

Rule 39 amended June 1988.

Rule 40

SURETY REQUIREMENTS ON BONDS

Where a personal bond is tendered by fiduciary, it shall be accompanied by a justification of surety, which shall include the description (exact, if possible) of the property of the surety, the names of joint owners if any, its value above encumbrances and exemptions, and whether a homestead or not, and if signed by a married woman, the bond must include a "married woman" clause. Whenever any individual is offered as surety on any bond, the court may in its discretion require that the surety make justification in compliance with Neb. Rev. Stat. § 25-2223.

Rule 41

BONDS IN GUARDIANSHIP/CONSERVATORSHIP CASES

In all guardianship/conservatorship cases, the court shall order that an approved corporate surety bond be filed in an amount that will fully protect the assets plus 1 year's estimated income. This bond shall be reviewed by the court periodically and adjusted to reflect any increase as set out in Rule 39.

The court shall not order such a bond when (1) there are no assets, (2) the assets are in real estate or are in certificates of deposit or other accounts, which certificates or accounts are restricted to withdrawal by court order only, or (3) the guardian or conservator is a national banking association, a holder of a banking permit under the laws of this state, or a trust company holding a certificate to engage in trust business from the Department of Banking and Finance.

Rule 41 amended May 1990.

Rule 42

CONSERVATOR/GUARDIAN INVENTORY AND ACCOUNTS

Within 90 days after appointment, every conservator shall prepare and file with the court a complete inventory of the estate of the protected person pursuant to Neb. Rev. Stat. § 30-2647, together with his or her oath or affirmation that it is complete and accurate as far as he or she is informed. If an inventory is not filed within 30 days after the date it is due, the court shall issue an order to show cause why the conservator should not be removed and shall set the same for hearing.

Unless otherwise ordered by the court, every conservator or guardian of an estate shall, not later than 30 days after the expiration of 1 year after letters are issued and annually thereafter, file with the court a complete account of his or her administration, along with the required fee and an affidavit of mailing showing that copies were sent to all interested parties, including the bonding company. The account shall include an itemized statement of assets in his or her possession at the end of the accounting period.

The court shall schedule a formal due process hearing to approve the accounting upon (1) a petition requesting approval by the guardian/conservator, (2) the request or objection of any interested party, or (3) the court's own motion. Notice of such hearing must be given to all interested parties and the protected person's interest safeguarded as provided in the filing of the original petition (see Neb. Rev. Stat. § 30-2636).

The conservator or guardian of an estate shall exhibit to the court or attach to his or her account a certificate of proof of possession of all intangible personal property existing at the end of the accounting period. Such certificate shall substantially be in the form set forth herein as Rule 49.

The court shall monitor all cases in which annual accountings are required to see that the accountings are filed in a timely manner. If an accounting is not filed within 30 days after the date it is due, the court shall issue an order to show cause why the guardian/conservator should not be removed and shall set the same for hearing.

Rule 42 amended June 1988.

Rule 43

CONSERVATOR/GUARDIAN LETTERS

Language expressly limiting powers shall be included on all letters of guardian/conservator in the following language: "You shall not pay yourself or your attorney compensation from the assets or income of your ward, nor sell real property of the estate, without first obtaining an order therefor, after an application, notice to the interested persons, and hearing thereon. The order may be entered ex parte if all interested persons have waived notice of hearing or have executed their written consent to the fee."

At the same time the annual accounting is filed with the court, the guardian/conservator shall file with the court an application for payment of the previous year's fees to the attorney and to the guardian/conservator. The specific amount of the fees requested shall be set out in the application.

Rule 43 amended November 1988.

Rule 44

RULES NOT JURISDICTIONAL

No rule adopted by this court shall be or be construed to be jurisdictional, nor shall failure to comply with any such rule in any proceeding impair or otherwise affect the legality of such proceedings.

Rule 45

FILING REQUIREMENTS

Any order, notice signed by the court or the registrar, and the petition application or pleading on which it is based, is deemed to be immediately filed upon signing. All such documents must be taken directly to the counter where a clerk will accept them and affix the court file stamp. In no instance shall any documents be taken from this court until they have been filed, posted, filed for permanent record, and placed in the court file.

Rule 46

PERSONAL REPRESENTATIVE'S FAILURE TO QUALIFY

In all cases where a personal representative, guardian, or conservator has been formally or informally appointed and has failed to qualify by filing the required bond and acceptance within 60 days of appointment, and nothing appears in the records of the court which may explain or excuse the delay, the appointment may be set aside by the court on its own motion with or without prior notice to interested persons. If prior notice is not given, the clerk shall promptly mail a copy of the order of the court to the petitioner or petitioner's attorney, and to the personal representative, guardian, or conservator.

Rule 47

DISMISSAL FOR FAILURE TO ACT

A petition or application for probate of will, adjudication of intestacy, appointment of a personal representative, guardian or conservator shall be subject, on the court's own motion and with or without prior notice to interested persons, to dismissal without prejudice when it appears from the records of the court that no action on the petition or application has been taken by the petitioner or applicant for 4 months or longer, and nothing appears in the records of the court which may explain or excuse the delay. If the dismissal is ordered without notice, the clerk of the court shall promptly notify the petitioner or applicant and attorney of record of such action.

Rule 48

LOCAL RULES

Each county court by action of a majority of its judges may from time to time recommend other local rules not inconsistent with these rules nor inconsistent with any directive of the Supreme Court or statutes of the State of Nebraska. Any such recommended rule shall not become effective until approved by the Supreme Court and published in the Nebraska Advance Sheets.

Rule 48 amended September 1987.

Rule 49

CERTIFICATE OF PROOF OF POSSESSION

Name of Fiduciary _____ () Guardian () Conservator
of _____

CERTIFICATE OF BALANCE ON DEPOSIT

(Name and Address of Institution)

I CERTIFY that on the ____ day of _____, _____, there was on deposit in this Institution to the credit of this Fiduciary the following:

Checking Account, No. _____ Balance of \$ _____
including interest of \$ _____ paid during period of statement of account.
Savings Account, No. _____ Balance of \$ _____
including interest of \$ _____ paid during period of statement of account.

(*Extend above format for additional accounts as required) _____ (Signature and Title of Certifying Official)

CERTIFICATE AS TO SECURITIES

Line No.	KIND OF BOND OR SECURITY <small>(Identify U.S. Savings Bonds by series, number, purchase date and cost. Accounts by Number.)</small>	Date of Purchase	Cost	Interest Rate	Present Value
----------	---	------------------	------	---------------	---------------

(*Extend format for additional bonds or securities as required)

I CERTIFY that the securities listed on lines 1 through ____ were exhibited to me by the above-named fiduciary as being the property of the estate of the ward, said securities then and there being in the custody and control of the fiduciary.

Date of Signature _____ Address of Certifying Official _____ Signature and Title of Certifying Official _____

NOTE: This certificate may be executed by a bank official, an authorized official or agent of the company which is surety on your bonds; by a judge or clerk of the court.

Rule 50

PROVISIONS FOR DEPOSIT AND INVESTMENT OF FUNDS
RECEIVED BY THE CLERK OF THE COUNTY COURT

I. Public Moneys Paid to County Court Officials; Depository Banks; Designation; Pledged Securities; List.

A. All funds paid to any county court shall be deposited in such bank or banks as have been designated as official depositories for such funds. Depository banks shall be such banks as designated by the county judge or judges.

B. Deposits in excess of the amount insured by the Federal Deposit Insurance Corporation shall be made only as authorized by the provisions of Neb. Rev. Stat. §§ 77-2326.04 through 77-2326.09.

C. The clerk magistrate of each county court shall submit to the State Court Administrator a current and correct list and description of the securities pledged or in which a security interest has been granted by any depository bank to secure the deposits.

II. Investment of Moneys Not Otherwise Provided for by Law.

A. Individual trust funds. Trust funds in excess of \$5,000 that can be expected to be held in excess of 90 days in trust by a county court may be placed, upon written request of an interested party, in interest-bearing certificates of deposit or a savings account of a bank or other financial institution or interest-bearing obligations of the federal government. This provision is effective only for individual deposits in excess of \$5,000.

B. Pooled trust funds. Other funds received by the court and pooled should be invested wherever possible with consideration to:

1. the highest possible interest (such as NOW or SUPER NOW accounts);
2. the least restrictions (such as minimum balances, limitations on withdrawals, or number of checks per month); and
3. minimum or no service charges (to the extent service charges are incurred, such charges shall be paid out of state fees received that month).

III. Distribution of Earned Interest.

A. Individual funds. The interest earned from income accumulated from the investment of moneys from Rule 50(II)A shall be retained for the benefit of the owner of the funds.

B. Pooled funds. Each clerk of the court shall transmit the net of any interest from Rule 50(II)B, and fees for credit card use reduced first by any costs incurred as a result of credit card use and any other bank charges, to the State Treasurer along with the regular submissions of fees and costs.

Rule 51

COUNTY COURT RECORDS

I. Minimum Requirements. County court records shall be organized as set out in the Records Model at § 21 of the County Court Procedures Manual. At a minimum, each record shall contain the information shown in the Records Model.

II. Media Used. County court records may be maintained on any media approved by the State Court Administrator. The requirements contained in the Rules and Regulations of the State Records Administrator shall be observed. Docket books, registers of action, and indexes are not required for that portion of a court's caseload which is part of the county court automation system.

III. Paper Size. Pleadings filed in the county courts shall be on white paper measuring 8½ by 11 inches. Forms used in the courts shall be on paper no larger than 8½ by 11 inches and no smaller than 8½ by 5½ inches. Existing forms shall be replaced by forms measuring 8½ by 11 inches.

IV. Standard Forms. Approved standard forms contained in the County Court Forms Manual shall be used without modification where possible. Modifications must be approved by the State Court Administrator before a modified form can be printed or used.

V. Transcript and 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 county 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 county 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 clerk of the county court.

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 county 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 clerk of the county court by counsel making such request.

Any litigant is entitled to inspect the original transcript and bill of exceptions in his or her case at the office of the clerk of the trial court. Transcripts and bills of exceptions shall not be checked out to litigants. Any nonincarcerated litigant is entitled to obtain a copy of his or her transcript or bill of exceptions by filing a written request with the clerk of the trial court. A copy of the transcript shall be prepared by the clerk of the trial court and a copy of the bill of exceptions shall be prepared by the court stenographer at litigant's cost unless the litigant has been allowed to proceed in forma pauperis in the action in which the request for a record has been made. Except for good cause shown, any additional copies of the transcript and/or the bill of exceptions once provided to a litigant on an in forma pauperis basis shall be prepared at the litigant's costs.

When a request is made to the clerk of the trial court for a transcript of pleadings by or on behalf of any incarcerated person, the clerk of the trial court shall prepare two copies, one to be filed in the court to which the matter is being appealed and one to be sent to the incarcerated person at the correctional center where he or she resides. The cost shall be paid by the person making the request unless the person has been allowed to proceed in forma pauperis in the action in which the request for a record has been made. Except for good cause

shown, any additional copies of the transcript once provided to a litigant on an in forma pauperis basis shall be prepared at the litigant's cost.

When a request is made by or on behalf of any incarcerated person for a bill of exceptions, the court stenographer shall prepare the original to be filed with the clerk of the trial court. The court stenographer shall also prepare a duplicate copy at the statutory rate for copies and send it to the incarcerated person at the correctional center where he or she resides. The copy shall contain the index of exhibits but shall not include exhibits. The cost shall be paid by the person making the request unless that person has been allowed to proceed in forma pauperis in the action in which the request for a record has been made. Except for good cause shown, any additional copies of the bill of exceptions once provided to a litigant on an in forma pauperis basis shall be prepared at the litigant's cost. An incarcerated person may request copies of exhibits by filing a motion with the court having jurisdiction of the case.

Where a request for a copy of a transcript or a bill of exceptions is made on an in forma pauperis basis and an action is not pending, good cause must be shown by the litigant making the request for the necessity of a copy. A copy shall be provided only upon an order of the court.

Rule 51 adopted September 1987; Rule 51 amended May 21, 2003.

Rule 52

APPEALS TAKEN FROM THE COUNTY COURTS

I. Appeals from County Court to District Court.

A. Transcript of pleadings; how ordered.

1. Appellant shall file a request for preparation of the transcript of pleadings at the time of filing the notice of appeal. The request shall designate the pleadings to be included in the transcript by listing the name of the pleading and its date of filing.

2. The transcript shall contain the documents set out in Rule 52(I)B(1)a through e.

B. Transcript of pleadings; content.

1. The transcript of pleadings shall contain:

a. In criminal cases, the complaint and arraignment sheet showing the plea entered. In civil cases, a copy of the last amended petition and last amended answer;

b. The judgment, decree, or final order sought to be reversed, vacated, or modified, and the county court's opinion, if any;

c. Copies of the notice of appeal and request for transcript, and copies of the request for bill of exceptions, and the application to proceed in forma pauperis and accompanying poverty affidavit if those documents were filed;

d. A copy of any bond or undertaking given in the county court; and

e. Any other parts of the county court record which appellant believes to be necessary. Only those portions of the record which are material to the assignments of error may be requested. Requests must be made in the manner set out in Rule 52(I)A(2).

2. The county court shall, in the absence of a request for the inclusion of additional filings, prepare a transcript containing the documents set out in Rule 52(I)B(1)a through d. In appeals to the Supreme Court, the notice of appeal, praecipes for transcript and bill of exceptions, and poverty affidavits shall not be included in the transcript, since they have been previously certified and sent to the Supreme Court.

3. In appeals to the district court involving small claims cases, the county court shall certify the complete transcript of pleadings to the district court if the appellant is not represented by counsel.

C. Transcript of pleadings; form.

1. The transcript shall be photocopied. The image shall be permanent, black on a white background, and sharply and clearly legible. Each document in the transcript shall bear a clear and distinct stamp or writing showing the date the document was filed by the clerk of the court.

2. Transcripts shall be submitted on paper measuring 8½ x 11 inches. If the pleadings were filed in the county court on paper measuring 8½ x 14 inches, the entire transcript may be reproduced on 8½ x 14 inch paper. The paper shall be of standard 12- to 16-pound substance.

3. The transcript shall be securely bound at the top center of each page with a fastener with prongs 2¾ inches apart on center. No pages in the transcript may be stapled.

4. For appeals to the district court, the first two pages of the transcript shall be unnumbered and shall consist of (1) the clerk's certificate as set forth in Appendix 1 of these rules and (2) a properly prepared index. The index shall bear the caption of the case and the county court case identification number. The rest of the index shall be divided into three columns. The first column shall be used to number each item included in the transcript; the second column shall contain a brief description of the item; the third column shall show the transcript page number of the first page of the item described. Each page after the index shall be consecutively numbered. The number shall be centered at the bottom of each page.

D. Payment for transcript.

1. The party making the request shall pay the cost of the transcript to the county court before the transcript may be delivered to the district court.

2. An appeal may be dismissed for failure to make payment for the transcript except in cases where a poverty affidavit has been filed. If payment for the transcript has not been received within the time allowed under Neb. Rev. Stat. § 25-2731, and no poverty affidavit has been filed, the clerk of the county court shall send a certified copy of the notice of appeal to the clerk of the district court, together with a statement that the fee has not been paid.

E. Supplemental transcript. After the original transcript is filed in the office of the clerk of the district court, any party may, without leave of court, request a supplemental transcript containing matters omitted from the original transcript and which are necessary to the proper presentation of the case in the district court.

1. The request for a supplemental transcript shall be in writing and in the same form prescribed in Rule 52(I)A.

2. Supplemental transcripts shall be filed within 10 days after the county court receives the request, unless the district court has extended the due date.

3. Supplemental transcripts shall be in the form prescribed in Rule 52(I)C.

4. No change in the original or supplemental transcript shall be made after filing, or papers added to or withdrawn from the transcript, without leave of the district court.

F. Cases previously appealed. When a final order is appealed in a case which was previously appealed, the transcript should not contain pleadings already on file in the district court.

G. Statement of errors. Within 10 days of the filing of the bill of exceptions in 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 case will be limited to errors assigned and discussed. The district court may, at its option, notice a plain error not assigned. This rule shall not apply to small claims appeals.

II. Bills of Exceptions.

A. How ordered. An appellant may order a bill of exceptions by filing a request with the clerk of the county court at the time the notice of appeal is filed. The request shall specifically identify each portion of the evidence and exhibits offered at any hearing which the party appealing believes material to the issues to be presented for review.

B. Preparation. The county court stenographer shall prepare only the portions of evidence specified in the request for preparation of the bill of exceptions. At the same time, the appellant shall serve a copy of the request upon all parties.

C. Supplements. If the appellee believes additional evidence should be included in the bill of exceptions, the appellee may, within 10 days after service of the request for bill of exceptions filed by the appellant, file a supplemental request for preparation of a bill of exceptions with the clerk of the county court. At the same time, a copy of the supplemental request shall be served upon all parties. The supplemental request shall be processed in the same way as the initial request.

D. Settlement, signature, and allowance. When the bill of exceptions has been prepared, it shall be reviewed by the county judge or court stenographer, as the county judge elects, to determine whether the bill of exceptions conforms to applicable rules and is an accurate transcription of the tape recording. The person who completes the review and finds the bill of exceptions acceptable shall sign a certificate to be included in the bill of exceptions certifying that it is an accurate transcription of the proceeding.

E. Filing. The bill of exceptions shall be filed in the office of the clerk of the district court by a county court employee as soon as the certificate is signed.

F. Relevance. The bill of exceptions shall contain only matters of evidence or exhibits which are necessary to decide the issues presented on appeal.

G. Payment. Except in cases where payment of the cost of preparing the bill of exceptions will be paid by the state, county, or other governmental subdivision, the cost shall be estimated at the time the request is received. The estimate shall be given or mailed to the party making the request.

1. The appellant shall deposit the amount of the estimated cost with the clerk of the county court within 14 days after receipt of the estimate.

2. If the appellant fails to make the deposit on time, the clerk magistrate shall order the court stenographer to cease work on the transcript of testimony and shall notify the district court in writing that the deposit has not been made. The time allowed the court stenographer for preparation shall be stayed until the deposit has been made. Appellant's time shall not be stayed by failure to make the deposit on time.

H. Preparation and delivery.

1. The bill of exceptions shall be filed with the clerk of the district court as soon as possible.

The following time limits apply unless an extension of time is approved by the district court in accordance with these rules. The time period begins on the date the request is filed in the county court.

Criminal trials	6 weeks
Civil trials	6 weeks
Preliminary hearings in felonies . .	6 weeks
Guilty or nolo contendere pleas . .	3 weeks

2. If the bill of exceptions cannot be prepared within the time allowed by Rule 52(II)H(1), the district court may grant additional time for preparation.

a. The clerk magistrate or court stenographer shall file a request with the clerk of the district court for additional time at least 1 week prior to the date the bill of exceptions is due to be filed.

b. The request shall be in the form of a pleading, captioned and bearing the district court case number. The request shall specify the length of time requested for the extension and shall bear the signature of the clerk magistrate or court stenographer. A brief affidavit of the clerk magistrate or court stenographer shall accompany the request for extension of time and shall set forth the reasons why the bill of exceptions cannot be completed by the date due.

c. Copies of the request shall be served on all parties to the action or their attorneys at the time the request for extension of time is filed.

d. The district court shall rule upon the request as soon as possible. The clerk of the county court shall be notified of the decision as soon as possible, but not later than 2 business days after the decision.

e. Requests for extension shall be allowed only upon a showing of good cause, and first extensions of time shall not be routinely granted.

I. Notice of district court action. The clerk of the district court shall notify the clerk of the county court of action taken by the district court on the appeal as follows:

1. Within 2 judicial days after the decision of the district court becomes final, the clerk of the district court shall issue a mandate and transmit the same to the clerk of the county court on the form prescribed by the Supreme Court together with a copy of the district court's decision.

2. The following shall be the procedure in appeals to the Supreme Court from the district court:

a. The clerk of the district court shall notify the clerk of the county court if any matter appealed from the county court is appealed to the Supreme Court. Such notice shall be sent to the county court within 2 days after the date the notice of appeal is filed in the district court.

b. The clerk of the district court shall notify the clerk of the county court of receipt of a mandate from the Supreme Court within 2 days after the mandate is received by the district court.

III. Direct Appeals from County Courts to the Court of Appeals or Supreme Court.

A. Notice of appeal; requests to prepare record. The appellant's notice of appeal to the Court of Appeals or Supreme Court shall be filed with the clerk of the county court within the time established by Neb. Rev. Stat. § 25-1912.

1. At the same time the notice of appeal is filed, the appellant shall file a request for preparation of the transcript of pleadings and may file a request for preparation of the bill of exceptions. Those requests shall be in the form prescribed in Rule 52(I) and (II).

2. The court stenographer shall commence preparation of the bill of exceptions when notified to do so by counsel for the appellant. The time limits for preparation of the bill of exceptions contained in Rule 52(II)H(1) shall apply, and the time shall begin from the date the notice of appeal is filed.

3. The party requesting the preparation of the bill of exceptions may, at any time before the bill of exceptions is completed by the court stenographer, file with the clerk of the county court and serve upon the court stenographer a statement advising the court stenographer that settlement has been reached. Upon receipt of such statement, the court stenographer shall cease any further work upon the bill of exceptions. The county court shall be entitled to payment by the party ordering such bill of exceptions for the work performed up to the time that such notice was served upon the court stenographer, and rules with regard to payment of the fees to the county court for the bill of exceptions, as otherwise provided herein, shall apply.

4. The court stenographer shall file the completed bill of exceptions with the clerk magistrate of the county court, who shall notify all parties and the Clerk of the Supreme Court and Court of Appeals of the filing.

B. Payment of filing fee. The filing fee in the Court of Appeals or Supreme Court set by Neb. Rev. Stat. § 33-103 shall be first deposited with the clerk of the county court, who shall record receipt of the fee. The clerk of the county court may then write a check to the Clerk of the Supreme Court and Court of Appeals for the docket fee. If the county is to pay the fee (filing in forma pauperis or an appeal by the State), then the docket fee is not prepaid.

C. Filing notice of appeal with the Court of Appeals or Supreme Court. The clerk of the county court shall, within 2 business days of receipt of a notice of appeal to the appellate court, send the following to the Clerk of the Supreme Court and Court of Appeals:

1. A copy of the notice of appeal.
2. The request for preparation of the transcript of pleadings.
3. The request for preparation of the bill of exceptions (if filed).
4. The clerk's certificate, set forth in Appendix 2 of these rules, which shall contain the following information:
 - a. The caption of the case, including the names and adversary relationships of all the parties as the case was filed;
 - b. The name, address, city, state, zip code, telephone number, and Nebraska attorney identification number of each principal Nebraska attorney, and the name of the party or parties the attorney represents; or, if a party or parties represent themselves, the above information except for the identification number.
 - c. The date the notice of appeal was filed and the date the docket fee was paid.
5. The court's check for the docket fee, or the application to proceed in forma pauperis and a poverty affidavit if the filing is in forma pauperis. If the State is prosecuting the appeal, no other notice is required.

D. Processing appeals in the Court of Appeals or Supreme Court. Appeals from the county court will be processed in the same manner as other appeals. The Supreme Court and Court of Appeals Rules of Practice and Procedure shall be followed in appeals from the county courts. The county court transcript shall be certified by the clerk as a true copy of the proceedings contained therein. See Appendix 3.

E. Notification of decision. The Clerk of the Supreme Court and Court of Appeals shall issue a mandate in appeals from county courts as in other cases. The county court will be officially notified of the action of the appellate court through the mandate.

Rule 52(I)G amended October 27, 1993; Rules 52(I)C(4) and 52(II)C(4) and D amended April 13, 1994; Rules 52(III), A, A(4), B, C, D, and E amended June 2, 1994; Rules 52(III), C(4), and D amended January 31, 1996; Rule 52(II)A(3) amended September 17, 1997; Rules 52(I)B(1)(c) and 52(II)C(5) amended October 14, 1999.

Rule 53

PRELIMINARY HEARINGS IN FELONY CASES

I. Transcript of Pleadings. In cases where the defendant is ordered bound over to the district court, the original case file shall be transmitted to the clerk of the district court. The register of actions of the case in the county court shall be updated to show the actions in the county court, and the action of transmitting the record shall be recorded on the register of actions.

II. Transcript of Testimony.

A. Request for transcription. A transcript of testimony may be ordered by a party to the action. The request shall specify which portions of the evidence should be included in the transcript.

B. Payment. A transcript of testimony, when ordered, shall be prepared and paid for as described in Rule 52(II)G(1).

III. Cover Sheet. The county court shall prepare a cover sheet and a certificate of costs, showing whether costs have been paid or are still owed.

Rule 53 adopted September 1987.

Rule 54

CRIMINAL PROCEEDINGS BEFORE CLERK MAGISTRATES

Each clerk magistrate in the State of Nebraska is authorized to conduct arraignments, accept pleas of guilty and nolo contendere, and impose penalties as set forth below:

I. Waivers. The clerk magistrate may accept pleas of guilty and impose fines on all offenses set out in the waiver/fine schedule approved by the Nebraska Supreme Court.

II. Arraignments. The clerk magistrate may conduct arraignments and accept pleas of guilty, not guilty, and nolo contendere on any waivable offense, on any other infractions, misdemeanors, or violations of city ordinances. The clerk magistrate may impose penalties on any infractions, Class III, IV, or V misdemeanors, first offense Class W misdemeanors, or any violations of city ordinances. Penalties imposed by the clerk magistrate under this section are not limited to the fines on the uniform waiver schedule and may include probation. Such penalties shall not be in excess of statutory limits and shall not include imprisonment. A record shall be made of all arraignments conducted by the clerk magistrate. The presiding judge of each judicial district shall provide the clerk magistrate with a written verbatim arraignment form which shall be followed by the clerk magistrate to ensure that the defendant is properly advised of the charges made against him or her, the statutory language stating the offense, the possible penalties which could be imposed, and the necessary constitutional rights.

III. Bond Setting. When a defendant appears before the clerk magistrate and the case is continued for further hearing, the clerk magistrate shall order the defendant to appear on a date certain and shall release the defendant or set bond with appropriate conditions as statutorily provided.

IV. Other Duties. All other duties of clerk magistrate shall be pursuant to state statute.

Rule 54 adopted September 1987.

Rule 55

UNIFORM WAIVER SYSTEM

I. Uniform Waiver System. Each county court shall accept waivers of appearance and pleas of guilty in cases involving nonhazardous traffic violations, carrier violations, game and parks violations, and other violations in accordance with a schedule adopted by Supreme Court rule. Such waivers shall be on a form with uniform language in accordance with the Supreme Court rule.

II. Guidelines for Use of Waiver System. Waivers shall be accepted in the following ways:

A. Mail. Violators may be allowed by the law enforcement officer issuing the citation to use the waiver form contained on the defendant's copy of the citation. If the defendant is a resident of a state which is a member of the Nonresident Violator Compact, the defendant may then be released without the necessity of immediate collection of fine and costs.

If the defendant is a resident of a state which is not a member of the Nonresident Violator Compact, or is charged with an offense not covered by that compact, the officer shall

1. allow the defendant to sign the waiver and pay the fine and costs by using a credit card authorized by the court, or

2. allow the defendant to sign the waiver and place it in an envelope along with the fine and costs in the presence of the officer. The officer shall then accompany the defendant to the nearest U.S. mailbox to observe the deposit therein of the envelope. The officer shall at no time take possession of the fine and costs.

B. Locked waiver boxes. Carrier Enforcement officers who have a locked waiver box permanently attached to the inside of their portable unit or permanently affixed within the building of a fixed scale facility may allow the defendant, in the presence of the officer, to sign the waiver and to place it and the fine and costs in an envelope. The officer shall then, in the presence of the defendant, seal and place the envelope in the locked waiver box.

C. Personal appearance. Violators may appear personally at the office of the clerk of the appropriate court on or before the court appearance date.

D. Application. Violators may make application for waiver of appearance prior to the court appearance date. Upon receipt of an application, the court shall determine whether or not the waiver privilege shall be granted and shall send either a waiver or a notice of an appearance date. If the waiver privilege is denied, the judge shall set forth within the notice of appearance a written explanation showing good and sufficient cause as to why the privilege was denied.

E. Internet. Violators may access a Web site approved by the Supreme Court and upon successful completion of required information and agreeing to all waiver and plea instructions, pay the fine and costs plus any convenience fees by using a credit/debit card processor authorized by the court. Convenience fees are established by the credit/debit card processor authorized by the court and are not a part of the fine and costs to the state.

III. Fine Schedule. The Supreme Court shall establish a schedule of the amount of fines to be imposed for violations which are to be paid by waiver.

IV. Other Violations. Notwithstanding the provisions of Rule 55(III), a waiver may be allowed for violations not listed on the schedule in individual cases when authorized by the county judge or judges of the county.

Rule 56

JUVENILE REVIEW PANELS

I. Upon receipt of a request for review, the Clerk of the Supreme Court shall notify the Chief Justice and the State Court Administrator that a review hearing has been requested.

II. The State Court Administrator shall select a panel of judges for approval by the Chief Justice. Upon the approval, the State Court Administrator shall notify the members of the panel of their appointment by letter. The letter shall contain the names of the judges on the panel and their home court addresses and telephone numbers. The letter shall also denote which judge is presiding. A copy of the letter shall be sent by the State Court Administrator to each judge on the panel and to the clerk of the originating court.

III. If, for any reason, a judge must be excused from a panel, that judge shall notify the State Court Administrator, who shall select a replacement judge as in other cases. If the judge being excused is the presiding judge of the panel, the replacement shall become the presiding judge. A copy of any letter of replacement shall be provided to each remaining member of the panel and to the clerk of the originating court.

IV. The presiding judge shall arrange for the time and the site of the review hearing, with the first preference being given to the originating court. Any preliminary motions may be handled by telephone conference if agreed to by the panel of judges and all parties. The presiding judge shall contact the judge of the originating court to establish a date for delivery of the bill of exceptions. The presiding judge shall notify the clerk of the originating court of the time and site of the hearing. The clerk of the originating court shall provide notice of the time and site of the hearing to all parties in the case at their last known addresses.

V. The bill of exceptions shall consist of the disposition hearing and any other matters which the judge noted on the record as having been considered for purposes of disposition.

VI. The transcript and bill of exceptions shall be ordered and prepared pursuant to Rule 52. The court reporter or court stenographer shall provide the original bill of exceptions plus three unbound copies to the clerk of the originating court. Fees for preparation of the bill of exceptions and three copies, and for the preparation of the original transcript, shall be paid by the requesting party.

VII. The clerk of the originating court shall send a copy of the bill of exceptions and transcript to each judge on the panel. The clerk will charge fees only for preparation of the original transcript and not for photocopies made for the judges on the panel. The original transcript and bill of exceptions shall be kept by the clerk of the originating court. All pleadings shall be maintained by the clerk of the originating court in the juvenile's case file. The caption of the case shall be the same as that in the original juvenile case.

VIII. The court reporter or stenographer shall handle all confidential material requested as part of the bill of exceptions in the same manner as a predispositional report. Parties to the case who wish a copy of the bill of exceptions may request it from the clerk of the originating court. This copy shall not contain any of the confidential material unless there is an order from the judge of the originating court releasing that material. Any confidential material given to the panel members shall be destroyed by them after disposition. The clerk shall charge the statutory fees for photocopies prepared for parties to the case.

IX. The clerk of the court hosting the review hearing shall be responsible for providing adequate facilities for the panel to conduct its hearing.

X. Parties may make either written or oral arguments to the panel. Such arguments may be made by counsel or personally if a party is not represented by counsel. A copy of any written argument shall be given to each judge on the panel at the time of the hearing. The presiding judge of the panel has the authority to establish time limits for any oral argument presented. The panel will not make a verbatim record of the hearing.

XI. The presiding judge shall sign the disposition of the panel and file it with the clerk of the originating court. The disposition shall be effective upon that filing. The clerk shall mail photocopies of the disposition to all parties.

XII. The clerk of the originating court shall, within 5 days, file a statement of completion of review with the Clerk of the Supreme Court. One copy shall be retained in the originating court and placed in the court file.

Rule 56 amended January 1991.

Rule 57

CITY OR VILLAGE ORDINANCE GUIDELINES

Pursuant to Neb. Rev. Stat. § 25-2703, the State Court Administrator established the following guidelines to prescribe the form that city or village ordinances shall be filed in the county courts:

I. Initial Filing of City or Village Ordinances. City or village ordinances shall be compiled in either book or pamphlet form. The preferred format is a looseleaf book form. For municipal code books or pamphlets which have been adopted in their entirety by an adopting ordinance, such books or pamphlets shall be accompanied by a copy of the adopting ordinance with a certificate of the municipal clerk, under the seal of the municipality, certifying that such ordinance was passed and approved as required by law. For municipal code books or pamphlets containing a compilation of ordinances passed by the municipality, such books or pamphlets shall be accompanied with a certificate of the municipal clerk, under the seal of the municipality, certifying that such ordinances were passed and approved as required by law. Each municipal code book or pamphlet shall contain a date of publication and purport that it is being published by the authority of the city council or village board of trustees. Each municipal code book or pamphlet shall contain an index.

II. Filing of New or Amended Ordinances. Copies of new or amended ordinances may be filed in the county court in typewritten, printed, or page form. For municipalities filing new or amended ordinances in ordinance form, such ordinances shall be accompanied with a certificate of the municipal clerk, under the seal of the municipality, certifying the date that such ordinances were passed and approved. For municipalities filing new pages for insertion in their municipal codes, such pages shall be accompanied with a certificate of the municipal clerk, under the seal of the municipality, listing the ordinance numbers which effectuated the changes therein and certifying the dates that such ordinances were passed and approved. The county court shall insert the new pages or firmly affix all new or amended ordinances to the published version of the respective city or village ordinances.

III. Need for Record. The foregoing provisions do not in any way modify the rule of appellate practice that when an ordinance charging an offense is not properly made a part of the record on appeal, an appellate court presumes the existence of a valid ordinance creating the offense charged, and will not otherwise take judicial notice of an ordinance.

Rule 57 adopted May 1994.

Rule 58

PETTY CASH FUNDS

Whenever the need exists, a clerk magistrate, with the concurrence of the county judges of his or her district, may establish and maintain a petty cash fund of not more than \$50. The fund shall be used only in the event of special circumstances which require the item or expense to be purchased and paid for immediately in cash. The creation of the fund is contingent upon budget approval by the local county board. If the local county board approves the budget request, the clerk magistrate shall maintain an accurate, detailed accounting of the fund which shall be submitted to the auditors at the time of their annual audit.

Rule 58 adopted July 1995.

Rule 59

PRESIDING JUDGES

The presiding judge has primary responsibility for overseeing the delivery of county court services within the geographical area of the judicial district.

In districts where there is a judicial administrator, the presiding judge, in accordance with Nebraska Supreme Court Personnel Policies and Procedures, bears the responsibility for the hiring, evaluation, and discipline of the judicial administrator. The presiding judge is to provide direction to the judicial administrator in matters of local district policy. A presiding judge is to provide direction to the judicial administrator to ensure that state statutes, Supreme Court rules, and policies of the Administrative Office of the Courts are appropriately carried out. The presiding judge is the immediate supervisor of the judicial administrator and shall meet with the judicial administrator on a regular basis to coordinate the work of the judges and staff within the district.

In districts where there is no judicial administrator, the presiding judge bears the responsibility for the hiring, evaluation, and discipline of the clerk magistrates in the district. The presiding judge is to provide direction to the clerk magistrates in matters of local district policy. A presiding judge is to provide direction to the clerk magistrates to ensure that state statutes, Supreme Court rules, and policies of the Administrative Office of the Courts are appropriately carried out. The presiding judge is the immediate supervisor of the clerk magistrates and shall meet with the clerk magistrates on a regular basis to coordinate the work of the judges and staff within the district. In districts with more than one county, these duties may be assigned to individual judges on a county-by-county basis.

It shall be the responsibility of the presiding judge to coordinate the work of all judges within the district. This may include assigning judges to various duties within a single county or among various counties of the district.

The presiding judge shall bear the responsibility of notifying the Administrative Office of the Courts if there is a need for a substitute judge anywhere in the district.

The presiding judge shall delegate appropriate administrative responsibility to the judicial administrator and the rest of the administrative staff of the district or to the clerk magistrates and the rest of the administrative staff of the counties relating to budget preparation and general administration, case management, facilities, personnel administration, and court records management. In districts with more than one county, these duties may be assigned to individual judges on a county-by-county basis.

It shall be the responsibility of the presiding judge to plan and chair meetings, on at least a quarterly basis, of all judges, judicial administrators, and clerk magistrates within a district.

The presiding judge shall be the liaison to the Nebraska State Bar Association and the press for the courts of the district. In districts with more than one county, these duties may be assigned to individual judges on a county-by-county basis.

The presiding judge shall be the liaison to other agencies of local and state government for the courts of the district. In districts with more than one county, these duties may be assigned to individual judges on a county-by-county basis.

It shall be the responsibility of the presiding judge of the district to review the audits of all courts of the district to make sure that the accounting practices being followed are in accordance with the County Court Accounting Manual. It is the duty of the presiding judge to respond to any audit recommendation. It is also the duty of the presiding judge to make all records and information available to the individuals doing the audit.

It shall be the duty of the presiding judge to approve any reinstatement of bonds which have been forfeited for more than 90 days when the presiding judge determines it is in the best interests of justice. In districts with more than one county, these duties may be assigned to individual judges on a county-by-county basis.

The presiding judge shall be elected each year by a majority vote of the judges of the district subject to approval by the Supreme Court. Notification of the name of the individual elected as presiding judge of the district shall be given to the State Court Administrator no later than January 15 of each year.

A presiding judge shall hold the position for a term of 1 year and may serve two consecutive terms.

Rule 59 adopted October 1996.

Rule 60

DOMESTIC RELATIONS

The Uniform District Court rules shall govern the procedure for domestic relations cases heard by a county court judge.

Rule 60 adopted November 1997.

Rule 61

MODIFICATION OF RULES

Any of the foregoing rules shall be subject to such modification by the court as may be necessary in special instances to meet emergencies or to avoid injustice or great hardship.

Renumbered to Rule 59, July 19, 1995; renumbered to Rule 60, October 17, 1996; renumbered to Rule 61 November 26, 1997.

Rule 62

COUNTY COURT AND SMALL CLAIMS COURT
JURISDICTIONAL LIMITS

I. County Court Civil Jurisdiction. The Nebraska Supreme Court has determined, pursuant to Neb. Rev. Stat. § 24-517(5), that on or after July 1, 2005, each county court shall have concurrent original jurisdiction with the district court in all civil actions of any type where the amount in controversy is \$51,000 or less.

II. Small Claims Court Jurisdiction. The Nebraska Supreme Court has determined, pursuant to Neb. Rev. Stat. § 25-2802(4), that on or after July 1, 2005, each small claims court shall have jurisdiction in all civil actions set forth in Neb. Rev. Stat. § 25-2802(1) and (2) where the amount in controversy is \$2,700 or less.

Rule 62 adopted June 22, 2005.

Rule 63

RULE RELATING TO UNIFORM TRAFFIC CITATION AND
COMPLAINT AND CITATION IN LIEU OF ARREST

I. Traffic Complaint and Notice to Appear; Form.

A. Form: hand-written citation and complaint. In traffic cases, the complaint and notice to appear shall be in the form known as the "Uniform Traffic Citation and Complaint," substantially the same as set out in appendix 5 hereto. The Uniform Traffic Citation and Complaint shall consist of four parts:

1. the complaint, printed on white paper;
2. the officer's copy, printed on yellow paper;
3. the prosecutor's copy, printed on blue paper; and
4. the defendant's copy, printed on card stock, with the waiver and plea printed on the reverse side.

The citation shall be 4.5 by 8 inches in size and printed in precisely the format approved by the Supreme Court. Three inches from the top of the citation there will be a 2-inch section listing offenses and statute numbers. Any agency wishing to replace the offenses in that section with other offenses unique to its enforcement responsibility may submit a proposal to the Administrative Office of the Courts and request approval for the same.

B. Form: computer-generated citation and complaint. The "Uniform Traffic Citation and Complaint" may be created on a computer and printed. The information on the form shall be the same as on the hand-written form and shall be substantially the same as set out in appendix 5 hereto. The law enforcement officer or prosecutor preparing the Uniform Traffic Citation and Complaint shall print at least two copies--the complaint, to be filed with the Court, and the defendant's copy, which shall contain the waiver and plea section if applicable. A copy may be printed for the law enforcement officer or her or his agency, and another for the prosecutor.

All computer-generated Uniform Traffic Citation and Complaint forms shall be at a minimum printed on letter-sized (8.5 by 11 inches) white paper with black printing, in the format approved by the Supreme Court. For agencies that use Mobile Data Terminals with continuous paper rolls, it is acceptable to exceed the

minimum length described above. The offenses and statute numbers the defendant is accused of violating shall be listed in a separate section of the form.

C. Numbering. All citations shall be numbered in consecutive order. Each number shall contain up to two alpha characters and up to seven numerals with no leading zeros. Any agency wishing a specific alpha designation shall request assignment of the same from the Administrative Office of the Courts.

The citation number shall be displayed at the top of the citation in Arabic characters and numerals. A machine-readable "3 of 9" barcode shall appear at the top of every copy of the citation. The barcode will not be required during the initial test period of citations generated electronically.

D. When used. The complaint form shall be used in traffic cases in county courts, whether the complaint is made by a peace officer, prosecutor, or any other person.

E. The motorist's signature promising to appear may be captured on paper which is filed with the court or a digital representation of the motorist's signature may be captured, stored, and filed with the court.

II. Uniform Citation in Lieu of Arrest.

A. Form. Any citation in lieu of arrest issued pursuant to Neb. Rev. Stat. §§ 29-422 through 29-430 or Neb. Rev. Stat. § 60-684 shall comply with the following minimum standards:

1. the name and address of the cited person;
2. the offense charged;
3. the time and place the cited person is to appear in court;
4. a written promise to appear in court (applicable only to citations issued by law enforcement personnel);
5. a line on which the cited person shall place his or her signature thereby promising to appear in court (applicable only to citations issued by law enforcement personnel);
6. a warning that failure to appear in accordance with the command of the citation is a punishable offense; and
7. the citation may constitute a complaint filed in the trial court (applicable only to citations issued by law enforcement personnel).

Rule 63 adopted September 26, 2006.

The County Court General Rules were adopted in July 1985.

**COUNTY COURT APPEAL TO DISTRICT COURT
CERTIFICATE OF TRANSCRIPT**

IN THE _____ COURT OF _____ COUNTY, NEBRASKA

APPEARANCES

Plaintiff For the Plaintiff:

vs.

Defendant For the Defendant:

CERTIFICATE OF TRANSCRIPT

I, _____ Clerk of the _____ County Court, certify that the attached are true and accurate copies of the pleadings filed in this case. (Index attached).

The notice of appeal was filed on _____, _____.

The District Court filing fee in the amount of \$ _____ was paid on _____, _____, **or**

A poverty affidavit (copy attached) was filed on _____, _____.

I further certify that costs of \$ _____ (G have) (G have not) been paid:

Date: _____ By the Court: _____

Clerk (Seal)

SAMPLE CERTIFICATE - CIVIL CASES
FOR USE IN APPEALS TO SUPREME COURT AND COURT OF APPEALS

IN THE COUNTY COURT OF _____ COUNTY, NEBRASKA

In the Matter of the Estate of
Matilda A. Farquar, Deceased

Trial Court No. _____

F. J. Farquar, Plaintiff,

Tyrone A. Ledbetter, No. 28154
(Address)
(Telephone)

v.

Alfred T. Farquar, Defendant.

Frank X. O'Brien, No. 18766
(Address)
(Telephone)

I certify that the attached are true and accurate copies of pleadings filed in the above-captioned case.

- The case is a civil case originating in the County Court:
- | | |
|-----------------------------------|--|
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Inheritance Tax |
| <input type="checkbox"/> Juvenile | <input type="checkbox"/> Probate |
| | <input type="checkbox"/> Guardianship |

Notice of appeal directed to:

- Court of Appeals
 Supreme Court
- Statutory Authority:
 Constitutionality of statute

The notice of appeal was filed on _____.

The statutory docket fee was paid on _____;
or a poverty affidavit was filed on _____.

All motions for new trial have been disposed of:

- Yes. Date: _____
 No.
 No motions for new trial filed.

Date: _____

(SEAL)

Clerk Magistrate

By: _____

SAMPLE CERTIFICATION OF TRANSCRIPT FOR USE IN APPEALS TO THE
SUPREME COURT AND COURT OF APPEALS
(ATTACH TO BACK OF TRANSCRIPT)

CERTIFICATION OF TRANSCRIPT

I, _____, Clerk Magistrate of the _____ County
Court, do hereby certify that the foregoing is a true transcript of the record requested in our Case No. _____
entitled: _____
_____ as the same appear on file of said Court.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of said Court this _____ day of
_____, _____.

(Seal)

Clerk Magistrate

Plaintiff's Claim and Notice to Defendant
(Small Claims Court)

CASE NUMBER

IN THE COUNTY COURT OF _____ COUNTY, NEBRASKA

Plaintiff

Plaintiff's Claim and
Notice to Defendant

VS.

Defendant

Plaintiff states that defendant(s) owe(s) and should be ordered to pay to me the sum of \$_____ and costs of this action, or return the property valued at \$_____ and costs of this action because on _____, _____ at _____

Plaintiff declares that the defendant(s) is (are) not a "person in the military service of the United States" as defined in Sec. 101 of the Soldiers Relief Act, 1940.

I have filed _____ small claims this week, and _____ within the current calendar year.

To the best of my knowledge and belief, the defendant(s) may be served at the following address:

My printed name and printed address are as follows:

Telephone #:

I elect to have the notice served upon the defendant(s) by sheriff/constable mail process server.

DATE: _____ PLAINTIFF'S SIGNATURE: _____

DATE: _____ SIGNED IN MY PRESENCE: _____ (Seal)

NOTICE TO DEFENDANT

This claim has been filed against you. You must appear before this court on _____, _____, at _____ m. at _____ (location)

If you do not appear, a judgment may be entered against you, together with costs of this action. You should read the information on the back of this claim notice. If you have any questions about the procedure, you may contact the Clerk of the Court in person or by calling _____

DATE: _____ BY THE COURT: _____ (Seal)

(Clerk)

<p style="text-align: center;">I hereby certify that on</p> <p style="text-align: center;">OFFICER'S RETURN _____ I served upon:</p>	<p style="text-align: center;">BY:</p>	<p style="text-align: center;">a true and certified copy of the Plaintiff's Claim with all endorsements thereon.</p> <p style="text-align: center;">By:</p>														
<table style="margin-left: auto;"> <tr> <td style="border-right: 1px solid black; width: 100px;">Service & Return</td> <td style="width: 100px;"></td> </tr> <tr> <td style="border-right: 1px solid black;">Copy</td> <td></td> </tr> <tr> <td style="border-right: 1px solid black;">Mileage</td> <td></td> </tr> <tr> <td style="border-right: 1px solid black;">FEES</td> <td></td> </tr> <tr> <td style="border-right: 1px solid black;">Total</td> <td></td> </tr> <tr> <td style="border-right: 1px solid black;"> </td> <td></td> </tr> <tr> <td style="border-right: 1px solid black;"> </td> <td></td> </tr> </table>			Service & Return		Copy		Mileage		FEES		Total					
Service & Return																
Copy																
Mileage																
FEES																
Total																
<p style="margin-right: 20px;">OFFICER</p>																

SMALL CLAIMS COURT

The Small Claims Court provides a method of settling legal disputes involving \$2,700 or less. Court procedure is informal and without a jury. You cannot be represented by an attorney in Small Claims Court, however, you are allowed to seek an attorney's advice about your case.

The person making the claim is known as the plaintiff. The other party is known as the defendant. Small Claims cases can be filed in the county where the defendant resides or is doing business or in the county where the legal dispute occurred. Except for merchants claiming a loss due to shoplifting, no one may file more than two complaints in a calendar week, nor more than ten complaints in a calendar year. The plaintiff fills out the claim form and signs it in the presence of a court clerk or notary. The clerk sets a date for trial, and arranges for notice to the defendant. The notice may be delivered by the sheriff or constable or sent by certified mail. The plaintiff decides how the notice will be served. The plaintiff pays in advance a filing fee totaling \$23.00, and the cost of serving the notice on the defendant. If the plaintiff wins, these costs are added to the judgment which the defendant must pay.

The plaintiff and defendant must appear in the court at the time shown on the notice. If the defendant does not appear, a judgment can be entered against him or her. If the defendant is not able to appear at the time set for trial, he or she should contact the court clerk before that time and explain why. The court may continue the trial to a later date if there is good reason. Mere inconvenience is never considered sufficient. The defendant has the right to file a counterclaim or setoff, but this must be done at least two days prior to the time of trial. In a counterclaim, the defendant says that the plaintiff is at fault rather than the defendant. In a setoff, the defendant says he or she may owe something, but that the plaintiff also owes something. If the amount of the counterclaim or setoff exceeds \$2,700 the case will be transferred to regular civil docket and handled with a regular civil lawsuit. The defendant may request that the case be transferred out of the Small Claims Court to the regular civil docket by filing and serving a notice of transfer at least two days prior to the time the case

is set for hearing. A transfer fee of \$19.00 will be assessed for either the transfer to the regular docket or a counterclaim in excess of \$2,700.

At the trial, both the plaintiff and the defendant may have witnesses to support their position. They can have other evidence produced in court, by a court order, if the other party refuses to bring it to court. Both may also present other evidence, such as contracts or cancelled checks. The responsibility for proving the case, and proving the amount of money or property owed, is that of the party making the claim.

If either party is not satisfied with the judge's decision, they may appeal to the district court where the case will be tried again. The formal rules of evidence and procedure will be used and the parties may have lawyers. Notice of appeal must be given within 30 days from the date of the judge's decision. When you file the notice of appeal you will be required to post an appeal bond in the amount of \$50.00. In addition, you will be required to pay the district court filing fee. If an appeal is filed and you desire to stop execution of the judgment against you, a supersedeas bond must be filed in the amount of the judgment plus costs.

It is the duty of the party who wins the case to collect the judgment--the property or money which the judge has granted to him or her. If the losing party does not voluntarily pay or agree to pay the judgment awarded, the party winning the lawsuit will have to start collection procedures. Use of an attorney is permitted in these collection procedures.

A pamphlet explaining Small Claims Court in more detail is available from the clerk of the county court.

Appendix 5

Manual Uniform Citation and Complaint Forms

- [5A](#) - Court Copy (front)
- [5B](#) - Court Copy (back)
- [5C](#) - Officer's Copy (back)
- [5D](#) - Prosecutor's Copy (back)
- [5E](#) - Defendant's Copy (back)

Electronic Uniform Citation and Complaint Forms

Waiverable

- [5F](#) - Court Copy
- [5G](#) - Officer's Copy
- [5H](#) - Prosecutor's Copy
- [5I](#) - Defendant's Copy

Nonwaiverable

- [5J](#) - Court Copy
- [5K](#) - Officer's Copy
- [5L](#) - Prosecutor's Copy
- [5M](#) - Defendant's Copy

Appendix 5 adopted September 20, 2006.

NEBRASKA RULES OF PLEADING IN CIVIL ACTIONS

Rule 1. Scope and Purpose of Rules

These Rules govern pleading in civil actions filed on or after January 1, 2003. They apply to the extent not inconsistent with statutes governing such matters.

These Rules shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

These Rules govern pleading in a forcible entry and detainer action only to the extent they are consistent with a court's jurisdiction over such actions and are not in conflict with law governing such actions.

Comment. The Rules are authorized by §§ 25-801.01 and 42-353. Jurisdiction to hear a forcible entry and detainer action is discussed in *Cummins Mgmt. v. Gilroy*, 266 Neb. 635, 667 N.W.2d 538 (2003).

Rule 1 amended May 19, 2004.

Rule 2. One Form of Action [Reserved]

Comment. The only form of action is a civil action. Section 25-101.

Rule 3. Commencement of Action [Reserved]

Comment. Section 25-501 provides that a civil action is commenced by filing a complaint in the office of the clerk of a proper court. The date an action is commenced for purposes of the statutes of limitations is defined by § 25-217.

Rule 4. Summons [Reserved]

Comment. Service of process is governed by Chapter 25, Article 5.

Rule 5. Serving and Filing Pleadings and Other Papers

(a) Service: When Required. Except as otherwise provided in these rules or by statute, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of a summons.

In an action begun by seizure of property, in which no person need be or is named as a defendant, any service required to be made prior to the filing of any answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

Comment. The second sentence of the first paragraph addresses only whether one party must serve papers on a party for whom no appearance has been entered. Section 25-1308 provides the procedure when a party is in default for failure to answer or for other reasons. Section 25-534 requires that an appearance include an address to which mail may be sent.

(b) Same: How made. [Reserved]

Comment. The method of service of papers after the complaint and summons is governed by § 25-534.

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing: Certificate of Service. All papers after the complaint required to be served upon a party (except Discovery Material), together with a certificate of service, must be filed in the office of the clerk of the court within a reasonable time after service. Neb. Ct. R. of Discovery 26(g) governs filing of all Discovery Material.

(e) Filing with the Court Defined. [Reserved]

Rule 6. Time

(a) Computation. [Reserved]

Comment. Computation of time and legal holidays are governed by § 25-2221.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect. The court may not extend the time for taking any action specified in any statute, except to the extent and under the conditions stated in the statutes.

(c) [Reserved]

(d) For Motions--Affidavits. [Reserved]

Comment. Motion practice is governed by Chapter 25, Article 9(d).

(e) Additional Time After Service by Mail. [Reserved]

Comment. Additional time after service by mail is governed by the last paragraph of § 25-534.

Rule 7. Pleadings Allowed; Form of Motions

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such, if the answer contains a counterclaim; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned as a third-party defendant; and a third-party answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

Comment. The initial pleading will be a petition when that designation is provided by statute. See § 25-801.01(2)(b).

A partial list of the proceedings in which the initial pleading is a "petition" includes a petition in error (see § 25-1903), probate procedure (see § 30-2209), protection from domestic abuse (see § 42-924), adoption (see § 43-102), actions under the juvenile code (see § 43-245 et seq.), workers' compensation actions (see § 48-173), Commission of Industrial Relations actions (see § 48-811), mental health commitments (see § 83-1001 et seq.), and judicial review of administrative action (see § 84-917). The initial pleading in an action for postconviction relief by a prisoner is a "verified motion" (see § 29-3001).

A separate rules defines the extent to which an action for grandparent visitation is governed by these rules (see § 43-1803 and the Rules adopted by the Supreme Court pursuant thereto).

(b) Motions and Other Papers. [Reserved]

Comment. Motion practice is governed by Chapter 25, Article 9(d).

(c) Demurrers, Pleas, Etc., Abolished. [Reserved]

Comment. See § 25-801.01(2)(c).

Rule 7(a) amended May 19, 2004.

Rule 8. General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a caption, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded. If the recovery of money be demanded, the amount of special damages shall be stated but the amount of general damages shall not be stated; and if interest thereon be claimed, the time from which interest is to be computed shall also be stated.

(b) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, a party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. The pleader may

make denials as specific denials of designated averments or paragraphs, may generally deny all the averments except such designated averments or paragraphs as are expressly admitted, or may controvert all the averments of the preceding pleading by general denial.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to value or the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleadings to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds. All statements shall be subject to the standards set forth in § 25-824.

(3) Construction of Pleadings. [Reserved]

Comment. See § 25-801.01(2)(d).

Rule 9. Pleading Special Matters

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Undue Influence, Condition of the Mind. In all averments of fraud, mistake, or undue influence, the circumstances constituting fraud, mistake, or undue influence shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

Rule 10. Form of Pleadings

(a) Caption: Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

Rule 11. Signing of Pleadings

(a) Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by an affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b)-(d) [Reserved]

Comment. Litigation that is frivolous or in bad faith is subject to sanctions under §§ 25-824 to 25-824.03.

Rule 12. Defenses and Objections--When and How Presented--by Pleading or Motion--Motion for Judgment on the Pleadings

(a) When Presented.

(1) A defendant shall serve an answer within 30 days after being served with the summons and complaint or completion of service by publication.

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 30 days after being served. A plaintiff shall serve a reply to a counterclaim in the answer within 30 days after being served with the answer, or, if a reply is ordered by the court, within 15 days after service of the order, unless the order otherwise directs.

(3) [Reserved]

(4) Unless a different time is fixed by court order, the service of a motion permitted under this rule alters these periods of time as follows:

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 20 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 20 days after the service of the more definite statement.

Comment. Subpart 4 defines the time in which a defendant must file an answer after the court denies a motion such as one raising the defense in subpart (b)(6), or after the plaintiff files an amended complaint in response to the grant of a motion for a more definite statement. The rules do not define the time in which a plaintiff must act if the court sustains a motion filed under subpart (b). If the defect can be corrected, such as by serving the summons and complaint again to remedy a defect in the attempt to serve process or by serving an amended complaint to remedy the failure to state a claim, the court must define the time in which plaintiff can act. If the defect cannot be corrected or the plaintiff does not correct the defect within the permitted time the court can render a judgment dismissing the action.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) lack of jurisdiction over the subject matter;
- (2) lack of jurisdiction over the person;
- (3) [reserved]
- (4) insufficiency of process;
- (5) insufficiency of service of process;
- (6) that the pleading fails to state a claim upon which relief can be granted;
- (7) failure to join a necessary party.

A motion making any of these defense shall be made before pleading if further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.

If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief.

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in §§ 25-1330 to 25-1336, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by statute.

Comment. Improper venue is not a ground for dismissal; the issue can be raised by a timely motion for transfer under § 25-403.01.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in §§ 25-1330 to 25-1336 and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by statute.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(2) and (4)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days or within such time as the court may fix, the court may strike the pleading or make such order as it deems just.

(f) Motion to Strike. Upon motion by a party before responding to a pleading, or if no responsive pleading is permitted by these rules, upon motion made by a party within 30 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Comment. This Rule authorizes a motion to strike a specific portion of a pleading. Section 25-913 authorizes a motion to strike an entire pleading.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

Comment. Subpart (g) promotes expeditious procedure by permitting the simultaneous presentation of defenses and objections by a single motion. Some defenses will be waived under subpart (h)(1) if they are omitted from a motion that is filed. Other defenses can be asserted in subsequent procedural steps under subpart (h)(2) if they are omitted from a motion that is filed. The opening clause of subpart (b) provides that any motion is optional and that all the defenses listed can be asserted in the responsive pleading.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a necessary party, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Comment. Under part (g) a motion to transfer an action to a court with proper venue pursuant to § 25-403.01 may be joined with a motion under this rule. As an alternative, it may be made timely and separately because improper venue is not listed as a defense that will be waived under the circumstances described in part (h)(1).

Rule 13. Counterclaim and Cross-Claim

(a) Counterclaims. A pleading may state as a counterclaim any claim which at the time of serving the pleading, the pleader has against an opposing party.

(b) Failure to Include Counterclaim; Effect in Subsequent Action. A party who does not assert a counterclaim that arises out of the transaction or occurrence that is the subject matter of an opposing party's claim cannot recover costs against that party in any subsequent action thereon.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the State and Political Subdivisions. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State of Nebraska, an officer or agency of the State, or a political subdivision of the State.

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after filing a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

Comment. Joinder of additional cross-claims is also governed by § 25-701.

(h) Joinder of Additional Parties. [Reserved]

Comment. Joinder of additional parties to a counterclaim or cross-claim is governed by § 25-705(4).

(i) Separate Trials; Separate Judgments. [Reserved]

Rule 14. Third-Party Practice [Reserved]

Comment. Third-Party Practice is governed by § 25-331.

Rule 15. Amended and Supplemental Pleadings

(a) Amendments. A party may amend the party's pleading once as a matter of course before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, the party may amend it within 30 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party, and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. [Reserved]

Comment. Relation back of amendments is governed by § 25-201.02.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or a defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

Rule 16. Pretrial Conferences; Scheduling; Management [Reserved]

Comment. See District Court Pretrial Procedure, Nebraska Supreme Court Rules, Page 12.1.

Adopted December 11, 2002; effective January 1, 2003.

GUIDELINES CONCERNING THE ADOPTION
OF THE SUPREME COURT RULES

I. Statement of Purpose

These guidelines are intended to aid the Supreme Court in the process of evaluation and enactment of Supreme Court rules covering the practice of law and the administration of the judicial system.

II. Definitions

In this rule, unless the context or subject matter otherwise requires:

A. "Official Supreme Court Rules" refer to the Revised Rules of the Supreme Court/Court of Appeals of the State of Nebraska and include official, published Supreme Court rules and regulations and amendments thereto of general application relating, inter alia, to pleading, practice, and procedure, and to the admission to practice, conduct, and discipline of attorneys at law.

B. "Miscellaneous Supreme Court Rules" refer to Supreme Court rules and regulations and amendments thereto, of general application, relating to the operation of the judicial system. Such rules and regulations include, but are not necessarily limited to, the Supreme Court Personnel Policies and Procedures, Judicial Qualifications Rules, Judicial Resources Commission Rules, Rules Relating to the Parenting Act, Grievance Procedure for ADA Complaints, and City or Village Ordinance Guidelines.

Rule II(A) and (B) amended October 14, 1999.

III. Rules Consideration

A. Requests to consider the creation, amendment, or repeal of any Supreme Court rule can be initiated by action of the Court or brought to any member of the Court, the Clerk of the Supreme Court, or the State Court Administrator by any interested party, unless an existing rule contains specific language providing for procedure for amendment. Such request shall be submitted in writing and on a disk in a Microsoft Word 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.

B. The Supreme Court may:

1. accept the request,
2. deny the request, or
3. defer action pending:
 - (a) additional comment from requestor,
 - (b) comment from staff or committee, or
 - (c) a formal written comment period.

C. In the case of deferral pending a formal written comment period, notification of the pending rules changes and solicitation of comment may be made in any publication(s) deemed advisable by the Supreme Court and notification of the pending rules requests and solicitations for comments may also be provided, as directed by the Court, to those identified as having a potential interest.

Any formal written comment period shall be for the period of time specified by the Court in such notification.

D. At the completion of the comment period established above, the Court may accept, reject, or modify the rules request under discussion; the Court may request further written comment as provided in item III(C) of this rule; or the Court may on its own motion or on the request of an interested party hold a public hearing on the rules change sought.

E. If the Supreme Court determines to hold a public hearing on a proposed rules change, notification shall be given in the same manner as specified by item III(C) of this document. Such notification shall also contain the time and place scheduled for the hearing and the method by which the entire proposed rule change can be secured.

F. Upon completion of the procedures set forth above, and prior to Supreme Court consideration for initial approval, such rule or amendment shall, unless otherwise directed by the Court, be reviewed by the Supreme Court Staff Attorney for any comments or recommendations to the Court. Upon report by the Staff Attorney and consideration of all other relevant materials, the Court shall approve or deny the requested rule or amendment.

After Court approval of a change or amendment to the "Official Supreme Court Rules," the approved revision shall be forwarded to the Reporter of Decisions Office for editing. If expressly directed by the Court, the Reporter shall also edit any "Miscellaneous Supreme Court Rule" which has been approved for change or amendment. The Reporter shall thereafter return the edited version of the rule or amendment to the Court for final adoption.

Rule III(A), (B), and (C) amended October 14, 1999; Rule III(F) adopted October 14, 1999; Rule III(A) amended June 5, 2002.

IV. Rules Publication and Distribution

After adoption by the Court of any change in the "Official Supreme Court Rules," the Reporter of Decisions Office shall make changes to the printed rules and the Reporter shall thereafter submit such changes to the Clerk of the Supreme Court. Changes adopted by the Court to any "Miscellaneous Supreme Court Rules" shall be made by the designated employee of the Court Administrator's Office. Supreme Court rules, recent amendments, and pending proposed amendments are available on the Supreme Court's website at <http://court.nol.org>. Any person requesting a complete or partial copy of the Court's rules from the Clerk of the Supreme Court may be charged a fee as established by the Supreme Court and postage required for mailing such rules.

All changes to the "Official Supreme Court Rules," except for minor grammatical or editorial changes, shall be published in the Nebraska Advance Sheets. Changes to any "Miscellaneous Supreme Court Rules" may be published as directed by the Court.

Rule IV amended October 14, 1999; Rule IV amended June 5, 2002.

V. Contents

The published rules of the Supreme Court shall contain all formal rules of the Supreme Court either in fact or by reference, unless otherwise directed by the Court.

Rule V amended October 14, 1999.

VI. Limitations

Nothing in this rule shall act to limit the Supreme Court from enacting such rules or adopting such orders as it deems necessary on an emergency basis.

RULE OF LEGAL PRACTICE BY APPROVED SENIOR LAW STUDENTS

I. PURPOSE. The purpose of this rule is to provide senior law students with supervised practical training in the practice of law during the period of their formal legal education.

II. ACTIVITIES. An eligible law student may engage in the following activities:

A. Appear and participate in:

1. Trials in civil matters in Workers' Compensation Court, county courts, and district courts in this State when acting under the general supervision of an attorney duly admitted to practice in Nebraska. Any such appearance in Workers' Compensation Court, county courts, and district courts must be in the personal presence of the supervising attorney, except that the county court judge, may waive the requirement of personal presence of a supervising attorney in specific cases for an eligible law student who has previously participated in a trial in that court in the personal presence of the supervising attorney. For the purposes of this rule, proceedings to enforce a penalty for violation of a municipal ordinance shall be deemed criminal in nature.

2. Criminal matters in all courts when acting under the general supervision of an attorney duly admitted to practice in Nebraska who is defending any case in these courts. Such appearance must be in the personal presence of the supervising attorney.

3. Criminal matters in all courts when acting as an assistant to a county attorney, deputy county attorney, or other prosecuting official duly admitted to practice in Nebraska. Such appearance must be in the personal presence of the supervising attorney.

4. Postconviction and habeas corpus matters in all courts when acting under the general supervision and in the personal presence of a lawyer admitted to practice in Nebraska who is prosecuting or defending such a case.

5. Juvenile matters when acting under the general supervision of an attorney duly admitted to practice in Nebraska who is prosecuting or defending such case. Any such appearance must be in the personal presence of the supervising attorney.

B. Hold consultations and prepare pleadings, briefs, and other documents to be filed in any matter in which the student is eligible to appear, when acting under the general supervision of an attorney duly admitted to practice in Nebraska. Such pleadings, briefs, and other documents must be signed by the supervising attorney but may also set forth the name of the eligible law student who has participated in preparation of the document(s).

C. Prepare briefs and other documents to be filed in the Nebraska Court of Appeals and the Supreme Court of Nebraska, but such briefs or other documents must be prepared under the general supervision of and signed by an attorney duly admitted to practice in Nebraska. Each such instrument may set forth the name of the eligible law student who has participated in preparation of the document(s).

D. Participate in oral argument in the Nebraska Court of Appeals and the Supreme Court of Nebraska, but only in the personal presence of an attorney of record in the case and only with the prior approval of the Court.

Rule II(C) and (D) amended November 22, 2000.

III. REQUIREMENTS AND LIMITATIONS. To become eligible to participate in legal activities pursuant to this rule, a law student must:

A. Be duly enrolled in a law school approved by the American Bar Association. A law student will be considered duly enrolled during the period of his law school's next summer vacation period following completion of the requirements of paragraph III B below.

B. Have completed legal studies sufficient to have attained senior standing at his or her law school.

C. Be certified by the dean of his or her law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern under the general supervision of the attorney or attorneys designated by name.

D. Be introduced to the court in which he or she is appearing by an attorney duly admitted to practice in that Court.

E. Receive the affirmative consent of the court in which he or she is appearing to appear before it.

F. Not ask for or receive any compensation or remuneration of any kind for his services directly from the client on whose behalf he renders services. This provision is not intended to preclude the supervising attorney from compensating the eligible law student nor to prevent the supervising attorney from receiving a fee from the client for the services performed in compliance with the otherwise applicable rules of proper professional conduct.

Rule III(B) amended May 20, 1992.

IV. SUPERVISION. The lawyer under whose supervision an eligible law student engages in any of the activities permitted by this rule shall:

A. Be duly admitted to practice law in Nebraska.

B. Assume personal professional responsibility to the client for the services performed by the law student.

C. Secure the prior written consent of the client for the services actually to be performed in court by the law student.

D. Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.

E. Assist the student in his or her preparation to the extent the supervising lawyer considers it necessary.

V. CERTIFICATION. The certification of a student by the law school dean:

A. Shall be filed with the Clerk of this Court and, unless it is sooner withdrawn, shall terminate if the student does not take the first bar examination following his or her graduation, or if the student takes such bar examination and fails it, or if he or she is admitted to full practice before this court.

B. May be withdrawn by the dean at any time by mailing a notice thereof to the Clerk of this Court. It is not necessary that the notice state the cause for withdrawal.

C. May be terminated by this Court at any time without prior notice and without any showing of cause.

Rule V(A) amended September 25, 2002.

VI. MISCELLANEOUS. Nothing contained in this rule shall affect the right of any person who is not admitted to practice law in Nebraska to do anything that he or she might lawfully do prior to the adoption of this Rule.

GUIDELINES FOR USE BY NEBRASKA COURTS IN DETERMINING WHEN
AND UNDER WHAT CONDITIONS A HEARING BEFORE SUCH COURT
MAY BE CLOSED IN WHOLE OR IN PART TO THE PUBLIC

The purpose of these guidelines is to aid judges of the courts of Nebraska in determining whether a proceeding may be closed from the general public, in whole or in part.

In formulating such guidelines it must be kept in mind that as a general principle it is the view of the judiciary of the State of Nebraska that proceedings should be open to the public at all times and only closed, in whole or in part, where evidence presented to the court establishes that by permitting all or part of the proceeding to remain open to the public, a party's right to a fair trial will be substantially and adversely affected and there are no other reasonable alternatives available to protect against such substantial and adverse effect.

We therefore establish the following guidelines to aid judges of the courts of the State of Nebraska in determining whether a judicial proceeding of any type should be closed, in whole or in part.

1. Except as otherwise specifically provided by law or by these guidelines, the general public should not be excluded from a legal proceeding of any type or nature, including a pretrial criminal hearing, suppression hearing, or trial on the merits.

2. Except as otherwise provided herein, upon motion of the defendant or one standing in the position of a defendant, even if known by another name and hereinafter called defendant, the court may consider excluding the general public from all or a portion of a proceeding at which:

(a) the voluntariness of a confession may be seriously disputed and the admissibility of the confession will be a material issue either at the preliminary proceeding then before the court, or at a subsequent hearing, including the trial on the merits, and the court finds based upon evidence adduced that permitting the general public to be present during such proceeding is likely to result in substantially injuring or damaging the accused's right to a fair proceeding and that no other reasonable alternative exists to assure the defendant of a fair trial, or

(b) the defendant is seeking to suppress evidence allegedly obtained illegally and the court finds based upon evidence adduced that permitting the general public to be present during such proceeding is likely to result in substantially injuring or damaging the accused's right to a fair proceeding and that no other reasonable alternative exists to assure the defendant of a fair trial.

(c) If the court believes that by permitting the general public to be present at either of the hearings noted in subparagraph (a) or (b) above, the defendant may be denied a fair trial, and the defendant has not moved for closure, the court shall inquire of the defendant, on the record, whether the defendant desires to hold all or a part of such proceeding with the public present. If the defendant elects to hold such hearing with the public present, the court shall so proceed after noting the defendant's election on the record. If the defendant, however, elects to close all or a portion of such proceeding and so advises the court, it shall be as if the defendant has so moved and all of the provisions of these guidelines shall apply.

3. Before determining to close such proceedings, in whole or in part, the court shall give reasonable notice to all parties to the proceedings and such other persons who have advised the clerk of the court in writing, in advance of a specific trial, of their desire to be notified if such a motion is presented and is to be considered by the court. In giving such notice, the court will advise all such persons of the time and place when hearing on the motion shall be heard and shall afford all interested persons, including the general public, a reasonable opportunity to be present and prepare for such hearing.

4. If the trial court determines after hearing that permitting the general public to hear such matters under consideration will result in a substantial likelihood of injury or damage to the accused's right to a fair trial and no other reasonable alternative for assuring a fair trial exists, the trial court may exclude the general public from such proceeding. To the extent that the trial court can isolate the testimony concerning such matter from other matters presented to the court at the same time, the general public should be excluded only from that portion of the hearings in which such matter is being considered or evidence taken.

Upon entering an order of closure, the court shall articulate written findings as follows:

(a) that the evidence establishes an adequate basis to support a finding that there is a substantial likelihood that irreparable damage to the accused's right to a fair trial will result from conducting the questioned proceedings in public,

(b) that a substantial likelihood exists that reasonable alternatives to closure will not adequately protect the accused's right to a fair trial, and

(c) there is a substantial likelihood that closure will be effective in protecting against the perceived harm.

The burden of establishing such facts shall be upon the moving party.

Except as otherwise provided by law, all matters heard by the court after the general public has been excluded shall nevertheless be on the record and shall be made available for public inspection within a reasonable time after a final judgment or verdict in the case has been rendered.

5. The court may receive preliminary evidence concerning the matters noted in paragraph 4 above in camera, in the presence of counsel for the parties and such other members of the public who have requested the right to be present.

Persons desiring to be present not represented by counsel shall be considered as appearing Pro Se and shall be bound by the orders of the court in regard to such hearing.

A record shall be made of the hearing in camera. The trial court may order such proceedings sealed until after a final judgment or verdict in the trial court has been rendered. The fact that the case in chief is pending on appeal before the Supreme Court of Nebraska shall not prevent the previously sealed tape from being made available to the public upon request. The sealed record, however, shall be made available for purposes of review by the Supreme Court or other court of competent jurisdiction pertaining to the decision to close the proceedings, in whole or in part.

6. Nothing in these guidelines shall be construed, however, to limit the powers of the courts to maintain decorum by ordering unruly spectators removed from the courtroom, or by reasonably limiting the number of spectators, or by exercising similar powers of judges at common law, nor shall anything in these guidelines require a judge to exclude the general public from any such proceedings if, after considering such matter, the trial court concludes that permitting the general public to be present will not create a substantial likelihood of injury or damage to the accused's right to a fair hearing. The fact that an accused or other witness may be embarrassed or be subject to public ridicule by reason of the public being present shall not be grounds upon which to close such matters, it being the intention of these guidelines to prescribe extremely limited situations under which courts shall be closed to the general public and otherwise establish a general policy of permitting courts to be open to the general public, consistent with the accused's constitutional rights to a fair hearing.

NEBRASKA SUPREME COURT RULES FOR
RELEASE, SUBSTITUTION, AND DISPOSAL OF EXHIBITS

(1) The clerks of the various courts or the official court reporters are authorized to release, under the following conditions, any exhibit offered or received in evidence in any civil, criminal, or juvenile proceeding:

(a) Upon request of an introducing attorney or owner, release to such introducing attorney or owner at any time during or after trial, if request is made during trial to substitute a copy and permission is granted by the court to do so.

(b) Upon request of an introducing attorney or owner, release to such introducing attorney or owner at any time after trial or following expiration of appeal time, provided it is stipulated in writing that a copy shall be substituted, or if, in the absence of such a stipulation, the judge who tried the case, or if such judge is unavailable the current presiding judge, determines such substitution to be unnecessary.

(c) When, in compliance with Supreme Court rules governing preparation of bills of exceptions, counsel shall substitute photographs or mechanical drawings and descriptions for any large or cumbersome exhibits where such would fairly present such exhibits to the appellate court.

(2) The clerks of the various courts or the official court reporters are authorized to dispose of any exhibits or substitutes which have not been released pursuant to (1) above according to the applicable Records Retention and Disposition Schedules of the State Records Administrator.

(3) Exhibits first shall be sought to be returned to the attorneys who introduced them, if possible, or to the owners, if they can be determined. Questions as to ownership of exhibits shall be submitted to the judge who tried the case, or to the presiding judge. Attorneys or owners of exhibits shall be notified to remove them; in the event of their failure to do so within 30 days, or if the attorneys or owners are not available or cannot be determined, the exhibits shall be disposed of or destroyed as ordered by the judge who tried the case, or the presiding judge.

(4) Nothing herein shall restrict or contravene the discretion given to a court to dispose of exhibits under Neb. Rev. Stat. § 24-1004, or in requiring compliance by all parties with Neb. Rev. Stat. §§ 84-1201 to 84-1220, and nothing herein shall restrict a court from requiring retention of exhibits in any instance for a period of time in excess of that in the applicable Records Retention and Disposition Schedules of the State Records Administrator.

RULES RELATING TO USE OF NEBRASKA STATE LIBRARY

1. General Use. The general public may use at the library premises and during regular library hours the material housed in the Nebraska State Library and may, at the user's expense, photocopy library materials in accordance with the copyright laws, utilizing photocopy equipment located on the library premises.

Rule 1 amended February 26, 2003.

2. Special Use.

(a) State Senators, Justices of the Supreme Court, Judges of the Court of Appeals, Directors of State agencies, and the Attorney General, and members of their respective staffs, may check out and use away from the library premises for a period of no more than 10 days any material required in the performance of their duties; provided, however, that the librarian shall call for its return sooner if the material checked out is needed by a State Senator, Justice of the Supreme Court, or Judge of the Court of Appeals.

(b) Unless return is requested sooner by the librarian, the following material may be checked out from the library and used away from the library premises by members of the Nebraska State Bar Association for a period of not more than 5 days:

- American Jurisprudence Proof of Facts
- American Jurisprudence Trials
- Bound Periodicals
- Bound Federal Register
- Nebraska Continuing Legal Education Seminar Manuals
- Advance Sheets (retired)
- State Reports, Nebraska excluded
- Code of Federal Regulations (retired)
- Treatises
- U.S. Government Publications, not otherwise designated

(c) Members of the Nebraska State Bar Association may check out the following materials for no more than 1 day:

- American Jurisprudence 2d
- American Jurisprudence Pleading and Practice Forms
- American Law Reports
- BNA Tax Management Portfolios
- Code of Federal Regulations (current)
- Corpus Juris Secundum
- Legal Forms Books
- Looseleaf Services (BNA & CCH)
- Nebraska Briefs
- Nebraska How to Practice Manuals
- Nebraska Jury Instructions
- Personal Injury Valuation Handbooks
- State and Federal Court Rules
- State Jury Instructions
- U.S. Code Service
- Unbound Periodicals
- State Statutes, Session Laws, Nebraska excluded
- Unbound Federal Register
- Words and Phrases

(d) Materials not specified in subparagraphs (b) and (c) above may not be checked out by anyone other than those users specified in subparagraph (a) above.

Rule 2 amended January 19, 1995; amended February 26, 2003.

3. Checkout Procedures. The librarian shall devise a checkout system which ensures that the identity of the material checked out and the name, address, and telephone number of the user who checked it out are known at all times.

Rule 3 amended February 26, 2003.

4. Renewals. Checkout of materials specified in subparagraph (b) above may be renewed for one additional 5-day period, unless the material is called for by the librarian. Checkout of materials specified in subparagraph (c) above may not be renewed.

Rule 4 adopted February 26, 2003.

5. Timely Return in Good Condition. Failure to make timely return of items in good condition may result in the loss of checkout privileges.

Rule 5 (previously numbered Rule 4) amended February 26, 2003.

6. Public Computers and Internet Access.

(a) Purpose. The Nebraska State Library provides current, comprehensive, and efficient resources for legal information, allowable within its budget, to the Nebraska Judiciary, the legal community, and the public. The purpose of this rule is to ensure that Nebraska State Library users have reasonable access to the library's electronic resources while respecting the rights of others.

(b) Disclaimer. Patrons access Nebraska State Library computers at their own risk. Legal information may be inaccurate, out of date, or incomplete. Users of the computers are encouraged to exercise caution and critical judgment in evaluating the validity of information accessed via the Internet. Users of the library computers shall have no expectation of privacy while using the resources. The Nebraska State Library assumes no responsibility for damages, direct or indirect, arising from the use of the computers.

(c) Acceptable Uses.

(1) Nebraska State Library public computers and Internet access are provided to conduct legal research or to retrieve federal, state, or local government documents.

(2) E-mail accounts may be used to send legal research results to the user's home or office.

(3) More than one person may share a computer terminal as long as it is by mutual agreement and their behavior and conversation do not disturb other library users or library staff.

(4) Children under the age of 18 may use the computers to research a legal issue only with the permission of library staff.

(d) Unacceptable Uses.

(1) Nebraska State Library computers may not be used for any purpose that violates federal, state, or local laws, including violation of applicable laws pertaining to intellectual property.

(2) Nebraska State Library computers may not be used to add, modify, change, alter, damage, download, save, upload, evade, or otherwise interfere or change any established computer hardware, software, security, or other computer system.

(3) Nebraska State Library computers may not be used for non-research purposes, such as e-mail, chat rooms, games, pornography, commercial activities, solicitation of funds, or product sales.

(4) Nebraska State Library computers may not be used to engage in any illegal purpose, including, but not limited to, hacking, misrepresentation, harassment, slander, or the intimidation or threatening of another person or entity.

(5) Nebraska State Library computers may not be shut off or restarted by users.

(e) Time. Terminals are available on a first come, first serve basis. Research periods are limited to 30 minutes if someone is waiting to use the terminal. Users are requested to be considerate of the patrons waiting to use the terminal.

(f) Right to Privacy. All library users are expected to respect the privacy of those using the Nebraska State Library public computers and not interfere with their use. Public computer workstations are located in open areas where others may see words or images that appear on the computer monitors. Users must be aware that this public environment precludes any guarantee of privacy.

(g) Printing. Printing costs 10 cents per printed page. Printed materials may be picked up and paid for at the library's front desk.

(h) Enforcement of Policy. Users who engage in illegal activities on the Internet will be reported to the appropriate authorities. Failure to use Nebraska State Library public computers and Internet access appropriately and in accordance with this rule may result in:

(1) Suspension of equipment use privileges; and/or

(2) Suspension of access to the Nebraska State Library.

Each Library staff person has the authority and responsibility to enforce this rule.

Rule 6 adopted November 30, 2005.

PROFESSIONAL SERVICE CORPORATIONS

I.

Any professional service corporation organized under this rule prior to December 1, 1999, and operating in accordance with the provisions of this rule, may continue to operate hereunder until such corporation chooses to incorporate under the Nebraska Supreme Court Rule for Limited Liability Professional Organizations provided that such professional corporation has not been suspended or dissolved by the Secretary of State, in which case the professional corporation must amend or restate its articles of incorporation to comply with the provisions of the Limited Liability Professional Organizations rule. The articles of incorporation of any professional corporation operating in accordance with this rule shall contain provisions complying with the following requirements:

A. The corporation shall be organized solely for the purpose of conducting the practice of law only through persons qualified to practice law in the State of Nebraska.

B. The corporation may exercise the powers and privileges conferred upon corporations by the law of Nebraska only in furtherance of and subject to its corporate purpose.

C. All shareholders of the corporation shall be persons duly licensed by the Supreme Court of the State of Nebraska to practice law in the State of Nebraska, and who at all times own their shares in their own right.

D. Provisions shall be made requiring any shareholder who ceases to be eligible to be a shareholder to dispose of all his or her shares forthwith either to the corporation or to any person having the qualifications described in paragraph C above.

E. The president shall be a shareholder and a director, and all other directors and officers shall be persons having the qualifications described in paragraph C above.

F. The articles of incorporation shall provide, and all shareholders of the corporation shall be deemed to agree by virtue of becoming shareholders or members, that all shareholders or members shall be jointly and severally liable to the extent that the assets of the corporation are insufficient to satisfy any liability incurred by the corporation for the acts, errors, and omissions of the shareholders or members and other employees of the corporation or association arising out of the performance of the professional services by the corporation or association while they are shareholders or members to the same extent as if the shareholders were practicing in the form of a general partnership.

G. A corporation which discontinues the practice of law may nevertheless continue in operation for an additional period of up to 2 years for the purpose of dissolving and winding up the administrative business of the firm.

Rule I(E) amended April 24, 1996; Rule I amended June 16, 1999; Rule I amended June 28, 2000.

II.

A. A copy certified by the Secretary of State of the articles of incorporation of any corporation formed pursuant to this rule shall be filed with the Clerk of the Supreme Court of Nebraska, together with a certified copy of all amendments thereto. At the time of filing the original articles with said Clerk, the corporation shall file with said Clerk a written list of shareholders setting forth the names and addresses of each and a written list containing the names and addresses of all persons who are not shareholders who are employed by the corporation and who are authorized to practice law in Nebraska. Within ten days after any change in such shareholders or employees, a written list setting forth the information required by

the preceding sentence shall be filed with said Clerk. The position in the professional corporation of each person identified in the firm name shall be stated.

B. The corporation shall do nothing which if done by an attorney employed by it would violate the standards of professional conduct established for such attorney by this Court. The corporation shall at all times comply with the standards of professional conduct established by this Court and the provisions of this rule. Any violation of this rule by the corporation shall be grounds for the Supreme Court to terminate or suspend its right to practice law.

C. Nothing in this rule shall be deemed to diminish or change the obligation of each attorney employed by the corporation to conduct his or her practice in accordance with the standards of professional conduct promulgated by this Court; any attorney who by act or omission causes the corporation to act or fail to act in a way which violates such standards of professional conduct, including any provision of this rule, shall be deemed personally responsible for such act or omission and shall be subject to discipline therefor.

D. Nothing in this rule shall be deemed to modify the attorney-client privilege specified by statute, and any comparable common-law privilege.

Rule II(A) amended March 13, 1996; Rule II(A) amended February 25, 1998.

III.

Any such corporation may adopt a pension, profit-sharing (whether cash or deferred), health and accident, insurance or welfare plan for all or part of its employees including lay employees, providing that such plan does not require or result in the sharing of specific or identifiable fees with lay employees and any payments made to lay employees or into any such plan in behalf of lay employees are based upon the lay employees' compensation or length of service or both rather than the amount of fees or income received.

IV.

Except as provided by this rule, corporations shall not practice law.

This rule shall not apply to organizations offering prepaid legal services to a defined and limited class of clients; to nonprofit charitable or benevolent organizations organized and operating primarily for a purpose other than the provision of legal services and which furnish legal services as an incidental activity in furtherance of their primary purpose; or to nonprofit organizations which have as their primary purpose the furnishing of legal services to indigent persons; provided that (1) the legal work serves the intended beneficiaries of the organizational purpose, (2) the staff attorney responsible for the matter signs all papers prepared by the organization, and (3) the relationship between the staff attorney and client meets the attorney's professional responsibilities to the client and is not subject to interference, control, or direction by the organization's board or employees except for a supervising attorney licensed to practice law in Nebraska.

Rule IV amended December 24, 1997; Rule IV amended July 13, 2005, effective September 1, 2005.

RULE REQUIRING APPROVAL OF CERTAIN RULES
OF PRACTICE BY THE SUPREME COURT

Each separate juvenile court and the Workers' Compensation Court, by action of a majority of its judges, may from time to time recommend rules of practice concerning matters which are not inconsistent with any directive of the Supreme Court or statutes of the State of Nebraska. 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, copies thereof shall be made available to the bar and public through the office of the clerk of the court recommending the rules.

Amended May 24, 1995; amended September 17, 1997.

TRUST ACCOUNTS AND BLANKET BONDS RULES

Rule 1. Definitions.

A. The following definitions shall apply to the Trust Accounts and Blanket Bonds Rules:

(1) "Financial Institution" includes any state or federally chartered bank, savings bank, savings and loan association, or building and loan association insured by the Federal Deposit Insurance Corporation.

(2) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

(3) "Notice of dishonor" refers to the notice which a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument which the institution dishonors.

Rule 2. General Provisions.

All lawyers admitted to practice on active status (defined as Regular Active, Junior Active, Senior Active, or Military Active) with an office in the State of Nebraska shall have and maintain a trust account in a financial institution for the deposit of funds of clients unless such lawyer is a member of the Nebraska judiciary, or does not reasonably expect that he or she will receive into his or her hands funds of clients. Lawyer trust accounts shall be maintained only in financial institutions approved by the Counsel for Discipline of the Nebraska Supreme Court as set forth in Rule 4.

Rule 2 amended November 12, 2007.

Rule 3. Interest-Bearing Trust Accounts.

A. Except as may be authorized hereinafter, interest earned on insured trust accounts (less any deduction for service charges, fees of the financial institution, and intangible taxes collected with respect to the deposited funds) shall belong to the clients whose funds have been so deposited, and the lawyer or law firm shall have no right or claim to such interest.

B. Unless an election not to do so is submitted in accordance with the procedure set forth in Rule 3C, a lawyer or law firm shall maintain an interest-bearing insured trust account for clients' funds which are nominal in amount or are expected to be held for a short time in compliance with the following provisions:

(1) No earnings from such an account shall be made available to a lawyer or law firm.

(2) The account shall include only clients' funds which are nominal in amount or to be held for a short period of time.

(3) Funds in each interest-bearing account shall be subject to withdrawal upon demand, subject only to any notice period which the financial institution is required to reserve by law or regulation.

(4) The rate of interest payable on any interest-bearing trust account shall be the same rate of interest paid by the financial institution for all other holders of similar accounts. Interest rates higher than those offered by the financial institution on regular or savings accounts may be obtained by a lawyer or a law firm on some or all of the deposited funds so long as there is no impairment of the right to withdraw or transfer principal immediately, subject only to any notice period which the financial institution is required to reserve by law or regulation.

(5) Lawyers or law firms electing to deposit client funds in an interest-bearing trust account shall direct the financial institution:

(a) To remit interest or dividends, as the case may be, at least quarterly to the Nebraska Lawyers Trust Account Foundation (hereinafter Foundation); and

(b) To transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm, the trust account number, and the interest rate for whom the remittance is sent; and

(c) To transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation.

(6) The interest or dividends received by the Foundation shall be used by the Foundation solely for the support of the Legal Aid of Nebraska program. Such income shall be applied only to activities permitted to be conducted by organizations exempt from taxation under § 501(c)(3) of the Internal Revenue Code of 1986, as from time to time amended.

(7) This rule may be subsequently amended to effectuate its purposes or to comply with any amendments to the Internal Revenue Code or new interpretations by the Internal Revenue Service or the courts.

C. A lawyer or law firm that elects to decline to maintain accounts described in Rule 3B(5) shall submit a Notice of Declination in writing to the Chief Justice of the Supreme Court or his or her designee by February 15 of the year to which the Notice of Declination will apply.

(1) Notwithstanding the foregoing, any lawyer or law firm may petition the Court at any time and, for good cause shown, may be granted leave to file a Notice of Declination at a time other than those specified above. An election to decline participation may be revoked at any time by filing a request for enrollment in the program.

(2) A lawyer or law firm that does not file with the Chief Justice of the Supreme Court a Notice of Declination in accordance with the provisions of this rule shall be required to maintain an account in accordance with Rule 3B(5).

(3) The Board of Directors of the Nebraska Lawyers Trust Account Foundation may take all action necessary at any time to exempt a lawyer, law firm, or trust account otherwise participating in the program where in the Board's judgment such participation would be administratively or economically unreasonable, burdensome, or counterproductive to the purposes of the program.

Rule 3B(5)(b) and (6) amended November 15, 2007.

Rule 4. Trust Account Overdraft Notification Rules.

A. The trust account overdraft notification rules shall become effective on July 1, 2002.

B. A financial institution shall be approved as a depository for lawyer trust accounts if it shall file with the Counsel for Discipline of the Nebraska Supreme Court an agreement, in a form provided by the Counsel for Discipline, to report to the Counsel for Discipline, in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Counsel for Discipline shall establish rules governing approval and termination of approved status for financial institutions and shall annually publish a [list of approved financial institutions](#).

C. No trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon 30 days' notice in writing to the Counsel for Discipline.

D. The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor. The financial institution shall provide a copy or machine readable copy of the dishonored instrument, if the instrument is available to the financial institution, to the Counsel for Discipline within 5 banking days of receiving a written request for a copy of the instrument from the Counsel for Discipline; and

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

E. Such reports shall be delivered by mail, electronically, or otherwise to the Office of the Counsel for Discipline of the Nebraska Supreme Court within 5 banking days of the date on which an instrument is dishonored. If an instrument presented against insufficient funds is honored, then the report shall be delivered by mail, electronically, or otherwise to the Office of the Counsel for Discipline of the Nebraska Supreme Court within 5 banking days of the date of presentation for payment against insufficient funds.

F. Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

G. Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

Rule 5. Trust Account Affidavit Rules.

A. A lawyer who is associated with a law firm, which for purposes of this rule shall include firms that operate as a limited liability professional organization, a partnership, a professional service corporation, or a nonprofit legal services organization, shall be considered to have and maintain a trust account if his or her law firm maintains a trust account as specified in Rule 2. Further, a single affidavit, as required by Rule 5C, may be filed by a law firm on behalf of all attorneys in the firm.

B. A nonresident lawyer who is admitted to practice before the courts of this State on a case-by-case basis shall be exempt from the requirements of these rules.

C. Each lawyer admitted to practice on active status (defined as Regular Active, Junior Active, Senior Active, or Military Active) with an office in the State of Nebraska shall file with the Nebraska State Bar Association the affidavit attached to this rule as Appendix 1 stating the existence of the trust account required under Rule 2 or, in the alternative, that he or she does not now have and does not reasonably expect to have funds of clients come into his or her hands within the next 12 months. Members of the Nebraska Judiciary need not complete the affidavit. The Nebraska State Bar Association shall provide a place on the annual dues statement where a member can indicate that an affidavit has been previously submitted, that the information contained in that affidavit remains current, and that the member consents to the financial institution(s) at which the trust account(s) are maintained complying with the reporting and production requirements mandated by these rules. Those lawyers maintaining trust accounts shall also provide on their affidavit the name and address of the financial institution where the account is maintained, the account number, and the name and address of all persons authorized to sign checks or

make withdrawals on the account. If an existing trust account is closed or a new account opened, an updated affidavit shall be filed by any such attorney within 30 days providing the reason for closing of an account, as well as the specified information on any new account, and a copy of such updated affidavit shall be provided to the Nebraska Lawyers Trust Account Foundation.

D. Any lawyer who has filed an affidavit that he or she does not reasonably expect to have funds of clients come into his or her hands within the next 12 months but who does receive clients' funds shall forthwith establish a trust account for the deposit and maintenance of such funds.

Rule 5(C) amended March 29, 2006; Rule 5(A) and (C) amended November 15, 2007.

Rule 6. Trust Account Audit Rule.

The Counsel for Discipline of the Nebraska Supreme Court, or such counsel's representative authorized in writing, shall have access to the affidavits required in Rule 5 and shall have the power to audit at any time any trust account required by these rules.

Rule 7. Purpose of Rules.

A. These rules shall not affect the Client Assistance Fund, its rules, procedures, structure, or operation in any way; nor shall the adoption of these rules make the Nebraska State Bar Association, its officers, directors, representatives, or membership liable in any way to any person who has suffered loss by theft, misappropriation, or fraud by a lawyer. These rules are adopted solely for the purposes stated herein and not for the purpose of making the Nebraska State Bar Association, its officers, directors, representatives, or membership insurers or guarantors for clients with respect to funds of clients which come into the hands of their lawyers.

B. These rules do not create a claim against a financial institution or its officers, directors, employees, and agents for failure to provide a trust account overdraft report or for compliance with any provision of these rules.

[APPENDIX 1](#) - Affidavit (PDF)

Trust Accounts and Blanket Bonds Rules and Appendix amended and readopted September 19, 2001; Appendix 1 amended March 29, 2006; Appendix 1 amended November 15, 2007.

TRUST ACCOUNT AFFIDAVIT

STATE OF NEBRASKA)
) ss. AFFIDAVIT
County of _____)

_____, BEING FIRST DULY SWORN ON OATH, STATES AS FOLLOWS:
(Print Name Here)

I am an attorney duly licensed to practice law in the State of Nebraska, and I am familiar with the provisions of the Nebraska Supreme Court Rules concerning Trust Accounts, Rule 1.15 of the Nebraska Rules of Professional Conduct, and Trust Account Overdraft Notifications, requiring:

- 1) that all lawyers holding funds of clients or third persons must maintain a separate account for such funds (commonly known as a trust account)
2) that every lawyer maintaining a trust account must participate in the Interest On Lawyers Trust Account (IOLTA) Program unless a written Notice of Declination is submitted to the Chief Justice of the Supreme Court by February 15 of the year to which the Notice of Declination will apply
3) certain reporting and production by approved financial institutions in regard to overdrafts of trust accounts

[] I am exempt from the provisions of these rules because I do not maintain a trust account and I handle no funds of clients or third persons and do not expect to receive funds of clients or third persons within the next twelve (12) months.

[] I, or my firm, do maintain one or more trust accounts for the deposit of funds from clients or third persons. I will participate in the Interest On Lawyers Trust Accounts (IOLTA) Program for the accounts listed below that are specifically identified as IOLTA accounts. I certify that the following information pertaining to said accounts is true and accurate, and grant the following authorizations.

Table with 4 columns: BANK NAME & ADDRESS, NAME ON ACCOUNT, ACCOUNT NO., IOLTA (Please circle) Yes No*. It contains three rows of blank lines for account information.

* Circling "No" requires a filing be made pursuant to Rule 3C of the Trust Accounts and Blanket Bonds Rules to effect a declination.

Below: List names and addresses of all persons authorized to sign checks or make withdrawals on each account.

Authorization to Financial Institutions

IOLTA Participation: I hereby authorize any financial institution in which I maintain a trust account for client funds or third persons to automatically, and without further documentation, convert my trust account described above to an interest-bearing IOLTA account subject to the provisions of the Nebraska Supreme Court Rules. In summary, the financial institution is specifically authorized and directed to remit the interest earned, less customary services or charges, to the Nebraska Lawyers Trust Account Foundation. The Taxpayer Identification Number certification (IRS Form W-9 and 1099 information returns), if required, will show the Nebraska Lawyers Trust Account Foundation, PO Box 95103, Lincoln, NE 68509, Taxpayer I.D. No. 36-3357241, as the recipient of interest.

Automatic Notice of Trust Account Overdrafts: I hereby consent to the release by the banking institution referenced above of information associated with the trust account(s) maintained at said banking institution for purposes of complying with the reporting and production requirements mandated by the Trust Account Overdraft Notification Rules as adopted by the Nebraska Supreme Court. All such notices must be sent to the Counsel for Discipline, 3808 Normal Blvd., Lincoln, NE 68506.

Attorney or Firm Name: _____
Address: _____

Signature: _____
Bar Number _____

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20_____

Instructions:

Complete the form and return to:

NSBA
PO Box 81809
Lincoln, NE 68501
402-475-7091
402-475-7098 - Fax

Notary Public: _____

A firm may complete one affidavit (retyped on firm letterhead, signed by a partner) for all attorneys in the firm. It must list all the attorneys (and their Bar numbers) in the firm, or covered by the affidavit, and contain the same affirmations as this form, identifying all trust accounts, if they are IOLTA accounts, and the names and addresses of all persons authorized to sign checks or make withdrawals. Supreme Court Rules and other information can be found at www.nebar.com

RULE REGARDING NEBRASKA JURY INSTRUCTIONS

(a) Nebraska Jury Instructions, Second Edition (NJI 2d), is designed for use when the instruction correctly states the law and the pleadings and evidence call for such an instruction. Where applicable, a trial judge may utilize an appropriate NJI instruction.

(b) The trial court may and ordinarily should hold a conference before or during the trial with reference to the preparation of proposed instructions. The trial court may direct counsel for either party to prepare designated instructions. Counsel may object at the conference on instructions to any instruction regardless of who prepared it. At the conference on instructions, each counsel should aid the trial court by stating any specific objection that he or she has on any instruction proposed to be given.

The rule of practice adopted by this court on November 20, 1968, requiring use of the Nebraska Jury Instructions is hereby rescinded.

COMMENT

Nebraska Jury Instructions, Second Edition (NJI2d) (1999), is available through West Group, 620 Opperman Dr., Eagan, MN 55123, or the West Group order line (800)328-9352.

RULES FOR NEBRASKA JUDICIAL NOMINATING COMMISSIONS

A. Application Process.

(1) Upon request, an applicant for judicial appointment will receive an application for judicial vacancy form, together with a letter of instruction, a copy of the Code of Judicial Conduct, a personal data sheet, and a copy of these rules. Requests for judicial applications may be made to and forwarded by the judge chairperson of the appropriate Judicial Nominating Commission, the Clerk of the Supreme Court, or the State Court Administrator. The judicial application form can also be found on the Nebraska Judicial Branch web site at <http://court.nol.org/manual/application.htm>.

(2) The application and personal data sheet must be signed and sworn to before a notary public and be filed with the commission chairperson not later than 21 days prior to the date of the public hearing. An applicant for any judicial vacancy may be investigated to, among other things, verify the accuracy of information provided.

(3) The personal data sheet is a confidential communication between the commission, its staff, and the applicant. However, any applicant's name forwarded to the Governor shall be accompanied by the application, personal data sheet, and results of any investigation conducted on behalf of the commission.

Rule A(2) amended December 21, 1994.

B. Disqualification Process.

(1) If a relationship between a commission member, or the Supreme Court member who chairs the commission, and an applicant falls into one of the following four categories, the commission member or chairperson shall recuse himself or herself from the commission:

a. Any relationship to the applicant by blood or marriage by virtue of being the applicant's spouse, child, or spouse of a child. The commission member shall not be related to the applicant under the third degree of relationship test. The third degree of relationship test is defined as being the applicant's or the applicant's spouse's parent, grandparent, aunt, uncle, sibling, nephew, or niece, or spouse of any of these relatives. Additionally, the commission member shall recuse himself or herself in situations where the applicant and commission member are sharing or have shared a residence during the past 5 years.

b. Any arrangement involving the practice of law or an employment relationship including, but not limited to, partnership, professional corporation, or office sharing within the past 5 years.

c. Any relationship in which the commission member and applicant are actively engaged in managing a common profitmaking business or venture.

d. Any instance in which the member of the commission would cast his or her vote on a basis other than an applicant's qualification for the office.

(2) If the person recusing himself or herself is the Supreme Court member who chairs the commission, the Chief Justice or the next senior judge shall request the Governor to appoint another member of the Court to chair such commission meeting.

(3) Any person may challenge the impartiality of a member or the chairperson of a judicial nominating commission. The challenge shall be in writing and directed to the Supreme Court member chairing such commission. If a challenge is raised regarding the impartiality of a member or the chairperson and the person so challenged declines to disqualify himself or herself, the unchallenged members of the commission shall rule on the challenge by a majority vote. Any such decision shall be attached to the information forwarded to the Governor and attached to the report submitted to the State Court Administrator.

(4) A violation of rule B(1) by a commission member will not constitute cause for rescission of a judicial nomination or reopening of the commission process.

C. Commission Deliberation.

(1) Each commission member will execute the official oath and a statement of understanding, attached hereto as exhibit A.

(2) Each commission member will be provided a Nebraska Judicial Nominating Commissioner's Handbook, the contents of which shall include the American Bar Association's Guidelines for Reviewing Qualifications of Candidates for State Judicial Office and a checklist of qualifications. The qualifications checklist will be used as a guide to provide uniformity in evaluating candidates.

(3) The commission is encouraged to hold private interviews with candidates prior to or following the public hearing.

(4) The list of applicants determined to be sufficiently qualified to hold the judicial position in question shall be submitted to the Governor in alphabetical order.

EXHIBIT A

Statement of Understanding
of Ethical Considerations

In the performance of their duties, the judicial nominating commission members shall be ever mindful that they hold positions of public trust. No commission member shall conduct himself or herself in a manner which reflects discredit upon the judicial selection process or discloses partisanship or partiality in the consideration of applicants. Consideration of applicants shall be made impartially, discreetly, and objectively. A commission member shall disclose to the commission all personal and business relationships with a prospective applicant that may directly or indirectly influence his or her decision. After certification of a list of sufficiently qualified applicants to the Governor, no commission member shall attempt, directly or indirectly, to further influence the ultimate decision of the Governor. No attempt shall be made to rank such nominees whose names are made public or to otherwise disclose a preference of the commission.

In accordance with the above ethical considerations, I will accept the following responsibilities:

1. I will disclose any conflict of interest that I may have with any of the applicants.
2. I will avoid preselection of nominees, "hidden agenda," or consideration of factors other than the merit of the applicants.
3. I agree not to discriminate against any applicant because of the applicant's race, religion, gender, political affiliation, age, or national origin.
4. I will not divulge any of the applicants' confidential information or the commission's deliberations except as provided by the Judicial Nominating Commission rules.

Statement of Understanding of Ethical Considerations amended December 21, 1994.

RULES RELATING TO THE
NEBRASKA DISPUTE RESOLUTION ACT 1992

1. Appointment of Advisory Council. Procedures for filling yearly advisory council vacancies shall be set forth in the Policy Manual of the Office of Dispute Resolution.
2. Meetings of the Advisory Council. Procedures for regular council meetings and task force meetings shall be defined in the Policy Manual of the Office of Dispute Resolution.
3. Responsibilities of the Director of the Office of Dispute Resolution. The Director's responsibilities regarding such areas as center information development, application, and reporting, as well as the general areas of program budgeting, sliding scale fees, public awareness, and training, shall be defined in the Policy Manual of the Office of Dispute Resolution.
4. Application for Center Approval of Funding. An application for funding by a center must include all the statutory requirements: plan of operation, objectives, population served, administrative organization, record-keeping procedures, mediator qualifications, annual budget, and proof of nonprofit status. Specific application requirements are set forth in the Policy Manual of the Office of Dispute Resolution.
5. Procedures for Approved Centers. All centers must have clearly established procedures in the following areas: permanent files, numbered case files, center forms and records, mediation training, mediation payment, center fees, accounting system, compliant procedures, and divorce policies. Specific procedure requirements are defined in the Policy Manual of the Office of Dispute Resolution.
6. Center Reports to the Office of Dispute Resolution. The center will report quarterly to the Office of Dispute Resolution. The annual report will be a summation of the quarterly reports in that year. Reporting forms may be supplied by the Office. Information for the reports should include the following: referral source, outcomes of cases, types of cases, participant evaluations, cost of sessions, and outreach. These areas are defined in the Policy Manual of the Office of Dispute Resolution.
7. Grievance Procedures. Complaints may be made directly to a center or to the Office of Dispute Resolution. Grievance procedures pursuant to the Policy Manual of the Office of Dispute Resolution shall be followed.

DISTRICT COURT RECORDS MODEL

Each district court shall maintain the following records:

1. Appearance Docket
2. Trial Docket
3. Journal
4. Complete Record
5. Execution Docket
6. Fee Book
7. General Index
8. Judgment Record
9. Case File

I. APPEARANCE DOCKET

The appearance docket is a summary of the case and is kept chronologically as cases are filed. The docket shall provide the following information:

1. case type,
2. filing dates of petition and all subsequent pleadings,
3. names of parties and their counsel,
4. date of issuance of, return date of, and the return of summons,
5. cost summary, and
6. posting references to other records.

The appearance docket may be compiled, filed, and maintained in either a paper volume or a computer system.

II. TRIAL DOCKET

The trial docket is a listing of cases at issue in the order they were made up and should serve as the order in which the cases are called for trial. If the court has more than 300 cases at issue, the scheduling of trials may be described by local court rule.

Rendition of a judgment is the act of the court, or a judge thereof, in making and signing a written notation of the relief granted or denied in an action.

The trial docket may be compiled, filed, and maintained in either a paper volume or a computer system.

Rule II amended September 13, 2000.

III. JOURNAL

A journal is a record of the court in which all judgments and orders must be entered and must clearly specify the relief granted or order made in the action.

Entry of a judgment, decree, or final order occurs when the clerk of the court places the file stamp and date upon the judgment, decree, or final order. For purposes of determining the time for appeal, the date stamped on the judgment, decree, or final order shall be the date of entry.

The journal may be compiled and filed on microfilm, in a computer system, or in a paper volume.

Rule III amended September 13, 2000.

IV. COMPLETE RECORD

The clerk shall make a complete record of every cause, as soon as it is finally determined, unless such record, or some part thereof, is duly waived. The complete record shall contain the following:

1. petition,
2. process,
3. return,
4. pleadings subsequent thereto,
5. reports,
6. verdicts,
7. orders,
8. judgments,
9. all material acts and proceedings of the court, and
10. by reference, all journal entries and all such filings as are required to be entered in full in the appearance dockets.

The complete record may be compiled and filed on microfilm, in a computer system, or in a paper volume.

V. EXECUTION DOCKET

The execution docket is also referred to as the "encumbrance book." Its purpose is to provide a ready reference to the activities of the sheriff regarding attachments and executions filed in a case. It records liens and encumbrances on land. The information in the execution docket is also found in the appearance docket.

The execution docket may be compiled, filed, and maintained in either a paper volume or a computer system.

VI. FEE BOOK

The fee book is more commonly known as the "cash and fee ledger." It is the financial accounting record of the court. All money received and disbursed by the court shall be recorded upon the cash and fee ledger. The ledger shall record the receipts and disbursements of all money held in trust.

The fee book may be compiled, filed, and maintained in either a looseleaf paper ledger or a computer system.

VII. GENERAL INDEX

The general index is an alphabetical listing of names of the parties to the suit, both direct and inverse, with the page and book where all proceedings in such action may be found.

The general index may be compiled, filed, and maintained in either a paper volume or a computer system.

VIII. JUDGMENT RECORD

The judgment record shall contain:

1. the names of the judgment debtor and judgment creditor, arranged alphabetically,
2. the date of judgment,
3. the amount of judgment and costs,
4. the page and book where judgment may be found.

Transcripts of judgments from county courts filed in the district court shall be entered upon the judgment record, and whenever any judgment is paid and discharged, the clerk shall enter such fact upon the judgment record in a column provided for that purpose.

The judgment record may be compiled, filed, and maintained in either a paper volume or a computer system.

IX. CASE FILE

All cases shall be maintained in a case file which shall be filed numerically and accessible alphabetically through an index. The case file should contain all pleadings, journal entries, minute entries, court actions, orders, judgments, verdicts, postjudgment actions, and other documents filed in the case.

Adopted October 15, 1992.

NEBRASKA SUPREME COURT RULES
FOR THE USE OF FAX MACHINES
IN STATE COURTS

"Fax" means to transmit and reproduce a facsimile of an original document by electronic means. Every court in the State of Nebraska shall accept for filing a fax transmission of any pleading, motion, or other document, except for briefs, subject to prepayment of statutory filing fees and subject to the following:

Amended March 10, 1993; September 18, 1996.

1. Equipment. All fax machines shall use plain paper and shall meet standard minimum CCITT Group III requirements. "CCITT" means Consultative Committee for International Telephone and Telegraph. "Group III" is a standard letter-size document that takes approximately 1 minute for transmission. The fax machine shall place the date and time of receipt on the transmission received.

2. Dedicated Use. A fax machine in the judicial system shall be used solely for court business. A court may authorize use of fax equipment by other governmental offices or agencies so long as such use does not interfere with the conduct of court business.

3. Cover Sheet. A fax transmission for filing shall be preceded by an attached uniform cover sheet approved by the Supreme Court of Nebraska. The fax cover sheet shall contain the sender's full name, address, telephone number, and fax number, and, if the sender is a lawyer, the lawyer's identification number assigned by the Nebraska State Bar Association. The cover sheet shall specify the number of pages in the transmission. The sender's information supplied on the fax cover sheet shall be typed or printed.

4. Original Transmission. A plain-paper original transmission shall constitute a filing. The sender shall retain the original document transmitted by fax for a period not less than the maximum allowable time to complete the appellate process, unless otherwise directed by a court.

5. Limit of Pages Transmitted. Each transmission shall be limited to 10 pages, excluding the cover sheet. Additional pages may be permitted with prior approval of the clerk at the receiving court. Each transmitted page shall bear its sequential number in the transmission, e.g., "1 of 10," "2 of 10," etc.

6. Multiple Copies. If a filing requires an original and multiple copies of the original, and when the aggregate number of pages in the original and multiple copies exceeds the page limit specified in rule 5 of these rules, only the original, which does not exceed the specified page limit, shall be filed by fax transmission. The required multiple copies of the original shall be delivered to the clerk of the receiving court within 5 days after fax transmission of the original. Delivery of multiple copies to the clerk at the receiving court within the 5-day period constitutes filing the multiple copies on the date that the original fax-transmitted document was filed in the receiving court.

7. Fees and Credit Card. In addition to any statutory fee for filing, the following fee shall be paid for fax filings: \$3 for the first page and \$1 for each additional page in the transmission. Pursuant to Neb. Rev. Stat. § 48-187, the Workers' Compensation Court shall be exempt from charging for receipt of fax filings. No fee is charged for the cover sheet. No pleading for which payment of a statutory filing fee is required shall be accepted as a fax transmission unless the filing fee is received at the time of filing. Fees for use of fax filings shall be paid as prescribed by the receiving court, provided that no fee, except a filing fee required by statute, shall be charged to any agency of the State of Nebraska or to any agency of a political subdivision of the State of Nebraska. At the receiving court's option, the fee for a fax transmission may be paid by credit card. Fees for credit card usage shall be at the rate specified in Neb. Rev. Stat. § 33-126.05 and amendments thereto.

Amended September 18, 1996.

8. Collected Fees. Fees for fax filings received in district court, separate juvenile court, and county court shall be paid to the general fund of the county where the receiving fax machine is located. Fees paid for credit card usage to district courts and separate juvenile courts shall be remitted to the general fund of the county where the fee has been collected. Fees paid for credit card usage to county courts, the Nebraska Court of Appeals, and the Supreme Court of Nebraska shall be remitted to the general fund of the State of Nebraska. All fees received for fax filings in the Nebraska Court of Appeals and the Supreme Court of Nebraska shall be remitted to the general fund of the State of Nebraska.

9. Risk Assumed by Sender. The sender bears all risk in a fax transmission. Electronic transmission of a document by means of a fax machine does not constitute filing; filing is complete only after the receiving clerk's acceptance for filing in compliance with applicable statutes and these rules. If a receiving clerk determines that there has been an error in transmission, such as failure to complete the cover sheet for a transmission or an interruption in the sequence of pages transmitted, the clerk shall, as soon as practical, fax to the sender notice specifying the error preventing acceptability for filing. Any fax transmission containing an error that prevents filing may be disregarded by a clerk, but shall be retained for 10 days and thereafter disposed of unless within 10 days of the fax transmission the sender shall have requested judicial review of the rejection for filing. If a clerk rejects a filing in a pending proceeding, the clerk's rejection shall be noted on the docket of the court in which the proceeding is pending. A clerk is not required to acknowledge that a fax transmission has been received or accepted for filing. A clerk receiving a transmission has no duty to serve on a party a copy of the faxed transmission.

10. Signature. A person seeking to file a signed document may fax a copy of the original signed document. Notwithstanding any provision of law to the contrary, a signature reproduced on a fax transmission is an original signature for the purpose of the fax filing only. Anyone who files a signed document by fax represents that the original signed document is physically in his or her possession or control.

11. Orders and Warrants. Fax transmission may be used for the issuance of orders or warrants, including, but not limited to:

(a) an arrest or search warrant;

(b) release or detention of a defendant in custody for a criminal proceeding;

(c) an order or warrant for placing a juvenile in custody or for release or detention of a person subject to the Nebraska Juvenile Code;

(d) a temporary restraining order or protection order; and

(e) an order in a domestic relations case.

For all procedural and statutory purposes, a faxed document shall have the same force and effect as the original document issued by a court.

12. Time of Filing. Filing by fax is allowed during the normal business hours of the receiving court. Unless prior permission is received from the clerk at the receiving court, any fax transmission received after normal business hours shall be deemed to be filed on the next business day. The time at which a document shall be deemed to be received is when the last page of the fax-transmitted document is received by the recipient clerk.

13. Consent to Service. A lawyer who is willing to accept service of papers by fax shall so indicate by including his or her fax machine telephone number, designated as a "fax number," as part of the lawyer's name, address, and telephone number on a document filed in an action. A lawyer who files a paper by fax consents to service of papers on him or her by fax in that proceeding.

14. Appellate Briefs. Neither the Nebraska Court of Appeals nor the Supreme Court of Nebraska will accept briefs for filing by fax transmission.

Adopted Jan. 13, 1993.

FAX COVER SHEET FOR USE IN NEBRASKA COURTS

USE ONLY FOR DOCUMENTS TO BE FILED IN THE COURT FILE

FILINGS: Filings by electronic transmission of a facsimile are governed by "Nebraska Supreme Court Rules for the Use of Fax Machines in State Courts."

PAGE LIMIT: No single transmission shall exceed ten (10) pages without special permission from the clerk who will receive the transmission. The FAX COVER SHEET is not counted in the limit on pages for transmission.

FEES: Fees for filing by fax transmission shall be paid in compliance with statutes and the "Nebraska Supreme Court Rules for the Use of Fax Machines in State Courts."

TYPE OR PRINT INFORMATION

1. SENDER'S NAME AND ADDRESS: _____

N.S.B.A. No. _____

2. SENDER'S TELEPHONE NUMBER: _____

SENDER'S FAX NUMBER: _____

3. RECEIVING COURT: _____

COURT'S FAX NUMBER: _____

4. CASE CAPTION: _____

vs.

5. CASE NUMBER: _____

6. DOCUMENT TRANSMITTED:

A. Nature of Document: _____

B. Number of Pages in Document: _____

C. Total Pages Transmitted (Excluding Cover Sheet): _____

7. FEES: (No fee for cover page)

1. Statutory filing fee \$ _____

2. First page (\$3.00) _____

3. Additional pages (\$1.00 per page) _____

4. Credit Card Fee (\$3.00) _____

TOTAL FEES: \$ _____

8. CREDIT CARD:

MasterCard _____ Account No.: _____

Visa _____

Other _____ Expiration Date: _____

(Type or print name of cardholder)

(Signature of cardholder)

APPROVED BY NEBRASKA SUPREME COURT: JANUARY 1993

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 Nebraska Supreme Court or statutes of the State of Nebraska. Such recommended rules shall be submitted in writing and on a disk in a Microsoft Word 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 1 amended June 5, 2002.

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 8½ 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 or 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. 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.

E. 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.

F. 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 4E(2) and (3) amended April 17, 1996; Rule 4F amended January 3, 1997; Rule 4 amended May 19, 2004 (4D deleted and 4E-G renumbered to 4D-F).

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 the Nebraska Reports or the Nebraska Appellate 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 (1) a certified copy of the bankruptcy petition, (2) a copy of the bankruptcy petition bearing the filing stamp of the clerk of the bankruptcy court, or (3) a copy of a "Notice of Bankruptcy Case Filing" generated by the Bankruptcy Court's electronic filing system 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 one of the three bankruptcy documents noted immediately above, 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 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 one of the three bankruptcy documents noted in paragraph A above 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 that the funds or property has been exempted by the debtor in the bankruptcy proceedings or that the party named as debtor in the bankruptcy petition, rather than the trustee in bankruptcy, is otherwise entitled to disbursement of such funds or distribution of such property. Such a showing shall be made by affidavit.

Rule 6(A) and (B) amended October 23, 2002.

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, 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 extrajudicial statement that the lawyer knows or reasonably should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. An extrajudicial 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

TRANSCRIPT AND 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), the attorney shall immediately return the record to the clerk of the district court.

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 clerk of the district court by counsel making such request.

Any litigant is entitled to inspect the original transcript and bill of exceptions in his or her case at the office of the clerk of the trial court. Transcripts and bills of exceptions shall not be checked out to litigants. Any nonincarcerated litigant is entitled to obtain a copy of his or her transcript or bill of exceptions by filing a written request with the clerk of the trial court. A copy of the transcript shall be prepared by the clerk of the trial court and a copy of the bill of exceptions shall be prepared by the court reporter at litigant's cost unless the litigant has been allowed to proceed in forma pauperis in the action in which the request for a record has been made. Except for good cause shown, any additional copies of the transcript and/or the bill of exceptions once provided to a litigant on an in forma pauperis basis shall be prepared at the litigant's costs.

When a request is made to the clerk of the trial court for a transcript of pleadings by or on behalf of any incarcerated person, the clerk of the trial court shall prepare two copies, one to be filed in the court to which the matter is being appealed and one to be sent to the incarcerated person at the correctional center where he or she resides. The cost shall be paid by the person making the request unless the person has been allowed to proceed in forma pauperis in the action in which the request for a record has been made. Except for good cause shown, any additional copies of the transcript once provided to a litigant on an in forma pauperis basis shall be prepared at the litigant's cost.

When a request is made by or on behalf of any incarcerated person for a bill of exceptions, the court reporter shall prepare the original to be filed with the clerk of the trial court. The court reporter shall also prepare a duplicate copy at the statutory rate for copies and send it to the incarcerated person at the correctional center where he or she resides. The copy shall contain the index of exhibits but shall not include exhibits. The cost shall be paid by the person making the request unless that person has been allowed to proceed in forma pauperis in the action in which the request for a record has been made. Except for good cause shown, any additional copies of the bill of exceptions once provided to a litigant on an in forma pauperis basis shall be prepared at the litigant's cost. An incarcerated person may request copies of exhibits by filing a motion with the court having jurisdiction of the case.

Where a request for a copy of a transcript or a bill of exceptions is made on an in forma pauperis basis and an action is not pending, good cause must be shown by the litigant making the request for the necessity of a copy. A copy shall be provided only upon an order of the court.

Rule 20 adopted December 29, 1999; Rule 20 amended September 27, 2000; Rule 20 amended May 21, 2003.

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

STATE OF NEBRASKA
§ 29-2524.01

**NEBRASKA COUNTY ATTORNEY
CRIMINAL HOMICIDE REPORT**

CASE NUMBER

Neb. Rev. Stat. § 29-2524.01 provides that the county attorney must file the following report with the State Court Administrator within thirty days of the ultimate disposition by the court of every criminal homicide case filed by the county attorney.

1. In the District Court of _____ County

2. State of Nebraska vs. _____ DOB:

Address:

3. Initial charges filed:

Date: _____,

4. Were any of the initial charges reduced? Yes No. If yes, what were the reduced charges?

5. Was the reduction a result from a plea bargain? Yes No, another reason which was:

6. Were there any charges dismissed prior to trial? Yes No. If yes, they were:

7. On _____, _____, the outcome of the trial was:

Found guilty Found not guilty

Charges were dismissed

Found guilty of a lesser included offense:

Other:

8. On _____, _____, the following sentence was imposed:

9. Was appeal taken? Yes No Date: _____,

10. Sentencing Judge:

(Signature)

11. Defense Counsel:

(Signature)

DATE: _____, _____

County Attorney

Print Name

Mail to: State Court Administrator, P.O. Box 98910, Lincoln, NE 68509-8910

Form adopted November 18, 1998.

Mandate: District Court to County Court

IN THE DISTRICT COURT OF _____, COUNTY, NEBRASKA

TO: County Court of _____ County, Nebraska

WHEREAS, in an action in your court, captioned:

*
*
V.
*
*

you rendered judgment.

And WHEREAS, _____ has prosecuted an appeal to this court.

ON CONSIDERATION OF and Pursuant to Neb. Rev. Stat. § 25-2733, the judgment which you rendered has been reviewed for error appearing on the record made in the county court and has been * _____ by the district court and has become a final order of this court on _____. Costs of this appeal, including the costs in the county court, are to be paid by _____ and taxed at \$ _____ **.

NOW, THEREFORE, you shall without delay, proceed to enter judgment in conformity with the decision and opinion of this court attached hereto.

WITNESS the Honorable _____, District Judge, and the seal of this court.

DATED: _____

Clerk of the District Court

* Affirmed, Affirmed but modified, Reversed, Reversed and remanded or Dismissed. (If the district court reverses, it may enter judgment in accordance with its findings or remand the case to the county court for further proceedings consistent with the judgment of the district court.)

District Court No. _____	/**COSTS ASSESSED IN DISTRICT COURT	
	/Costs due Clerk of District Court	\$ _____
County Court No. _____	/Docket fee due	\$ _____
	/Due _____	\$ _____
Date District Court	/Due _____	\$ _____
judgment issued _____	/Due _____	\$ _____
	/Due _____	\$ _____

Appendix 2

This form is neither approved nor disapproved by any court or judicial tribunal. Use of this form provides no immunity from error.

RULE REQUIRING FILING OF
NEBRASKA STATE BAR ASSOCIATION RULES
WITH SUPREME COURT

The Nebraska State Bar Association shall at all times keep on file with the Clerk of the Nebraska Supreme Court and Court of Appeals a current copy of its By-Laws and all rules under which its House of Delegates, Executive Council, and various committees operate.

Amended January 22, 1998.

**NEBRASKA CODE
of
JUDICIAL CONDUCT**

Adopted by order of
The Nebraska Supreme Court
May 28, 1992

Effective September 1, 1992

TABLE OF CONTENTS

	<u>Page</u>
PREFACE	30.iv
PREAMBLE	30.v
TERMINOLOGY	30.vi - 30.viii
CANON 1 A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY	30.1
A. Judge's Duty Concerning Standards of Conduct	30.1
CANON 2 A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES	30.1 - 30.2
A. Rules of General Conduct	30.1
B. Relational Influences; Use of Prestige of Office to Aid Private Interests; Character Witness	30.1 - 30.2
C. Memberships in Discriminatory Organizations	30.2
CANON 3 A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY	30.3 - 30.8
A. Judicial Duties in General	30.3
B. Adjudicative Responsibilities	30.3 - 30.5
1. Duty to sit	30.3
2. Fidelity to the law, professional competence, partisan interests, public clamor, fear of criticism	30.3
3. Require order and decorum	30.3
4. Patience, dignity, courtesy in court	30.3
5. Perform duties without bias or prejudice; manifestations of bias or prejudice	30.3
6. Prevent lawyers from manifesting bias or prejudice in proceedings; exception	30.3
7. The right to be heard and ex parte communications; exceptions	30.3 - 30.4
8. Promptness, efficiency, fairness	30.5
9. Public comment	30.5
10. Commending, criticizing juries	30.5
11. Disclosure, use of nonpublic information	30.5
C. Administrative Responsibilities	30.5 - 30.6
1. Diligence, competence and cooperation with others; no bias or prejudice	30.5

	<u>Page</u>
2. Fidelity and diligence of staff; judge to require no manifestations of bias or prejudice by staff	30.5
3. Judges with supervisory authority over other judges	30.5
4. Appointments, merit, nepotism, favoritism and compensation	30.6
D. Disciplinary Responsibilities	30.6
1. Misconduct of other judges	30.6
2. Misconduct of lawyers	30.6
3. Disciplinary duties part of judicial duties; privilege	30.6
4. Ethics committee exception	30.6
E. Disqualification	30.6 - 30.7
1. General standard; impartiality	30.6
2. Duty to keep informed of interests	30.7
3. Additional duty of disclosure	30.7
F. Remittal of Disqualification; Procedure	30.7 - 30.8

CANON 4 A JUDGE SHALL SO CONDUCT ALL EXTRAJUDICIAL
ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT
WITH JUDICIAL OBLIGATIONS 30.8 - 30.14

A. General Limitations	30.8
1. Protection of impartiality	30.8
2. Protecting judicial office	30.8
3. Interference with performance of judicial duties	30.8
B. Avocational Activities; Speaking, Writing, Lecturing, Teaching, Other Extrajudicial Activities Relating to Legal and Nonlegal Subjects	30.8
C. Governmental, Civic, or Charitable Activities	30.9 - 30.10
1. Appearance at public hearing; consultation with executive and legislative	30.9
2. Extrajudicial appointments	30.9
3. Services on behalf of organizations devoted to quasi-judicial functions and educational, religious, charitable, fraternal or civic organizations not conducted for profit	30.9 - 30.10
D. Financial Activities	30.10 - 30.12
1. General limitation	30.10 - 30.11
2. Investment management and other remunerative activity	30.11
3. General prohibition on business activity; exceptions	30.11
4. Minimize need for recusal; divestment	30.11
5. Gifts, bequests, favors and loans	30.11 - 30.12
E. Fiduciary Activities	30.12
1. General rule	30.12
2. No fiduciary service if likely to come before judge's court	30.13
3. Personal financial restrictions apply to fiduciary activities	30.13
F. Mediation and Arbitration	30.13

	<u>Page</u>
G. Practice of Law	30.13
H. Compensation, Reimbursement and Reporting	30.13 - 30.14
1. Compensation and reimbursement	30.13
2. Public reports	30.13 - 30.14
I. Disclosure of Judges' Income, Debts, Investments, Assets	30.14
CANON 5 A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY	30.14 - 30.17
A. Standards of Political Conduct in General	30.14 - 30.16
1. Prohibited conduct for judge or candidate	30.14 - 30.15
2. Resign judicial office to run for nonjudicial office; exception	30.15
3. Duties of all candidates for judicial office	30.15 - 30.16
B. Candidates Seeking Appointive Judicial or Other Governmental Office	30.16
1. Fund raising and accepting donations prohibited	30.16
2. Political activity to secure appointment generally prohibited; exceptions	30.16
C. Judges Subject to Retention Election	30.16
1. Limited political activity permissible when candidacy has drawn active opposition	30.16 - 30.17
2. No personal fund raising, but may use campaign committee; time restrictions; no personal use of campaign funds	30.17
D. Permissible Political Activity for Incumbent Judges	30.17
E. Applicability	30.17
APPLICATION OF THE CODE OF JUDICIAL CONDUCT	30.18
A. Part-Time Judges	30.18
B. Retired judges	30.18
C. Time for Compliance	30.18
Appendix A: Judicial Ethics Committee	30.19
Appendix B: Case Progression Standards	30.21
Appendix C: Judicial Financial Interest Statement	30.27
Subject Index	30.33

PREFACE

At its August 1990 annual meeting, the American Bar Association House of Delegates adopted the ABA Model Code of Judicial Conduct (1990), culminating several years of work by various ABA committees. The Nebraska Supreme Court assigned the task of reviewing the ABA Model Code to the Nebraska Judicial Ethics Advisory Committee. This Nebraska Code of Judicial Conduct (1992) is the result of the committee's work. The advisory committee suggested a number of modifications to the ABA Model Code. The reader must be aware that this Nebraska Code of Judicial Conduct (1992) and the ABA Model Code of Judicial Conduct (1990) are not fully interchangeable.

NEBRASKA CODE OF JUDICIAL CONDUCT

PREAMBLE

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

This Code is intended to establish standards for ethical conduct of judges of this state. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section, and Comments. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Comments, by explanation and example, provide guidance with respect to the purpose and meaning of the Canons and Sections. The Comments are not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations, the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered under specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law and in the context of all relevant circumstances. The Code is to be construed so as to not impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges. However, this Code is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

TERMINOLOGY

Terms explained below are noted with asteriks in the sections where they appear. In addition, the sections where terms appear are referred to after the explanation of each term below.*

APPROPRIATE AUTHORITY

The Nebraska Commission on Judicial Qualifications and the Nebraska Supreme Court Counsel for Discipline. See sections 3D(1) and 3D(2).

Amended July 13, 2005, effective September 1, 2005.

CANDIDATE

A person seeking selection for or retention in judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the secretary of state, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See preamble and sections 5A, 5B, 5C, and 5E.

COURT PERSONNEL

Does not include the lawyers in a proceeding before a judge. See sections 3B(7)(c) and 3B(9).

DE MINIMIS

An insignificant interest that could not raise reasonable question as to a judge's impartiality. See sections 3E(1)(c) and 3E(1)(d).

ECONOMIC INTEREST

Ownership of a legal or equitable interest, however small, or a relationship as officer, director, advisor, or other active participant in the affairs of a party, except that:

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(2) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal, or civic organization, or service by a judge's spouse, parent, or child as an officer, director, advisor, or other active participant in any organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. See sections 3E(1)(c) and 3E(2).

FIDUCIARY

Includes such relationships as personal representative, conservator, attorney in fact, trustee, and guardian. See sections 3E(2) and 4E.

FOURTH DEGREE OF RELATIONSHIP

The following persons are relatives within the fourth degree of relationship: great-great-grandparent, great-uncle or great-aunt, brother, sister, great-great-grandchild, grandnephew or grandniece, or first cousin. See section 3E(1)(d).

JUDGE

Persons subject to this Code as defined in the application section herein.

KNOWINGLY, KNOWLEDGE, KNOWN, or KNOWS

Actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See sections 3D, 3E(1), and 5A(3).

LAW

All court rules adopted by the Nebraska Supreme Court, including the Workplace Harassment Policy and Drug-Free Workplace Policy, as well as statutes, constitutional provisions, and decisional law. See sections 2A, 3A, 3B(2), 4B, 4C, 4D(5), 4F, 4I, 5A(2), 5B(2), 5C(1), and 5D.

Amended Feb. 10, 1999.

MEMBER OF THE CANDIDATE'S FAMILY

A spouse, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship. See section 5A(3)(a).

MEMBER OF THE JUDGE'S FAMILY

A spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See sections 4D(3), 4E, and 4G.

MEMBER OF THE JUDGE'S FAMILY RESIDING IN THE JUDGE'S HOUSEHOLD

Any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See sections 3E(1) and 4D(5).

NONPUBLIC INFORMATION

Information that, by law, is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentence reports, and statutorily confidential information in other cases. See section 3B(11).

PART-TIME JUDGE

A periodic part-time judge is a judge who serves on a continuing or part-time basis but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. See application section A.

POLITICAL ORGANIZATION

A political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See sections 5A(1), 5B(2), and 5C(1).

REQUIRE

The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See sections 3B(3), 3B(4), 3B(5), 3B(6), 3B(9), and 3C(2).

CANON 1

A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code shall be construed and applied to further that objective.

COMMENT

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

COMMENT

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions in this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity and impartiality is impaired.

At least six factors should be considered in evaluating the appearance of impropriety involved in any activity: (1) The public or private nature of the act when done; (2) the extent to which the conduct is protected as an individual right; (3) the degree of discretion exercised by the judge; (4) whether the conduct is harmful or offensive to others; (5) the degree of respect or lack of respect for the public or individual members of the public that the conduct demonstrates; and (6) the degree to which the conduct is indicative of bias, prejudice, or improper influence.

See, also, comment under section 2C.

B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

COMMENT

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising as to that article to avoid exploitation of the judge's office. As to the acceptance of awards, see section 4D(5)(a) and comment.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request or to correct errors in the report whether requested to do so or not.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See, also, Canon 5 regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testified. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly subpoenaed. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

COMMENT

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but, rather, depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership. See *New York State Club Assn. Inc. v. New York City*, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).

Although section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion, or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2 and section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion, or national origin in its membership or other policies, or for the judge regularly to use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of section 2A.

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under section 2C or under Canon 2 and section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events, within 1 year after the judge first learns of the practices), the judge is required to resign immediately from the organization.

A person who is not a judge on the date this Code becomes effective and who thereafter becomes a candidate for judicial office is considered to be on notice of the requirements of this Code upon becoming a candidate for judicial office. Such a person would be required, before becoming a judge, to resign from any organizations that practice invidious discrimination.

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law*. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

1. A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

2. A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

3. A judge shall require* order and decorum in proceedings before the judge.

4. A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers and of staff, court officials, and others subject to the judge's direction and control.

COMMENT

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

5. A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so.

COMMENT

A judge must refrain from speech, gestures or other conduct that reasonably could be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias or prejudice on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media, and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

6. A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel, or others based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status. This section does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status or other similar factors are issues in the proceeding.

7. A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law*. A judge shall not initiate, permit, or consider ex parte communications

or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

a. Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized;

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

b. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

c. A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges.

d. A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

e. A judge may initiate or consider any ex parte communications when authorized by law to do so.

COMMENT

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by section 3B(7), it is the party's lawyer, or, if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to furnish a brief amicus curiae.

Certain ex parte communication is approved by section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in sections 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that section 3B(7) is not violated through law clerks or other personnel on the judge's staff.

If communications between the trial judge and the appellate court with respect to a proceeding appealed from that trial judge is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

8. A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

COMMENT

In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices and avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants, and their lawyers cooperate with the judge to that end.

NOTE: THE NEBRASKA SUPREME COURT HAS ADOPTED CASE PROCESSING GUIDELINES AND HAS ADOPTED A RULE CONCERNING THE REPORTING OF CASES UNDER SUBMISSION.

9. A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to interfere substantially with a fair trial or hearing. The judge shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge is a litigant in a personal capacity.

COMMENT

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Nebraska Rules of Professional Conduct and other law*.

Amended July 13, 2005, effective September 1, 2005.

10. A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

COMMENT

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

11. A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

C. Administrative Responsibilities.

1. A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

2. A judge shall require* staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

3. A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

4. A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

Appointees of a judge include assigned counsel; officials such as referees, commissioners, special masters, receivers, special administrators; and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by section C(4).

D. Disciplinary Responsibilities.

1. A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action. A judge having knowledge* that another judge has committed a violation of this Code that raises substantial question as to the other judge's fitness for office shall inform the appropriate authority.

2. A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Nebraska Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Nebraska Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority*.

Amended July 13, 2005, effective September 1, 2005.

3. Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged.

4. Members of the Nebraska Judicial Ethics Committee are excepted from section 3(D)(1) concerning information obtained from judges seeking an advisory opinion.

COMMENT

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

E. Disqualification.

1. A judge shall not participate in any proceeding in which the judge's impartiality reasonably might be questioned, including but not limited to instances where:

COMMENT

Under this rule, a judge is disqualified whenever the judge's impartiality reasonably might be questioned, regardless whether any of the specific rules in section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

a. The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding.

b. The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it.

COMMENT

A lawyer in a government agency ordinarily does not have an association with other lawyers employed by that agency within the meaning of section 3E(1)(b). A judge formerly employed by a government agency, however, should not participate in any proceeding if the judge's impartiality reasonably might be questioned because of such association.

c. The judge knows* that the judge, individually or as a fiduciary, or the judge's spouse, parent, or child, wherever residing, or any other member of the judge's family residing in the judge's household* has an economic interest* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis* interest that could be affected substantially by the proceeding.

d. The judge or the judge's spouse, or a person within the fourth degree of relationship* to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have a more than de minimis* interest that could be affected substantially by the proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

e. Any other instance where law* requires disqualification.

COMMENT

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality reasonably might be questioned" under section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "affected substantially by the outcome of the proceeding" under section 3E(1)(d)(iii) may require the judge's disqualification.

2. A judge shall keep informed about the judge's personal and fiduciary* economic interests,* and should make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

3. A judge shall disclose on the record information that the judge believes the parties or their lawyers reasonably might consider relevant to the question of the judge's disqualification, even if the judge believes there is no real basis for disqualification.

F. Remittal of Disqualification.

A judge disqualified by the terms of section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the

judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement must be in writing and filed in the court file of the proceeding.

COMMENT

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek, or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge should have all parties and their lawyers sign the remittal agreement.

CANON 4

A JUDGE SHALL SO CONDUCT ALL
EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE
THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extrajudicial Activities in General.

A judge shall conduct all of the judge's extrajudicial activities so that they do not:

1. Cast reasonable doubt on the judge's capacity to act impartially as a judge;
2. Demean the judicial office; or
3. Interfere with the proper performance of judicial duties.

COMMENT

Complete separation of a judge from extrajudicial activities is neither possible nor wise. Judges should not become isolated from their community.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status. See section 2C and accompanying comments.

B. Avocational Activities.

A judge may speak, write, lecture, teach, and participate in other extrajudicial activities concerning the law,* the legal system, the administration of justice, and nonlegal subjects, subject to the requirements of this Code.

COMMENT

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary, and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic, or charitable activities. This phrase is included to remind judges that the use of permissive language in various sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

C. Governmental, Civic, or Charitable Activities.

1. A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law,* the legal system, or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

COMMENT

See section 2B regarding the obligation to avoid improper influence.

2. A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law,* the legal system or the administration of justice. A judge may, however, represent a country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

COMMENT

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system, or administration of justice as authorized by section 4C(3). The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system, or the administration of justice and with educational, religious, charitable, fraternal, or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under section 4C(2), but service on a public law school or any private educational institution would generally be permitted under section 4C(3).

3. A judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law,* the legal system, or the administration of justice or of an educational, religious, charitable, fraternal, or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

COMMENT

This section does not allow judges to be members of or to hold office in political organizations. See Terminology, "political organization." Canon 5 governs judges' political activities.

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system, or the administration of justice; see section 4C(2).

See comments to section 4B regarding use of the phrase "subject to the requirements of this Code." As an example of the meaning of the phrase, a judge permitted by section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to section 4C. For example, a judge is prohibited by section 4G from serving as a legal advisor to a civic or charitable organization.

a. A judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is likely that the organization will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

COMMENT

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example,

in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

b. A judge as an officer, director, trustee, or nonlegal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fundraising and may participate in the management and investment of the organization's funds, but shall not participate personally in the solicitation of funds or other fundraising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law,* the legal system, or the administration of justice;

(iii) shall not participate personally in membership solicitation if the solicitation reasonably might be perceived as coercive or, except as permitted in section 4C(3)(b)(i), if the membership solicitation is essentially a fundraising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fundraising or membership solicitation.

COMMENT

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice or a nonprofit educational, religious, charitable, fraternal, or civic organization as long as the solicitation reasonably cannot be perceived as coercive and is not essentially a fundraising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except in the following cases: (1) A judge may solicit, for funds or memberships, other judges over whom the judge does not exercise supervisory or appellate authority; (2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves; and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fundraising or membership solicitation does not violate section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker or guest of honor at an organization's fundraising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

D. Financial Activities.

1. A judge shall not engage in financial and business dealings that

(a) reasonably may be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

COMMENT

The time for compliance provision in this Code (application section C) postpones the time for compliance with certain provisions of this section in some cases.

When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See section 2B; see, also, section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges of the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, see comments to section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See comments for section 4B regarding use of the phrase "subject to the requirements of this Code."

2. A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family,* including real estate, and engage in other remunerative activity.

COMMENT

This section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

3. A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:

(a) a business closely held by the judge or members of the judge's family, or

(b) a business entity primarily engaged in investments of the financial resources of the judge or members of the judge's family.

COMMENT

Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely held family business might otherwise be permitted by section 4D(3), a judge may be prohibited from participation by other provisions of this Code, when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely held family business if the judge's participation would involve misuse of the prestige of judicial office.

4. A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall dispose of investments and other financial interests that might require frequent disqualification.

5. A judge shall not accept, and shall urge members of the judge's family residing in the judge's household* not to accept, a gift, bequest, favor, or loan from anyone except for:

COMMENT

Contributions to a judge's retention campaign, if permitted, are governed by Canon 5, not by section 4D(5).

Because a gift, bequest, favor, or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

a. A gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law,* the legal system, or the administration of justice;

COMMENT

Acceptance of an invitation to a law-related function is governed by section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See sections 4A(1) and 2B.

b. A gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award, or benefit reasonably could not be perceived as intended to influence the judge in the performance of judicial duties;

c. Ordinary social hospitality;

d. A gift from a relative or friend, for a special occasion such as a wedding, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship;

COMMENT

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, section 4D(e).

e. A gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under section 3E;

f. A loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

g. A scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

h. Any other gift, bequest, favor, or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if the value of the gift, bequest, or favor exceeds \$100.00, or if the value of the loan exceeds \$1,000.00, the judge reports it in the same manner as the judge reports compensation as required in section 4H. All loans that create actual conflicts of interest shall be reported in the same manner as compensation under section 4H.

COMMENT

Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests, or loans from lawyers or their firms if they have come or are likely to come before the judge. It also prohibits gifts, favors, bequests, or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

E. Fiduciary Activities.

1. A judge shall not serve as personal representative, conservator, trustee, guardian, attorney in fact, or other fiduciary,* except for the estate, trust, or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.

2. A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

3. The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

COMMENT

The time for compliance provision of this Code (application section C) postpones the time for compliance with certain provisions of this section in some cases.

The restrictions imposed by this canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of section 4D(4).

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.*

COMMENT

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

G. Practice of Law. A judge shall not practice law. A judge who acts pro se is not considered to be practicing law.

COMMENT

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearance before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See section 2(B).

H. Compensation, Reimbursement, and Reporting.

1. Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extrajudicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

a. Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

b. Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

2. Public Reports. A judge shall report the date, place, and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extrajudicial compensation to the judge. The judge's report shall be made at least annually and shall be filed as a public document in the office of the Clerk of the Nebraska Supreme Court on forms furnished by that court.

COMMENT

See section 4D(5) regarding reporting of gifts, bequests, and loans.

This Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

I. Disclosure of a judge's income, debts, investments or other assets is required to the extent provided in this canon, in sections 3E and 3F, by the disclosure form provided pursuant to section 4(H)(2), or as otherwise required by law.*

COMMENT

Under section 3E, a judge is not permitted to participate in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the terminology section. Section 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties. Section 4H requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

CANON 5

A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY

A. Standards of Political Conduct in General for All Judges and Candidates.

1. Except as authorized in sections 5B(2) and 5C(1), a judge or a candidate* for retention in or appointment to judicial office shall not:

- a. Act as a leader or hold an office or membership in a political organization*;
- b. Publicly endorse or publicly oppose another candidate for public office;
- c. Make speeches on behalf of a political organization;
- d. Attend political gatherings; or
- e. Solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

COMMENT

A judge or candidate for judicial office retains the right to participate in the political process as a voter. Registering to vote with a party designation does not constitute membership in a political organization.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

Postelection parties held for the purpose of raising political funds are political gatherings for the purposes of section 5A(1)(d).

2. A judge shall resign from judicial office upon becoming a candidate* for a nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law* to do so.

3. A candidate for a judicial office:

a. Shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family* to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

COMMENT

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

b. Shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the sections of this canon;

c. Except to the extent permitted by section 5C(2), shall not authorize or knowingly* permit any other person to do for the candidate what the candidate is prohibited from doing under the sections of this canon;

d. Shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent;

COMMENT

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies, or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of the candidate's personal views. See, also, section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This section applies to any statement to commissions charged with judicial selection. See, also, applicable rules of the Nebraska Rules of Professional Conduct.

Amended July 13, 2005, effective September 1, 2005.

e. May respond to personal attacks or attacks on the candidate's record as long as the response does not violate section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

1. A candidate* for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.

2. A candidate for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

a. Such persons may:

(i) except as prohibited by law, communicate with the appointing authority, including any nominating commission;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for appointment to the office, and from individuals to the extent requested or required by those specified in section 5B(2)(a), and to the extent not prohibited by law;

(iii) provide to those specified in sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to the candidate's qualifications for the office;

b. A nonjudge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by law:

(i) retain an office and membership in a political organization,*

(ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.

COMMENT

Section 5B(2) provides a limited exception to the restrictions imposed by sections 5A(1) and 5D. Under section 5B(2), candidates seeking appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under section 5B(2), nonjudge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings, and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See sections 5B(1), 5B(2)(a), 5E, and application.

C. Judges Subject to Retention Election.

1. A judge or a candidate* subject to retention election may, except as prohibited by law,* when the judge's candidacy has drawn active opposition:

a. purchase tickets for and attend political gatherings;

b. contribute to a political organization*;

c. speak to gatherings on his or her own behalf;

d. appear in newspaper, television, and other media advertisements supporting his or her candidacy; and

e. distribute pamphlets and other promotional campaign literature supporting his or her candidacy.

COMMENT

Section 5C(1) permits judges subject to retention election with active opposition to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.

2. A judicial candidate for retention election whose candidacy has drawn active opposition shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A judicial candidate for retention election whose candidacy has drawn active opposition may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums, and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign, and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than six months before an election and no later than 30 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

COMMENT

Section 5C(2) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under section 3E.

Campaign committees established under section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate postelection fundraising, to the extent possible.

Unless the candidate is required by law to file a list of campaign contributors, the contributors' names should not be revealed to the candidate.

D. Permissible Political Activity for Incumbent Judges.

A judge shall not engage in any political activity except

1. as authorized under any other section of this Code;
2. on behalf of measures to improve the law,* the legal system, or the administration of justice; or
3. as expressly authorized by law.

COMMENT

Neither section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system, and the administration of justice, see comments to section 4B; see, also, section 4C(1) and its comments.

E. Applicability.

Canon 5 generally applies to all incumbent judges and judicial candidates.* A successful candidate, whether or not an incumbent, is subject to judicial discipline for the candidate's campaign conduct. An

unsuccessful candidate who is a lawyer is subject to lawyer discipline for the candidate's campaign conduct. A lawyer who is a candidate for judicial office is subject to the Nebraska Rules of Professional Conduct.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

All judges appointed pursuant to Neb. Const. art. V, § 21, acting judges of the Workers' Compensation Court, clerk magistrates, child support referees, and referees in civil and disciplinary cases shall comply with this Code except as provided below. In addition, candidates for appointment to judicial office shall comply with sections 5A, 5B, and 5C.

A. Part-Time Judges.*

1. Is not required to comply with sections 4C(2), 4D(3), 4D(4), 4E, 4F, 4G, 4H(2), or 4I; and,
2. Shall not practice law in the court on which the part-time judge serves or in any court subject to the appellate jurisdiction of the court on which the part-time judge serves, or act as a lawyer in a proceeding in which the part-time judge has served or in any related proceedings.
3. Part-time child support referees shall not practice law in the court upon which they serve, but may practice law in any other court in matters not related to any proceedings in which they have served as child support referees.
4. Referees, appointed pursuant to Neb. Rev. Stat. § 25-1129 et seq. or for disciplinary proceedings, while acting as such, are not required to comply with sections 4C(2), 4D(3), 4D(4), 4E, 4F, 4G, 4H(2), or 4I. Persons who have served as such a referee shall not act as lawyers in any proceeding in which they have served as referees or in any related proceedings.

B. Retired Judges.

1. A retired judge who does not file with the Nebraska Supreme Court a statement of consent to be recalled for temporary judicial service or who is ineligible for judicial service need not comply with this Code, except as specifically provided.

A retired judge who consents to be recalled for temporary judicial service shall comply with this Code. However, such judge is not required to comply with sections 4C(2), 4E, 4F, 4H, or 4I. A retired judge who is subject to recall shall not practice law and shall refrain from accepting assignment in any case in which the retired judge's financial or business dealings, investments, or other extrajudicial activities might be directly or indirectly affected.

2. A retired judge shall not act as a lawyer in any proceeding in which the retired judge has served as a judge or in any other proceeding related thereto.
3. A retired judge is a person who has terminated full-time judicial service upon reaching retirement age or has been retired for disability.

C. Time for Compliance.

A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except sections 4D(2), 4D(3), and 4E and shall comply with these sections as soon as reasonably possible and shall do so in any event within the period of 1 year after assuming office.

This section amended June 21, 1995.

APPENDIX A

Judicial Ethics Committee

JUDICIAL ETHICS COMMITTEE

A. The Nebraska Supreme Court shall appoint a Judicial Ethics Committee consisting of seven members. Two members shall be appointed from each of the county and district courts and one from the Court of Appeals. The remaining members shall be judges appointed from any affected courts, but not from the Nebraska Supreme Court. The Supreme Court shall designate one of the members as chair and one member as vice chair who may serve in the event of disqualification or unavailability of the chair. When the committee is first appointed, all members shall commence their service forthwith and serve until December 31, 1992, and thereafter one of such members shall be designated to serve for a term of 1 year expiring December 31, 1993, and in like manner, one for a term of 2 years, one for a term of 3 years, one for a term of 4 years, one for a term of 5 years, one for a term of 6 years, and one for a term of 7 years, and thereafter all regular terms shall be 7 years. No member of the committee shall serve consecutive 7-year terms, but may, however, be reappointed to membership on the committee after a lapse of 1 year.

Section A revised October 1992.

B. The Judicial Ethics Committee so established shall have authority to:

1. By the concurrence of a majority of its members, express its opinion on proper judicial conduct with respect to the provisions of this Code, either on its own initiative, at the request of a judge or candidate for judicial office, or at the request of a court or the Nebraska Commission on Judicial Qualifications, provided that an opinion may not be issued on a matter that is pending before a court or before the commission except on request of the court or commission;

2. Make recommendations to the Nebraska Supreme Court for amendment of this Code; and

3. Adopt rules relating to the procedures to be used in expressing opinions, including rules to assure a timely response to inquiries.

C. A judge or candidate for judicial office as defined in the terminology section of this Code who has requested and relied upon an opinion may offer the opinion in a disciplinary proceeding based on conduct conforming to that opinion.

D. An opinion issued pursuant to this rule shall be filed with the State Court Administrator. Such an opinion is confidential and not public information unless the Nebraska Supreme Court otherwise directs. However, the State Court Administrator shall cause an edited version of each opinion to be prepared, in which the identity and geographic location of the person who has requested the opinion, the specific court involved, and the identity of other individuals, organizations, or groups mentioned in the opinion are not disclosed. Opinions so edited shall be published periodically in the manner the Supreme Court deems proper.

APPENDIX B

Case Progression Standards

CASE PROGRESSION STANDARDS

Trial or hearing on the merits of a case should be within the following time limits from date of filing:

DISTRICT COURT

Appeals	3 months
Criminal Cases	6 months
Domestic Relations Cases	9 months
Civil Cases--Nonjury	1 year
Civil Cases--Jury	18 months

COUNTY COURT

Misdemeanor and Traffic Offenses--Nonjury	60 days
Misdemeanor and Traffic Offenses--Jury	6 months
Civil Cases	6 months
Preliminary Hearings	As soon as possible but no more than 30 days

Final disposition of probate cases should be within 1 year from filing except when a federal estate tax return is required, and, in that event, 18 months.

A longer interval may be approved where deemed necessary because of extraordinary eventualities, such as exceptionally complicated discovery, stabilization of injury in personal injury cases, or settlement of financial affairs in complex cases.

JUVENILE COURT

(1) Notwithstanding any federal or state law providing for a longer period, the juvenile shall not be held in detention for more than 48 hours without a probable cause hearing being conducted by the appropriate judicial authority.

(2) Adjudication hearings in dependent/neglect cases under Neb. Rev. Stat. § 43-247(3)(a) should be held within 90 days of filing of the petition, except in cases with exceptional complications, in which cases adjudication should be held in 180 days. Adjudication hearings in law violation cases should be held within 180 days of filing of the petition.

(3) A disposition hearing should be held within 60 days from the date of the adjudication hearing, unless good cause is shown.

(4) Review hearings for children in out-of-home placements should be held, on the record, every 6 months.

Amended October 29, 1997.

CASE PROGRESSION REPORTS - MATTERS UNDER ADVISEMENT

On the last day of the month, each judge shall file a report form with the State Court Administrator which sets forth:

1. Whether any matter has been under advisement for more than 90 days.
2. If so, the title and number of the case, the nature of the matter for decision, the date it was taken under advisement, and the reason it has not been decided.

A matter is taken under advisement on the date all evidence has been received, or if there is no evidence, the date the legal issue has been heard by the judge. Time for filing briefs is not considered.

Report of Cases Under Advisement

TO: Nebraska Supreme Court
Administrative Office of Courts/Probation

FROM: _____

County Judge

Juvenile Judge

MONTH
ENDING: _____

_____ I have no matters which have been under advisement for more than 90 days.

_____ I have _____ matter(s) which has/have been under advisement for more than 90 days (do not include cases in which a presentence investigation has been requested but has not been received by the court; do not include cases in which a bench warrant has been issued). Provide case description below. (To report more than one case, attach additional form(s).)

Case Title: _____

Case Number: _____

Location of Hearing: _____

Date Taken Under Advisement: _____

Describe the nature of the matter for decision and the reason it has not been decided:

(Use the reverse side of this form or an additional page if needed.)

Dated this _____ day of _____, _____. _____
Signature

**Please submit reports no later than the 5th of each month to:
Administrative Office of Courts/Probation, P.O. Box 98910, Lincoln, NE 68509-8910**

Report of Cases Under Advisement

TO: Nebraska Supreme Court
Administrative Office of Courts/Probation

FROM: _____
District Judge

MONTH
ENDING: _____

_____ I have no matters which have been under advisement for more than 90 days.

_____ I have _____ matter(s) which has/have been under advisement for more than 90 days (do not include cases in which a presentence investigation has been requested but has not been received by the court; do not include cases in which a bench warrant has been issued). Provide case description below. (To report more than one case, attach additional form.)

_____ I have _____ appeal(s) from the county court under advisement (do not include appeals in which the transcript and/or bill of exceptions have not been filed). Provide case description below. (To report more than one case, attach additional form(s).)

Case Title: _____

Case Number: _____

Location of Hearing: _____

Date Taken Under Advisement: _____, or

Date Appeal Filed: _____

Describe the nature of the matter for decision and the reason it has not been decided:

(Use the reverse side of this form or an additional page if needed.)

Dated this _____ day of _____, _____. _____
Signature

**Please submit reports no later than the 5th of each month to:
Administrative Office of Courts/Probation, P.O. Box 98910, Lincoln, NE 68509-8910**

Report of Cases Under Advisement

TO: Nebraska Supreme Court
Administrative Office of Courts/Probation

FROM: _____
Workers' Compensation Judge

MONTH
ENDING: _____

_____ I have no matters which have been under advisement for more than 90 days.

_____ I have _____ matter(s) which has/have been under advisement for more than 90 days. Provide case description below. (To report more than one case, attach additional form.)

Case Title: _____

Case Number: _____

Location of Hearing: _____

Date Taken Under Advisement: _____,

Describe the nature of the matter for decision and the reason it has not been decided:

(Use the reverse side of this form or an additional page if needed.)

Dated this _____ day of _____, _____. _____
Signature

**Please submit reports no later than the 5th of each month to:
Administrative Office of Courts/Probation, P.O. Box 98910, Lincoln, NE 68509-8910**

APPENDIX C

Judicial Financial Interest Statement

JUDICIAL FINANCIAL INTEREST STATEMENT

GENERAL INFORMATION

The Code of Judicial Conduct as adopted by the Nebraska Supreme Court provides in part that:

A judge shall regularly file reports of compensation received for any extrajudicial activity for which the judge received compensation. A judge shall also regularly file reports of personal holdings and of gifts, bequests, favors, and loans received of such a nature that the judge's impartiality might reasonably be challenged.

All Nebraska judges are required to file this statement in the office of the Clerk of the Supreme Court at the address on the front of this form. The report must be filed no later than May 1 of each year. Except as otherwise provided by the rules of the Supreme Court or this form, all questions regarding filing shall be governed by the canons of the Nebraska Code of Judicial Conduct as adopted by the Supreme Court.

This statement must include all financial interests held at any time during the calendar year, and may not be limited to interests held at the end of the year.

DEFINITIONS

COMPENSATION

Any money or thing of value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense then constituting income under the Internal Revenue Code. The income must, however, be for services and does not include income, interest, or dividends received by reason of investment. Expense reimbursement exceeding actual cost is compensation.

GIFT

A payment, subscription, advance, forbearance, rendering or deposit of money, services, or anything of value, unless consideration of equal or greater value is given therefor. Gift shall not include a commercially reasonable loan made in the ordinary course of business, or a gift received from a member of the judge's immediate family or a relative or close personal friend whose appearance or interest in a case would in any event require disqualification.

MEMBER OF THE JUDGE'S FAMILY RESIDING IN THE JUDGE'S HOUSEHOLD

Any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

JUDICIAL FINANCIAL INTEREST STATEMENT

ITEM 3 - Real Property of the Filer in Nebraska:

List all the real property in your name or in which you have a direct ownership interest. Real estate valued at less than \$1,000 and your personal residence need not be reported. The description used must be sufficient to identify the location of the property. You do not need to use the legal description, although that may be used.

Location of Property	Nature of Property (i.e., agricultural, commercial, residential-rental)

ITEM 4 - Sources of Bequests, Gifts, or Favors of a Value Greater Than \$100 Received and the Circumstances of Each Gift Except Gifts from Relatives:

Name of Donor	Address of Donor	Occupation or Nature of Business of Donor

Circumstances of each bequest, gift, or favor or the occasion for which the gift or favor was given:

JUDICIAL FINANCIAL INTEREST STATEMENT

ITEM 5 - Other Financial Interests and Property Held During the Period of the Statement:

You need report only items which have a fair market value of \$1,000 or more.

A. List the names and addresses of the institutions in which you had checking and savings accounts and certificates of deposit.

Financial Institution	Address

B. List the name of the issuers of all stocks, bonds, and government securities that you own.

C. Describe other property owned or held for the production of income not otherwise disclosed in this statement. Include leaseholds and other interests in real estate, promissory notes and other obligations owned to you, beneficial interests in trusts and estates, cash value life insurance, IRAs, deferred income and retirement plans. Do not include household goods, personal automobiles, and other intangible personal property unless such property was held primarily for sale or exchange.

JUDICIAL FINANCIAL INTEREST STATEMENT

ITEM 6

A. Creditors to Whom \$1,000 or Greater Was Owed or Guaranteed by You or a Member of Your Family Residing in Your Household:

Accounts payable, debts arising out of retail installment transactions or from loans made by financial institutions in the ordinary course of business. Loans from a relative and land contracts that have been recorded with the county clerk or register of deeds need not be reported.

Name	Address

B. Creditors Whose Loans of Any Amount Create Actual Conflicts of Interest.

Describe the circumstances of each such loan and its amount.

Name and Address	Circumstances and Amount

ITEM 7 - County or Other Nonstate Funding Sources Providing Education, Travel, or Other Benefits to You or on Your Behalf:

Name of Funding Source	Type or Purpose of Funding

ITEM 8 - Signature of Judge and Date

Date _____ Name _____

Please attach a sheet of paper if you need more space for any item.

SUBJECT INDEX

A

Absolutely privileged, 30.6
Adjudicative responsibilities, 30.3 - 30.5
 bias or prejudice, 30.3
 competence, 30.3
 courtesy, 30.3
 dignity, 30.3
 efficiency, 30.3, 30.5
 ex parte communications, 30.3, 30.4
 fairness, 30.3, 30.5
 hear and decide matters assigned,
 duty to, 30.3
 order and decorum, 30.3
 patience, 30.3
 promptness, 30.4, 30.5
 right to be heard, 30.3
Administrative responsibilities, 30.5 - 30.6
 appointments, 30.5
 bias or prejudice, 30.5
 competence, 30.5
 diligence, 30.5
 fidelity, 30.5
 nepotism and favoritism, 30.5
 planning and other official activities with
 members of the executive and
 legislative branches, 30.18
Administration of justice, consultation
 with other officials, 30.9 - 30.10, 30.17
Amicus curiae, 30.4
Appear at a public hearing, 30.9
Appearance of impropriety, 30.1 - 30.2,
 30.11, 30.13
 compensation, 30.13
 factors to consider, 30.2
 financial dealings, 30.11
 personal conduct, 30.1 - 30.2
 reimbursements, 30.13
 test, 30.1
Appellate jurisdiction or authority,
 30.9 - 30.10, 30.13, 30.19
Application of Code, classes of judges,
 30.18
Appointment, 30.vi, 30.6, 30.9, 30.14,
 30.16 - 30.17, 30.19
 compensation of appointees, 30.6

 governmental, 30.9, 30.16
 "Appropriate authority," 30.vi, 30.6
Arbitrator, 30.13
Attorney in fact, 30.vii, 30.13
Avocational activities, 30.8
Award, 30.2, 30.6, 30.12

B

Bar Association,
 participation in activities of, 30.8
Bar-related function, 30.12
Benefit, 30.2, 30.7
Bequest, 30.11 - 30.12, 30.14
 acceptance of, 30.11 - 30.12
 reporting, 30.14
Bias or prejudice, 30.3, 30.5, 30.7 - 30.8
 manifest, 30.2, 30.3, 30.5
Books, acceptance of
 complimentary copies, 30.12
Business activities, 30.10 - 30.11
 family business exception, 30.11
 limitations on, 30.10 - 30.11
 standards for, 30.10 - 30.11

C

Campaign committees, 30.17
Campaign conduct, 30.18
Campaign contributions, 30.vi, 30.11, 30.16,
 30.17
 not for private benefit, 30.17
Campaign speech, 30.14
"Candidate,"
 for appointment, 30.vi, 30.2, 30.14 - 30.18
 retaining a public office during
 candidacy, 30.17
Ceremonial occasions, 30.9
Character witness, 30.1 - 30.2
 judge as, 30.1 - 30.2
Civic and charitable activities, 30.9 - 30.10
 limitations on, 30.9 - 30.10
 participation in, 30.9 - 30.10
Civil liability, 30.v
Clerk magistrates, 30.19
Code of Professional Responsibility,
 30.5, 30.6, 30.16, 30.18

Comment,
explaining for public information the
procedures of the court, 30.5
opposition to persecution of lawyers
and judges in other countries, 30.8
public, 30.5, 30.6, 30.14, 30.16, 30.17
Committee, 30.2, 30.6, 30.9, 30.16, 30.17,
30.20
Common investment fund,
as economic interest, 30.vi
Communication, 30.2, 30.3 - 30.4, 30.6
between the trial judge and the
appellate court, 30.4
ex parte, 30.3, 30.4
for scheduling, administrative purposes,
or emergencies, 30.4
with court personnel, 30.4
with other judges, 30.4
Compensation, 30.13 - 30.14
Compensation of appointees, 30.6
Competence,
in the law, 30.3
in judicial administration, 30.5
Compliance with Code,
by clerk magistrates, 30.19
by full-time judges, 30.19
by part-time judges, 30.19
by referees, 30.19
by retired judges, 30.19
Compliance date, 30.19
Contributing to political organizations
or candidates, 30.16
Cost, 30.5
"Court personnel," 30.vi, 30.4, 30.5, 30.16
Courtroom conduct,
see adjudicative responsibilities
Credit union membership,
as economic interest, 30.vi
Criminal prosecution, 30.v

D

"De minimis" interest, 30.vi, 30.7
Debts,
disclosure of, 30.14
Delay, 30.5
Deposit in financial institution,
as economic interest, 30.vi
Dignity, 30.3, 30.15

Director, 30.vi, 30.7, 30.9, 30.10, 30.11
Disciplinary responsibilities, 30.6
Discriminatory membership practices,
30.2 - 30.3
Disqualification, 30.3, 30.6 - 30.7, 30.8, 30.11,
30.12, 30.17, 30.21, 30.28
bias or prejudice, 30.6
disclose on the record, 30.6, 30.7
duty to keep informed, 30.7
economic interests, 30.7
financial activity, 30.10 - 30.11, 30.13, 30.14
government agency, 30.7
impartiality reasonably might be
questioned, 30.6 - 30.7, 30.28
material witness, judge as, 30.7
personal knowledge of disputed
evidentiary facts, 30.6
remittal of, 30.7 - 30.8
rule of necessity, 30.6
Divestment standard, 30.11

E

"Economic interest," 30.vi, 30.11
Efficiently, 30.5
Election, 30.vii, 30.viii, 30.16 - 30.17
general, 30.15
primary, 30.15
Endorse or publicly oppose, 30.14
Equitable interest as economic interest,
30.vi
Ex parte communications, 30.3, 30.4
Executive or legislative body
appearance before, 30.9, 30.13
consult with, 30.9
Expert, 30.4
Expense reimbursement, 30.13, 30.28
Exploitation of judicial position, 30.2, 30.11
Extrajudicial activities, 30.8 - 30.14
arbitrator or mediator, 30.13
avocational activities, 30.8
bias or prejudice, 30.8
cast reasonable doubt on the judge's
capacity to act impartially as a
judge, 30.8
charitable activities, 30.9 - 30.10
civic activities, 30.9 - 30.10
compensation and reimbursement, 30.13
conflict with judicial obligations, 30.8, 30.13

demean the judicial office, 30.8, 30.11
fiduciary activities, 30.13
financial activities, 30.11 - 30.14, 30.19
fundraising, 30.10
governmental activities, 30.9
interference with performance of
 judicial duties, 30.1, 30.8, 30.11, 30.13,
 30.14
membership solicitation, 30.10
practice of law, 30.13
speaking, 30.8, 30.10, 30.14
teaching, lecturing, 30.8
writing, 30.2, 30.8
Extrajudicial appointments, 30.9

F

Facts, 30.v, 30.4, 30.15
 false information concerning a judicial
 candidate, 30.15
 independently investigate, 30.4
 personal knowledge of disputed
 evidentiary facts, 30.7
 proposed findings of fact and
 conclusions of law, 30.4
Fair, Fairness, Fairly, 30.v, 30.3, 30.5, 30.6,
 30.8
Faithful to the law, 30.3
Family business, 30.11
Family investments, 30.11
Family member, defined, 30.vii
Favor, favoritism, 30.1, 30.6, 30.11, 30.12,
 30.28
 reporting favors, 30.28
Fear of criticism, 30.3
"Fiduciary," 30.vii, 30.7, 30.12
Fiduciary activities, 30.12
Financial activities, 30.10 - 30.11, 30.13, 30.14
 exploit judge's judicial position, 30.10 - 30.11
 financial disclosure, 30.14
 time for compliance, 30.14, 30.19
Financial interest,
 see economic interest, 30.vi
Fitness for office, 30.6
"Fourth Degree of Relationship," 30.vii, 30.7
Fundraising,
 general rule, 30.10
 grant recommendations, 30.10
 nonpolitical, 30.10

political, 30.14, 30.15
speaker or guest of honor in, 30.10
use of letterhead in, 30.10

G

Gift, 30.11 - 30.12, 30.14, 30.28
 reporting, 30.14
Governmental,
 activities, extrajudicial, 30.9
 appearances and consultation, 30.9
 appointments, 30.9, 30.16
 dealing with governmental agencies
 as practice of law, 30.13
 planning and other official activities, 30.18
 seeking other governmental office, 30.16
Guardian, 30.vii, 30.13
Guest of honor, 30.10

H

High standards of conduct, 30.v
 enforcing, 30.1
 establishing, 30.v, 30.1
 maintaining, 30.v, 30.1, 30.11
 duty to personally observe, 30.1
Honoraria, 30.14

I

Impartiality, 30.1, 30.2
 civic and charitable activities, 30.9 - 30.10
 disqualification for lack of, 30.11 - 30.12
 duty of, 30.1 - 30.8
 expressions of bias or prejudice, 30.8
 fiduciary dealings, 30.11
 financial and business dealings, 30.11
 political activity, 30.17
Impropriety, 30.1 - 30.3
 appearance of, 30.1, 30.2, 30.11, 30.13
 discriminatory memberships and, 30.2
 duty to avoid, 30.1 - 30.2
 factors to consider, 30.1
 test, 30.1
Income,
 disclosure of, 30.14
Incumbent judge, 30.16, 30.17, 30.18
Independence, 30.1
 extrajudicial appointments as
 danger to, 30.8, 30.9
Influence, 30.2, 30.9, 30.10, 30.11, 30.12, 30.14

Integrity, 30.1, 30.2, 30.12, 30.15
Interfere with performance of
 judicial duties, 30.8, 30.9, 30.11, 30.13,
 30.14
Interfere with a fair trial or hearing, 30.5
Investments, 30.11, 30.14, 30.19
 disclosure of, 30.14
 divestment of, 30.11
 permissibility of, 30.11
Invidious discrimination, 30.2, 30.9

J

Judge,
 as litigant in a personal capacity, 30.5
 as litigant in an official capacity, 30.5
 as material witness, 30.7
 as voter, 30.15
 pro se, 30.9, 30.13
Judicial duties, 30.3 - 30.8
 adjudicative responsibilities, 30.3 - 30.5
 bias or prejudice, 30.3, 30.5
 competence, 30.3
 courtesy, 30.3
 dignity, 30.3
 efficiency, 30.3, 30.5
 ex parte communications, 30.3, 30.4
 fairness, 30.3, 30.5
 hear and decide matters assigned,
 duty to, 30.3
 order and decorum, 30.3
 patience, 30.3
 precedence of, 30.3
 promptness, 30.4, 30.5
 right to be heard, 30.3
 administrative responsibilities,
 30.5 - 30.6
 appointments, 30.5
 bias or prejudice, 30.5
 diligence, 30.5
 fidelity, 30.5
 nepotism and favoritism, 30.5
 planning and other official activities
 with members of the executive
 and legislative branches, 30.18
 disciplinary responsibilities, 30.6
 ethics committee exception, 30.6
 judicial misconduct, 30.6
 lawyer misconduct, 30.6

 interference with performance of
 judicial duties, 30.8
Judicial Ethics Committee, 30.6, 30.20 - 30.21
Judicial retention election campaigns,
 campaign committees, 30.17
 endorsements, 30.14, 30.16
 media advertisements, 30.17
 solicitation of contributions, 30.vi,
 30.10
 speech, 30.14
 supervision of employees, 30.10
Judicial selection,
 communicate with the appointing authority,
 30.2, 30.16
 cooperating with appointing authorities
 and screening committees, 30.2
 initiating an evaluation, 30.21
Judiciary,
 independence, 30.v, 30.1, 30.8, 30.9, 30.15
 integrity, 30.1, 30.2, 30.3, 30.5
Jurors, 30.3, 30.5
 commend or criticize, 30.5
 express appreciation to, 30.5

K

"Knowingly," "knowledge," "known" or
 "knows," 30.vii, 30.6, 30.7, 30.11, 30.15,
 30.17
Knowledge of spouse's and relatives interests,
 30.7
 duty to keep informed, 30.7

L

"Law," 30.v, 30.vi, 30.vii, 30.1- 30.19
Law clerks, 30.4
Lawyer, 30.v, 30.vi, 30.2 - 30.8, 30.17,
 30.18, 30.19
 misconduct, 30.6
Lectures, 30.8
Legal interest,
 as economic interest, 30.vi
Legislature,
 appearance of judge at hearings,
 30.9, 30.13
 consultation, 30.9
Letterhead, 30.2, 30.10
Litigants, 30.3, 30.5

Loan, 30.11, 30.12, 30.14, 30.28
disclosure of, 30.12
standard for obtaining, 30.12

M

Mediate or settle, 30.4
Mediator, 30.13
Member, 30.vi, 30.vii, 30.1, 30.2, 30.6,
30.7, 30.9, 30.10, 30.12, 30.21
of a political party, 30.5
"Member of the candidate's family,"
30.vii, 30.15
"Member of the judge's family," 30.vii, 30.7,
30.11, 30.12, 30.13
"Member of the judge's family residing the
judge's household," 30.vii, 30.11, 30.18
Membership, 30.2 - 30.4, 30.16
in a political organization, 30.9, 30.14,
30.15, 30.16
Membership solicitation, 30.10
Misrepresentation, 30.15
Mutual fund,
as economic interest, 30.vi
Mutual insurance policy,
as economic interest, 30.vi
Mutual savings account,
as economic interest, 30.vi

N

Necessity, rule of, 30.6
Nepotism and favoritism, 30.6
New judge,
date for compliance with Code, 30.19
Nonjudicial office,
resign to seek elective office, 30.15
seeking appointive office, 30.16
Nonlegal advisor, 30.9 - 30.10
"Nonpublic information," 30.vii, 30.5

O

Officer, 30.vi, 30.8 - 30.11
Organizations, extrajudicial,
charitable, 30.vi, 30.9 - 30.10
civic, 30.vi, 30.9 - 30.10
discriminatory, 30.2
educational, 30.vi, 30.9 - 30.10
engaged in proceedings, 30.13
fraternal, 30.vi, 30.9 - 30.10

investment of organization's funds, 30.10
legal aid, 30.10
management of organizations' funds, 30.10
not conducted for profit, 30.9
officer, director, etc., of, 30.vi, 30.9 - 30.11
religious, 30.vi, 30.3 - 30.4, 30.9 - 30.10
securities held by,
as economic interest, 30.vi
solicitation of funds, 30.10

P

Partisan interests, 30.3
"Part-time judge," 30.vii, 30.19
Party,
consent to remittal of disqualification,
30.7 - 30.8
gift, bequest, favor, or loan from, 30.11
participation in affairs of, 30.8
relationship as basis for disqualification,
30.1, 30.9, 30.11
Personal representative, 30.vii, 30.13
Political activity, 30.14 - 30.17
retention election campaigns,
campaign committees, 30.17
endorsements, 30.14, 30.16
media advertisements, 30.17
solicitation of contributions, 30.vi,
30.10
speech, 30.14
supervision of employees, 30.10
seeking nonjudicial office, 30.vi, 30.15
Political gatherings,
attendance at, 30.14, 30.15, 30.16, 30.17
example of, 30.15
"Political organization," 30.viii, 30.9, 30.14, 30.16
contributions to, 30.14, 30.16, 30.17
dues and assessments, 30.14, 30.16
office in a political organization, 30.14, 30.16
speak on behalf of, 30.14
Political party dinners and functions,
attendance, 30.16, 30.17
purchasing tickets, 30.14, 30.16, 30.17
Practice of law, 30.13
Prestige of judicial office, abuse of, 30.2, 30.3
Probation or corrections officer, 30.2
Promptly, 30.2, 30.3, 30.4, 30.5
Public clamor, 30.3

Public comment, 30.5, 30.16
by court personnel, 30.5
by judges, 30.5
by lawyers, 30.5
Public hearing, appearance at, 30.9
Public testimonial, 30.12
Punctual, in attending court, 30.5

R

Real estate, 30.11
Reason, rules of, 30.v, 30.viii
Receivers, 30.6
Referee, 30.6, 30.19
Reference, serving as a, 30.2
Reimbursement, 30.13
Remittal of disqualification, 30.7 - 30.8
agreement, 30.8
Remunerative activity, 30.11
Reporting,
bequest, 30.14
compensation, 30.13 - 30.14
favors, 30.14
gifts, 30.14
loans, 30.14
misconduct, 30.6
"Require," 30.viii, 30.3, 30.5
Retired judge subject to recall, 30.19

S

Scholarships, 30.12
Sentencing judge, 30.2
Sexual harassment, 30.3
Social hospitality, 30.12
Solicitation of funds, 30.vi, 30.10
Speaker,
fees, 30.14
fundraiser, 30.10
political organization, 30.17
standards for, 30.10
Special administrators, 30.6
Special masters, 30.6
State constitutional convention, 30.15
Supervisory authority,
over employees and court officials,
30.4, 30.10
over other judges, 30.6

T

Teaching, 30.8
Terminology, 30.v, 30.vi - 30.viii
Time for compliance, 30.10, 30.13, 30.19
Trustee, 30.vii, 30.7, 30.9, 30.10, 30.13

U

V

W

Waive, 30.7, 30.8
Witnesses, 30.3, 30.5
Writ of mandamus, 30.5
Writing,
retaining control over advertising, 30.2
standards for, 30.14

X

Y

Z

CODE OF
PROFESSIONAL RESPONSIBILITY

As Adopted By The Nebraska Supreme Court

TABLE OF CONTENTS

<u>CANON</u>		<u>PAGE</u>
1	A LAWYER SHOULD ASSIST IN MAINTAINING THE INTEGRITY AND COMPETENCE OF THE LEGAL PROFESSION	31.1
	Ethical Considerations	31.1
	Disciplinary Rules	31.1
2	A LAWYER SHOULD ASSIST THE LEGAL PROFESSION IN FULFILLING ITS DUTY TO MAKE LEGAL COUNSEL AVAILABLE	31.2
	Ethical Considerations	31.2
	Recognition of Legal Problems	31.3
	Selection of a Lawyer: Generally	31.3
	Selection of a Lawyer: Lawyer Advertising	31.4
	Financial Ability to Employ Counsel: Generally	31.5
	Financial Ability to Employ Counsel: Persons Able to Pay Reasonable Fees	31.5
	Financial Ability to Employ Counsel: Persons Unable to Pay Reasonable Fees	31.6
	Acceptance and Retention of Employment	31.7
	Disciplinary Rules	31.8
3	A LAWYER SHOULD ASSIST IN PREVENTING THE UNAUTHORIZED PRACTICE OF LAW	31.13
	Ethical Considerations	31.13
	Disciplinary Rules	31.14
4	A LAWYER SHOULD PRESERVE THE CONFIDENCES AND SECRETS OF A CLIENT	31.15
	Ethical Considerations	31.15
	Disciplinary Rules	31.16
5	A LAWYER SHOULD EXERCISE INDEPENDENT PROFESSIONAL JUDGMENT ON BEHALF OF A CLIENT	31.17
	Ethical Considerations	31.17
	Interests of a Lawyer That May Affect His or Her Judgment	31.17
	Interests of Multiple Clients	31.19
	Desires of Third Persons	31.20
	Disciplinary Rules	31.21
6	A LAWYER SHOULD REPRESENT A CLIENT COMPETENTLY	31.24
	Ethical Considerations	31.24
	Disciplinary Rules	31.25
7	A LAWYER SHOULD REPRESENT A CLIENT ZEALOUSLY WITHIN THE BOUNDS OF THE LAW	31.25
	Ethical Considerations	31.25
	Duty of the Lawyer to a Client	31.25
	Duty of the Lawyer to the Adversary System of Justice	31.28
	Disciplinary Rules	31.31

<u>CANON</u>	<u>PAGE</u>
8	A LAWYER SHOULD ASSIST IN IMPROVING THE LEGAL SYSTEM 31.38
	Ethical Considerations 31.38
	Disciplinary Rules 31.39
9	A LAWYER SHOULD AVOID EVEN THE APPEARANCE OF
	PROFESSIONAL IMPROPRIETY 31.40
	Ethical Considerations 31.40
	Disciplinary Rules 31.41

CANON 1

A LAWYER SHOULD ASSIST IN MAINTAINING THE
INTEGRITY AND COMPETENCE OF THE LEGAL PROFESSION

Ethical Considerations

EC 1-1. A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence. Maintaining the integrity and improving the competence of the bar to meet the highest standards is the ethical responsibility of every lawyer.

EC 1-2. The public should be protected from those who are not qualified to be lawyers by reason of a deficiency in education or moral standards or of other relevant factors but who nevertheless seek to practice law. To ensure the maintenance of high moral and educational standards of the legal profession, lawyers should affirmatively assist courts and other appropriate bodies in promulgating, enforcing, and improving requirements for admission to the bar. In like manner, the bar has a positive obligation to aid in the continued improvement of all phases of preadmission and postadmission legal education.

EC 1-3. Before recommending an applicant for admission, a lawyer should satisfy himself or herself that the applicant is of good moral character. Although a lawyer should not become a self-appointed investigator or judge of applicants for admission, the lawyer should report to proper officials all unfavorable information he or she possesses relating to the character or other qualifications of an applicant.

EC 1-4. The integrity of the profession can be maintained only if conduct of lawyers in violation of the Disciplinary Rules is brought to the attention of the proper officials. A lawyer should reveal voluntarily to those officials all unprivileged knowledge of conduct of lawyers which he or she believes clearly to be in violation of the Disciplinary Rules. A lawyer should, upon request, serve on and assist committees and boards having responsibility for the administration of the Disciplinary Rules.

EC 1-5. A lawyer should maintain high standards of professional conduct and should encourage fellow lawyers to do likewise. A lawyer should be temperate and dignified and should refrain from all illegal and morally reprehensible conduct. Because of his or her position in society, even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. Respect for the law includes, inter alia, compliance with support orders. To lawyers especially, respect for the law should be more than a platitude.

EC 1-6. An applicant for admission to the bar or a lawyer may be unqualified, temporarily or permanently, for other than moral and educational reasons, such as mental or emotional instability. Lawyers should be diligent in taking steps to see that during a period of disqualification such person is not granted a license or, if licensed, is not permitted to practice. In like manner, when the disqualification has terminated, members of the bar should assist such person in being licensed or, if licensed, in being restored to his or her full right to practice.

EC 1-5 amended September 9, 1999.

Disciplinary Rules

DR 1-101 Maintaining Integrity and Competence of the Legal Profession.

(A) A lawyer is subject to discipline if he or she has made a materially false statement in, or if he or she has deliberately failed to disclose a material fact requested in connection with, the lawyer's application for admission to the bar.

(B) A lawyer shall not further the application for admission to the bar of another person known by him or her to be unqualified in respect to character, education, or other relevant attribute.

DR 1-102 Misconduct.

(A) A lawyer shall not:

- (1) Violate a Disciplinary Rule.
- (2) Circumvent a Disciplinary Rule through actions of another.
- (3) Engage in illegal conduct involving moral turpitude.
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice. Once a lawyer is employed in a professional capacity, the lawyer should not, in the course of such employment, engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers, or court personnel on the basis of the person's race, national origin, gender, or religion. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.

(6) Engage in any other conduct that adversely reflects on his or her fitness to practice law.

(7) Willfully refuse, as determined by a court of competent jurisdiction, to timely pay a support order, as such order is defined by Neb. Rev. Stat. § 43-1717.

DR 1-102(A)(5) amended June 17, 1998; DR 1-102(A)(7) adopted September 9, 1999.

DR 1-103 Disclosure of Information to Authorities.

(A) A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

CANON 2

A LAWYER SHOULD ASSIST THE LEGAL PROFESSION IN
FULFILLING ITS DUTY TO MAKE LEGAL COUNSEL AVAILABLE

Ethical Considerations

EC 2-1. The need of members of the public for legal services is met only if they recognize their legal problems, appreciate the importance of seeking assistance, and are able to obtain the services of acceptable legal counsel. Hence, important functions of the legal profession are to educate laypersons to recognize their problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services fully available.

Recognition of Legal Problems

EC 2-2. The legal profession should assist laypersons to recognize legal problems because such may not be self-revealing and often are not timely noticed. Therefore, lawyers should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise. Preparation of advertisements and professional articles for lay publications and participation in seminars, lectures, and civic programs should be motivated by a desire to educate the public to an awareness of legal needs and to provide information relevant to the selection of the most appropriate counsel rather than to obtain publicity for particular lawyers. The problems of advertising on television require special consideration, due to the style, cost, and transitory nature of such media. If the interests of laypersons in receiving relevant lawyer advertising are not adequately served by print media and radio advertising, and if adequate safeguards to protect the public can reasonably be formulated, television advertising may serve a public interest.

EC 2-3. Whether a lawyer acts properly in volunteering inperson advice to a layperson to seek legal services depends upon the circumstances. The giving of advice that one should take legal action could well be in fulfillment of the duty of the legal profession to assist laypersons in recognizing legal problems. The advice is proper only if motivated by a desire to protect one who does not recognize that he or she may have legal problems or who is ignorant of his or her legal rights or obligations. It is improper if motivated by a desire to obtain personal benefit, secure personal publicity, or cause legal action to be taken merely to harass or injure another. A lawyer should not initiate an inperson contact with a nonclient, personally or through a representative, for the purpose of being retained to represent him or her for compensation.

EC 2-4. Since motivation is subjective and often difficult to judge, the motives of a lawyer who volunteers inperson advice likely to produce legal controversy may well be suspect if he or she receives professional employment or other benefits as a result. A lawyer who volunteers inperson advice that one should obtain the services of a lawyer generally should not himself or herself accept employment, compensation, or other benefit in connection with that matter. However, it is not improper for a lawyer to volunteer such advice and render resulting legal services to close friends, relatives, former clients (in regard to matters germane to former employment), and regular clients.

EC 2-5. A lawyer who writes or speaks for the purpose of educating members of the public to recognize their legal problems should carefully refrain from giving or appearing to give a general solution applicable to all apparently similar individual problems, since slight changes in fact situations may require a material variance in the applicable advice; otherwise, the public may be misled and misadvised. Talks and writings by lawyers for laypersons should caution them not to attempt to solve individual problems upon the basis of the information contained therein.

Selection of a Lawyer: Generally

EC 2-6. Formerly a potential client usually knew the reputations of local lawyers for competency and integrity and therefore could select a practitioner in whom he or she had confidence. This traditional selection process worked well because it was initiated by the client and the choice was an informed one.

EC 2-7. Changed conditions, however, have seriously restricted the effectiveness of the traditional selection process. Often the reputations of lawyers are not sufficiently known to enable laypersons to make intelligent choices. The law has become increasingly complex and specialized. Few lawyers are willing and competent to deal with every kind of legal matter, and many laypersons have difficulty in determining the competence of lawyers to render different types of legal services. The selection of legal counsel is particularly difficult for transients, persons moving into new areas, persons of limited education or means, and others who have little or no contact with lawyers. Lack of information about the availability of lawyers, the qualifications of particular lawyers, and the expense of legal representation leads laypersons to avoid seeking legal advice.

EC 2-8. Selection of a lawyer by a layperson should be made on an informed basis. Advice and recommendation of third parties--relatives, friends, acquaintances, business associates, or other lawyers--and disclosure of relevant information about the lawyer and his or her practice may be helpful. A layperson is best served if the recommendation is disinterested and informed. In order that the recommendation be disinterested, a lawyer should not seek to influence another to recommend his or her employment. A lawyer should not compensate another person for recommending him or her, for influencing a prospective client to employ him or her, or to encourage future recommendations. Advertisements and public communications, whether in law lists, telephone directories, newspapers, other forms of print media, television or radio, should be formulated to convey only information that is necessary to make an appropriate selection.

Selection of a Lawyer: Lawyer Advertising

EC 2-9. The lack of sophistication on the part of many members of the public concerning legal services, the importance of the interests affected by the choice of a lawyer, and prior experience with unrestricted lawyer advertising require that special care be taken by lawyers to avoid misleading the public and to ensure that the information set forth in any advertising is relevant to the selection of a lawyer. The lawyer must be mindful that the benefits of lawyer advertising depend upon its reliability and accuracy. Examples of information in law advertising that would be deceptive include misstatements of fact, suggestions that the ingenuity or prior record of a lawyer rather than the justice of the claim are the principal factors likely to determine the result, inclusion of information irrelevant to selecting a lawyer, and representations concerning the quality of service, which cannot be measured or verified. Since lawyer advertising is calculated and not spontaneous, reasonable regulation of lawyer advertising designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.

EC 2-10. A lawyer should ensure that the information contained in any advertising which the lawyer publishes, broadcasts, or causes to be published or broadcasted is relevant, is disseminated in an objective and understandable fashion, and would facilitate the prospective client's ability to compare the qualifications of the lawyers available to represent him or her. A lawyer should strive to communicate such information without undue emphasis upon style and advertising stratagems which serve to hinder rather than to facilitate intelligent selection of counsel. Because technological change is a recurrent feature of communications forms, and because perceptions of what is relevant in lawyer selection may change, lawyer advertising regulations should not be cased in rigid, unchangeable terms. Machinery is therefore available to advertisers and consumers to prompt consideration of proposals to change the rules governing lawyer advertising. The determination of any request for such change should depend upon whether the proposal is necessary in light of existing Code provisions; whether the proposal accords with standards of accuracy, reliability, and truthfulness; and whether the proposal would facilitate informed selection of lawyers by potential consumers of legal services. Representatives of lawyers and consumers should be heard in addition to the applicant concerning any proposed change. Any change which is approved should be promulgated in the form of an amendment to the Code so that all lawyers practicing in the jurisdiction may avail themselves of its provisions.

EC 2-11. The name under which a lawyer conducts his or her practice may be a factor in the selection process. Accordingly, a lawyer in private practice should not practice under a firm name that is false, fraudulent, or deceptive or that would tend to mislead laypersons as to the identity of the lawyers actually practicing in the firm, the relationship of the lawyers practicing in such firm, or the nature of the firm's law practice. For many years some law firms have used a firm name retaining one or more names of deceased or retired partners and such practice is not improper if the firm is a bona fide successor of a firm in which the deceased or retired person was a member, if the use of the name is authorized by law or by contract, and if the public is not misled thereby. However, the name of a partner who withdraws from a firm but continues to practice law should be omitted from the firm name in order to avoid misleading the public.

EC 2-12. A lawyer occupying a judicial, legislative, or public executive or administrative position who has the right to practice law concurrently may allow his or her name to remain in the name of the firm if the lawyer

actively continues to practice law as a member thereof. Otherwise, the lawyer's name should be removed from the firm name, and he or she should not be identified as a past or present member of the firm; and the lawyer should not hold himself or herself out as being a practicing lawyer.

EC 2-13. In order to avoid the possibility of misleading persons with whom he or she deals, a lawyer should be scrupulous in the representation of his or her professional status. The lawyer should not hold himself or herself out as being a partner or associate of a law firm if the lawyer is not one in fact, and thus should not hold himself or herself out as a partner or associate if he or she only shares offices with another lawyer.

EC 2-14. In some instances a lawyer confines his or her practice to a particular field of law. In the absence of state controls to ensure the existence of special competence, a lawyer should not be permitted to hold himself or herself out as a specialist or as having official recognition as a specialist, other than in the fields of admiralty, trademark, and patent law where a holding out as a specialist historically has been permitted. A lawyer may, however, indicate in permitted advertising, if it is factual, a limitation of his or her practice to one or more particular areas or fields of law in which he or she practices. If a lawyer discloses areas of law in which he or she practices or to which he or she limits his or her practice, the lawyer should avoid any implication that he or she is either in fact certified or officially recognized as a specialist.

EC 2-15. The legal profession has developed lawyer referral systems designed to aid individuals who are able to pay fees but need assistance in locating lawyers competent to handle their particular problems. Use of a lawyer referral system enables a layperson to avoid an uninformed selection of a lawyer because such a system makes possible the employment of competent lawyers who have indicated an interest in the subject matter involved. Lawyers should support the principle of lawyer referral systems and should encourage the evolution of other ethical plans which aid in the selection of qualified counsel.

Financial Ability to Employ Counsel: Generally

EC 2-16. The legal profession cannot remain a viable force in fulfilling its role in our society unless its members receive adequate compensation for services rendered, and reasonable fees should be charged in appropriate cases to clients able to pay them. Nevertheless, persons unable to pay all or a portion of a reasonable fee should be able to obtain necessary legal services, and lawyers should support and participate in ethical activities designed to achieve that objective.

Financial Ability to Employ Counsel: Persons Able to Pay Reasonable Fees

EC 2-17. The determination of a proper fee requires consideration of the interests of both client and lawyer. The lawyer should not charge more than a reasonable fee, for excessive cost of legal service would deter laypersons from utilizing the legal system in protection of their rights. Furthermore, an excessive charge abuses the professional relationship between lawyer and client. On the other hand, adequate compensation is necessary in order to enable the lawyer to serve his or her client effectively and to preserve the integrity and independence of the profession.

EC 2-18. The determination of the reasonableness of a fee requires consideration of all relevant circumstances, including those stated in the Disciplinary Rules. The fees of a lawyer will vary according to many factors, including the time required; the lawyer's experience, ability, and reputation; the nature of the employment; the responsibility involved; and the results obtained. It is a commendable and longstanding tradition of the bar that special consideration is given in the fixing of any fee for services rendered a fellow lawyer or a member of his or her immediate family.

EC 2-19. As soon as feasible after a lawyer has been employed, it is desirable that the lawyer reach a clear agreement with his or her client as to the basis of the fee charges to be made. Such a course will not only prevent later misunderstanding but will also work for good relations between the lawyer and the client. It is

usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ him or her may have had little or no experience with fee charges of lawyers, and for this reason the lawyer should explain fully to such persons the reasons for the particular fee arrangement he or she proposes.

EC 2-20. Contingent fee arrangements in civil cases have long been commonly accepted in the United States in proceedings to enforce claims. The historical bases of their acceptance are that (1) they often, and in a variety of circumstances, provide the only practical means by which one having a claim against another can economically afford, finance, and obtain the services of a competent lawyer to prosecute his or her claim, and (2) a successful prosecution of the claim produces a res out of which the fee can be paid. Although a lawyer generally should decline to accept employment on a contingent fee basis by one who is able to pay a reasonable fixed fee, it is not necessarily improper for a lawyer, where justified by the particular circumstances of a case, to enter into a contingent fee contract in a civil case with any client who, after being fully informed of all relevant factors, desires that arrangement. Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relation cases are rarely justified. In administrative agency proceedings, contingent fee contracts should be governed by the same consideration as in other civil cases. Public policy properly condemns contingent fee arrangements in criminal cases, largely on the ground that legal services in criminal cases do not produce a res with which to pay the fee.

EC 2-21. A lawyer should not accept compensation or anything of value incident to the lawyer's employment or services from one other than his or her client without the knowledge and consent of the client after full disclosure.

EC 2-22. Without the consent of his or her client, a lawyer should not associate in a particular matter another lawyer outside his or her firm. A fee may properly be divided between lawyers properly associated if the division is in proportion to the services performed and the responsibility assumed by each lawyer and if the total fee is reasonable.

EC 2-23. A lawyer should be zealous in his or her efforts to avoid controversies over fees with clients and should attempt to resolve amicably any differences on the subject. The lawyer should not sue a client for a fee unless necessary to prevent fraud or gross imposition by the client.

Financial Ability to Employ Counsel: Persons Unable to Pay Reasonable Fees

EC 2-24. A layperson whose financial ability is not sufficient to permit payment of any fee cannot obtain legal services, other than in cases where a contingent fee is appropriate, unless the services are provided for him or her. Even a person of moderate means may be unable to pay a reasonable fee which is large because of the complexity, novelty, or difficulty of the problem or similar factors.

EC 2-25. Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus it has been necessary for the profession to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed, by the profession. Every lawyer should support all proper efforts to meet this need for legal services.

Acceptance and Retention of Employment

EC 2-26. A lawyer is under no obligation to act as adviser or advocate for every person who may wish to become the lawyer's client; but in furtherance of the objective of the bar to make legal services fully available, a lawyer should not lightly decline proffered employment. The fulfillment of this objective requires acceptance by a lawyer of his or her share of tendered employment which may be unattractive both to him or her and the bar generally.

EC 2-27. History is replete with instances of distinguished and sacrificial services by lawyers who have represented unpopular clients and causes. Regardless of his or her personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse.

EC 2-28. The personal preference of a lawyer to avoid adversary alignment against judges, other lawyers, public officials, or influential members of the community does not justify his or her rejection of tendered employment.

EC 2-29. When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, he or she should not seek to be excused from undertaking the representation except for compelling reasons. Compelling reasons do not include such factors as the repugnance of the subject matter of the proceeding, the identity or position of a person involved in the case, the belief of the lawyer that the defendant in a criminal proceeding is guilty, or the belief of the lawyer regarding the merits of the civil case.

EC 2-30. Employment should not be accepted by a lawyer when he or she is unable to render competent service or when the lawyer knows or it is obvious that the person seeking to employ him or her desires to institute or maintain an action merely for the purpose of harassing or maliciously injuring another. Likewise, a lawyer should decline employment if the intensity of the lawyer's personal feeling, as distinguished from a community attitude, may impair his or her effective representation of a prospective client. If a lawyer knows a client has previously obtained counsel, the lawyer should not accept employment in the matter unless the other counsel approves or withdraws, or the client terminates the prior employment.

EC 2-31. Full availability of legal counsel requires both that persons be able to obtain counsel and that lawyers who undertake representation complete the work involved. Trial counsel for a convicted defendant should continue to represent his or her client by advising whether to take an appeal and, if the appeal is prosecuted, by representing the client through the appeal unless new counsel is substituted or withdrawal is permitted by the appropriate court.

EC 2-32. A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances, and in a matter pending before a tribunal, he or she must comply with the rules of the tribunal regarding withdrawal. A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of his or her client and the possibility of prejudice to the client as a result of the withdrawal. Even when a lawyer justifiably withdraws, the lawyer should protect the welfare of his or her client by giving due notice of withdrawal, suggesting employment of other counsel, delivering to the client all papers and property to which the client is entitled, cooperating with counsel subsequently employed, and otherwise endeavoring to minimize the possibility of harm. Further, a lawyer should refund to the client any compensation not earned during the employment.

EC 2-33. As a part of the legal profession's commitment to the principle that high quality legal services should be available to all, lawyers are encouraged to cooperate with qualified legal assistance organizations providing prepaid legal services. Such participation should at all times be in accordance with the basic tenets of the profession: independence, integrity, competence, and devotion to the interests of individual clients. A lawyer so participating should make certain that his or her relationship with a qualified legal assistance organization

in no way interferes with providing independent, professional representation of the interests of the individual client. A lawyer should avoid situations in which officials of the organization who are not lawyers attempt to direct lawyers concerning the manner in which legal services are performed for individual members, and should also avoid situations in which considerations of economy are given undue weight in determining the lawyers employed by an organization or the legal services to be performed for the member or beneficiary rather than competence and quality of service. A lawyer interested in maintaining the historic traditions of the profession and preserving the function of a lawyer as a trusted and independent advisor to individual members of society should carefully assess such factors when accepting employment by, or otherwise participating in, a particular qualified legal assistance organization, and while so participating should adhere to the highest professional standards of effort and competence.

Disciplinary Rules

DR 2-101 Publicity.

(A) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(1) Contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) Is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Code of Professional Responsibility or other law; or

(3) Compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

(B) Subject to the requirements of DR 2-101(A) and DR 2-104(B), a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, radio or television, or through written communication not involving personal contact. A copy or recording of an advertisement or written communication shall be kept for one year after its dissemination along with a record of when and where it was used.

(C) If a lawyer advertises a fee for a service, the lawyer must render that service for no more than the fee advertised.

(D) Unless otherwise specified in the advertisement, if a lawyer publishes fee information in a publication that is published more frequently than one time per month, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such publication. If a lawyer publishes fee information in a publication that is published once a month or less frequently, he or she shall be bound by any representation made therein until the publication of the succeeding issue. If a lawyer publishes fee information in a publication which has no fixed date for publication of a succeeding issue, the lawyer shall be bound by any representation made therein for a reasonable period of time after publication but in no event less than one year.

(E) Unless otherwise specified, if a lawyer broadcasts fee information, the lawyer shall be bound by any representation made therein for a period of not less than 30 days after such broadcast.

(F) On the front of each envelope in which an advertisement of a lawyer is mailed or delivered or on the front of each postcard, if the advertisement is printed on a postcard, shall be placed the words: "This is an

advertisement". These words shall be printed in type size at least as large as the print of the address and shall be located in a conspicuous place on the envelope or postcard.

DR 2-101(A)(1) amended September 14, 1994.

DR 2-102 Firm Names and Letterheads.

(A) A lawyer shall not use a firm name, letterhead, or other professional designation that violates DR 2-101. A trade name may not be used by a lawyer in private practice. A firm may be designated by the names of all or some of its members, or by the names of deceased or retired members where there has been a continuing succession in the firm's identity.

(B) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(C) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(D) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

DR 2-102(A) amended September 14, 1994.

DR 2-103 Recommendation of Professional Employment.

(A) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or written communication permitted by these rules and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

(B) A lawyer shall not compensate or give anything of value to representatives of the press, radio, television, or other communication medium in anticipation of or in return for professional publicity in a news item.

DR 2-104 Personal Contact with Prospective Clients.

(A) A lawyer may initiate personal contact with a prospective client for the purpose of obtaining professional employment only in the following circumstances and subject to the requirements of paragraph (B):

(1) If the prospective client is a close friend, relative, former client, or one whom the lawyer reasonably believes to be a client;

(2) Under the auspices of a public or charitable legal services organization; or

(3) Under the auspices of a bona fide political, social, civic, fraternal, employee, or trade organization whose purposes include but are not limited to providing or recommending legal services, if the legal services are related to the principal purposes of the organization.

(B) A lawyer shall not contact, or send a written communication to, a prospective client for the purpose of obtaining professional employment if:

(1) The lawyer knows or reasonably should know that the physical, emotional, or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer;

(2) The person has made known to the lawyer a desire not to receive communications from the lawyer; or

(3) The communication involves coercion, duress, or harassment.

DR 2-105 Limitation of Practice.

Deleted May 15, 1992.

DR 2-106 Fees for Legal Services.

(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

(C) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.

DR 2-107 Division of Fees Among Lawyers.

(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his or her law firm or law office, unless:

(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

(2) The division is made in proportion to the services performed and responsibility assumed by each.

(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

(B) This Disciplinary Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

DR 2-108 Agreements Restricting the Practice of a Lawyer.

(A) A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.

(B) In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts his or her right to practice law.

DR 2-109 Acceptance of Employment.

(A) A lawyer shall not accept employment on behalf of a person if the lawyer knows or it is obvious that such person wishes to:

(1) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken for that person, merely for the purpose of harassing or maliciously injuring any person.

(2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

DR 2-110 Withdrawal from Employment.

(A) In general.

(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of his or her client, including giving due notice to the client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) The lawyer knows or it is obvious that his or her client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him or her, merely for the purpose of harassing or maliciously injuring any person.

(2) The lawyer knows or it is obvious that his or her continued employment will result in violation of a Disciplinary Rule.

(3) The lawyer's mental or physical condition renders it unreasonably difficult for him or her to carry out the employment effectively.

(4) The lawyer is discharged by his or her client.

(C) Permissive withdrawal.

If DR 2-110(B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) The lawyer's client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

(b) Personally seeks to pursue an illegal course of conduct.

(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out his or her employment effectively.

(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

(2) The lawyer's continued employment is likely to result in a violation of a Disciplinary Rule.

(3) The lawyer's inability to work with cocounsel indicates that the best interests of the client likely will be served by withdrawal.

(4) The lawyer's mental or physical condition renders it difficult for him or her to carry out the employment effectively.

(5) The lawyer's client knowingly and freely assents to termination of the lawyer's employment.

(6) The lawyer believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

DR 2-111 Sale of Law Practice.

(A) A lawyer or law firm may sell or purchase a private law practice, including goodwill, provided:

(1) Upon transferring the law practice to the purchaser, the seller shall cease to engage in the private practice of law in the geographic area in which the law practice has been conducted.

(2) The seller shall sell the law practice as an entirety to a single purchaser, which is another lawyer or law firm licensed to practice law in the State. Without violating this provision, the seller may agree to transfer all matters in one legal field to one purchaser, while transferring all matters in another legal field to another purchaser.

(3) The seller shall not disclose any specific information relating to a client without the client's prior written consent.

(4) The seller shall send a written notification to all clients whose files are currently active and all clients whose inactive files will be taken over by the buying lawyer or firm of lawyers. The written notification that the seller must send pursuant to this paragraph must include at the minimum:

(a) A statement that the law practice of the selling lawyer has been sold to the buying lawyer or law firm.

(b) A summary of the buying lawyer's or law firm's professional background including education and experience and the length of time that the buying lawyer or members of the buying law firm have been in practice.

(c) A statement that the client has the right to continue to retain the buying lawyer under the same fee arrangements as the client had with the selling lawyer or to have the client's complete file sent to the client or another lawyer of the client's choice.

(5) If the purchaser has identified a conflict of interest that the client cannot waive and that prohibits the purchaser from representing the client, the seller's notice to the client shall advise the client to retain substitute counsel to assume the client's representation and to arrange to have the substitute counsel contact the seller.

(6) If a client cannot be given notice, that matter shall not be included in the sale and the sale otherwise shall be unaffected.

(7) If a client does not retain other counsel and objects to the purchaser's substitution as counsel, or cannot be given notice, the seller shall comply with the requirements of DR 2-110.

(8) The agreement for the sale of a law practice may include restrictions on the seller's right to practice law in accordance with DR 2-108.

(9) The purchaser shall honor all fee agreements entered into between the seller and the seller's clients. The fees charged to the seller's or the purchaser's clients shall not be increased by reason of the sale.

(10) The seller and the purchaser may agree that the purchaser does not have to pay the entire sale price for the seller's law practice in one lump sum. The seller and the purchaser may enter into reasonable arrangements to finance the purchaser's acquisition of the seller's law practice without violating DR 2-107. The seller, however, shall have no control regarding the purchaser's conduct of the law practice.

(11) Lawyers and law firms participating in the sale of a law practice pursuant to this rule are subject to the ethical standards that apply when involving another lawyer in the representation of a client. See, e.g., EC 4-2.

(12) Unless expressly provided for by agreement between the seller and the purchaser, the purchaser shall not be deemed to have assumed any liability for the seller's law practice prior to the transfer under this rule.

(13) The seller or the purchaser may retain a broker to assist in the sale or purchase of a law practice. The seller or purchaser shall not disclose to a broker any specific information relating to a client without that client's prior written consent. The seller or purchaser may enter into reasonable arrangements with the broker to compensate the broker for his or her services. The broker, however, shall have no control over the purchaser's conduct of the law practice.

(14) The selling lawyer shall retain responsibility for the proper management and disposition of all inactive files that are not transferred as part of the sale of the law practice.

DR 2-111 adopted September 7, 2000.

CANON 3

A LAWYER SHOULD ASSIST IN PREVENTING THE UNAUTHORIZED PRACTICE OF LAW

Ethical Considerations

EC 3-1. The prohibition against the practice of law by a layperson is grounded in the need of the public for integrity and competence of those who undertake to render legal services. Because of the fiduciary and personal character of the lawyer-client relationship and the inherently complex nature of our legal system, the public can better be assured of the requisite responsibility and competence if the practice of law is confined to those who are subject to the requirements and regulations imposed upon members of the legal profession.

EC 3-2. The sensitive variations in the considerations that bear on legal determinations often make it difficult even for a lawyer to exercise appropriate professional judgment, and it is therefore essential that the personal nature of the relationship of client and lawyer be preserved. Competent professional judgment is the product of a trained familiarity with law and legal processes; a disciplined, analytical approach to legal problems; and a firm ethical commitment.

EC 3-3. A nonlawyer who undertakes to handle legal matters is not governed as to integrity or legal competence by the same rules that govern the conduct of a lawyer. A lawyer is not only subject to that regulation but also is committed to high standards of ethical conduct. The public interest is best served in legal matters by a regulated profession committed to such standards. The Disciplinary Rules protect the public in that they prohibit a lawyer from seeking employment by improper overtures, from acting in cases of divided loyalties, and from submitting to the control of others in the exercise of his or her judgment. Moreover, a person who entrusts legal matters to a lawyer is protected by the lawyer-client privilege and by the duty of the lawyer to hold inviolate the confidences and secrets of his or her client.

EC 3-4. A layperson who seeks legal services often is not in a position to judge whether he or she will receive proper professional attention. The entrustment of a legal matter may well involve the confidences, the reputation, the property, the freedom, or even the life of the client. Proper protection of members of the public demands that no person be permitted to act in the confidential and demanding capacity of a lawyer unless he or she is subject to the regulations of the legal profession.

EC 3-5. It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law. Functionally, the practice of law relates to the rendition of services for others

that call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his or her educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment. Where this professional judgment is not involved, nonlawyers, such as court clerks, police officers, abstracters, and many governmental employees, may engage in occupations that require a special knowledge of law in certain areas. But the services of a lawyer are essential in the public interest whenever the exercise of professional legal judgment is required.

EC 3-6. A lawyer often delegates tasks to clerks, secretaries, and other laypersons. Such delegation is proper if the lawyer maintains a direct relationship with his or her client, supervises the delegated work, and maintains complete professional responsibility for the work product. This delegation enables a lawyer to render legal service more economically and efficiently.

EC 3-7. The prohibition against a nonlawyer practicing law does not prevent a layperson from representing himself or herself, for then the layperson is ordinarily exposing only himself or herself to possible injury. The purpose of the legal profession is to make educated legal representation available to the public; but anyone who does not wish to avail himself or herself of such representation is not required to do so. Even so, the legal profession should help members of the public to recognize legal problems and to understand why it may be unwise for them to act for themselves in matters having legal consequences.

EC 3-8. Since a lawyer should not aid or encourage a layperson to practice law, a lawyer should not practice law in association with a layperson or otherwise share legal fees with a layperson. This does not mean, however, that the pecuniary value of the interest of a deceased lawyer in his or her firm or practice may not be paid to the deceased lawyer's estate or specified persons such as his or her widow or heirs. In like manner, profit-sharing retirement plans of a lawyer or law firm which include nonlawyer office employees are not improper. These limited exceptions to the rule against sharing legal fees with laypersons are permissible, since they do not aid or encourage laypersons to practice law.

EC 3-9. Regulation of the practice of law is accomplished principally by the respective states. Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he or she is not permitted by law or by court order to do so. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by the states. In furtherance of the public interest, the legal profession should discourage regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle the legal affairs of his or her client or upon the opportunity of a client to obtain the services of a lawyer of the client's choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice.

Disciplinary Rules

DR 3-101 Aiding Unauthorized Practice of Law.

(A) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.

(B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

DR 3-102 Dividing of Legal Fees with a Nonlawyer.

(A) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) An agreement by a lawyer with his or her firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to his or her estate or to one or more specified persons.

(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(3) A lawyer or law firm may include nonlawyer employees in a retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

DR 3-103 Forming a Partnership with a Nonlawyer.

(A) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

CANON 4

A LAWYER SHOULD PRESERVE THE CONFIDENCES AND SECRETS OF A CLIENT

Ethical Considerations

EC 4-1. Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him or her. A client must feel free to discuss whatever the client wishes with his or her lawyer and a lawyer must be equally free to obtain information beyond that volunteered by the client. A lawyer should be fully informed of all the facts of the matter the lawyer is handling in order for his or her client to obtain the full advantage of our legal system. It is for the lawyer in the exercise of the lawyer's independent professional judgment to separate the relevant and important from the irrelevant and unimportant. The observance of the ethical obligation of a lawyer to hold inviolate the confidences and secrets of a client not only facilitates the full development of facts essential to proper representation of the client but also encourages laypersons to seek early legal assistance.

EC 4-2. The obligation to protect confidences and secrets obviously does not preclude a lawyer from revealing information when the lawyer's client consents after full disclosure, when necessary to perform his or her professional employment, when permitted by a Disciplinary Rule, or when required by law. Unless the client otherwise directs, a lawyer may disclose the affairs of his or her client to partners or associates of the lawyer's firm. It is a matter of common knowledge that the normal operation of a law office exposes confidential professional information to nonlawyer employees of the office, particularly secretaries and those having access to the files; this obligates a lawyer to exercise care in selecting and training employees so that the sanctity of all confidences and secrets of the lawyer's clients may be preserved. If the obligation extends to two or more clients as to the same information, a lawyer should obtain the permission of all before revealing the information. A lawyer must always be sensitive to the rights and wishes of his or her client and act scrupulously in the making of decisions which may involve the disclosure of information obtained in the professional relationship. Thus, in the absence of consent of his or her client after full disclosure, a lawyer should not associate another lawyer in the handling of a matter; nor should the lawyer, in the absence of consent, seek counsel from another lawyer if there is a reasonable possibility that the identity of the client or his or her confidences or secrets would be revealed to such lawyer. Both social amenities and professional duty should cause a lawyer to shun indiscreet conversations concerning the lawyer's clients.

EC 4-3. Unless the client otherwise directs, it is not improper for a lawyer to give limited information from his or her files to an outside agency necessary for statistical, bookkeeping, accounting, data processing, banking, printing, or other legitimate purposes, provided the lawyer exercises due care in the selection of the agency and warns the agency that the information must be kept confidential.

EC 4-4. The lawyer-client privilege is more limited than the ethical obligation of a lawyer to guard the confidences and secrets of his or her client. This ethical precept, unlike the evidentiary privilege, exists without regard to the nature or source of information or the fact that others share the knowledge. A lawyer should endeavor to act in a manner which preserves the evidentiary privilege; for example, the lawyer should avoid professional discussions in the presence of persons to whom the privilege does not extend. A lawyer owes an obligation to advise the client of the lawyer-client privilege and timely to assert the privilege unless it is waived by the client.

EC 4-5. A lawyer should not use information acquired in the course of the representation of a client to the disadvantage of the client and a lawyer should not use, except with the consent of the lawyer's client after full disclosure, such information for his or her own purposes. Likewise, a lawyer should be diligent in his or her efforts to prevent the misuse of such information by the lawyer's employees and associates. Care should be exercised by a lawyer to prevent the disclosure of the confidences and secrets of one client to another, and no employment should be accepted that might require such disclosure.

EC 4-6. The obligation of a lawyer to preserve the confidences and secrets of his or her client continues after the termination of the lawyer's employment. Thus a lawyer should not attempt to sell a law practice as a going business because, among other reasons, to do so would involve the disclosure of confidences and secrets. A lawyer should also provide for the protection of the confidences and secrets of his or her client following the termination of the practice of the lawyer, whether termination is due to death, disability, or retirement. For example, a lawyer might provide for the personal papers of the client to be returned to the client and for the papers of the lawyer to be delivered to another lawyer or to be destroyed. In determining the method of disposition, the instructions and wishes of the client should be a dominant consideration.

Disciplinary Rules

DR 4-101 Preservation of Confidences and Secrets of a Client.

(A) "Confidence" refers to information protected by the lawyer-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:

- (1) Reveal a confidence or secret of the lawyer's client.
- (2) Use a confidence or secret of the lawyer's client to the disadvantage of the client.
- (3) Use a confidence or secret of the lawyer's client for the advantage of himself or herself or of a third person, unless the client consents after full disclosure.

(C) A lawyer may reveal:

- (1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.

(2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.

(3) The intention of the lawyer's client to commit a crime and the information necessary to prevent the crime.

(4) Confidences or secrets necessary to establish or collect the lawyer's fee or to defend the lawyer or his or her employees or associates against an accusation of wrongful conduct.

(D) A lawyer shall exercise reasonable care to prevent the lawyer's employees, associates, and others whose services are utilized by him or her from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101(C) through an employee.

(E) The relationship between a member of the Nebraska State Bar Association Committee on the Nebraska Lawyers Assistance Program or an employee of the Nebraska Lawyers Assistance Program and a lawyer who seeks or receives assistance through that committee or that program shall be the same as that of lawyer and client for purposes of the application of DR 1-103, DR 4-101, and DR 7-102(B).

DR 4-101(E) amended January 14, 1998.

CANON 5

A LAWYER SHOULD EXERCISE INDEPENDENT PROFESSIONAL JUDGMENT ON BEHALF OF A CLIENT

Ethical Considerations

EC 5-1. The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of the lawyer's client and free of compromising influences and loyalties. Neither the lawyer's personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute the lawyer's loyalty to his or her client.

Interests of a Lawyer That May Affect His or Her Judgment

EC 5-2. A lawyer should not accept proffered employment if his or her personal interests or desires will, or there is a reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client. After accepting employment, a lawyer carefully should refrain from acquiring a property right or assuming a position that would tend to make the lawyer's judgment less protective of the interests of his or her client.

EC 5-3. The self-interest of a lawyer resulting from the lawyer's ownership of property in which his or her client also has an interest or which may affect property of the client may interfere with the exercise of free judgment on behalf of the client. If such interference would occur with respect to a prospective client, a lawyer should decline employment proffered by him or her. After accepting employment, a lawyer should not acquire property rights that would adversely affect the lawyer's professional judgment in the representation of his or her client. Even if the property interests of a lawyer do not presently interfere with the exercise of the lawyer's independent judgment, but the likelihood of interference can reasonably be foreseen by him or her, a lawyer should explain the situation to his or her client and should decline employment or withdraw unless the client consents to the continuance of the relationship after full disclosure. A lawyer should not seek to persuade his or her client to permit the lawyer to invest in an undertaking of the client nor make improper use of the lawyer's professional relationship to influence the client to invest in an enterprise in which the lawyer is interested.

EC 5-4. If, in the course of a lawyer's representation of a client, the lawyer is permitted to receive from the client a beneficial ownership in publication rights relating to the subject matter of the employment, the lawyer may be tempted to subordinate the interests of the client to the lawyer's own anticipated pecuniary gain. For example, a lawyer in a criminal case who obtains from his or her client television, radio, motion picture, newspaper, magazine, book, or other publication rights with respect to the case may be influenced, consciously or unconsciously, to a course of conduct that will enhance the value of the lawyer's publication rights to the prejudice of his or her client. To prevent these potentially differing interests, such arrangements should be scrupulously avoided prior to the termination of all aspects of the matter giving rise to the employment, even though his or her employment has previously ended.

EC 5-5. A lawyer should not suggest to his or her client that a gift be made to the lawyer or for the lawyer's benefit. If a lawyer accepts a gift from his or her client, the lawyer is peculiarly susceptible to the charge that he or she unduly influenced or overreached the client. If a client voluntarily offers to make a gift to his or her lawyer, the lawyer may accept the gift, but before doing so, the lawyer should urge that the client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances. Other than in exceptional circumstances, a lawyer should insist that an instrument in which his or her client desires to name the lawyer beneficially be prepared by another lawyer selected by the client.

EC 5-6. A lawyer should not consciously influence a client to name the lawyer as executor, trustee, or lawyer in an instrument. In those cases where a client wishes to name his or her lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety.

EC 5-7. The possibility of an adverse effect upon the exercise of free judgment by a lawyer on behalf of his or her client during litigation generally makes it undesirable for the lawyer to acquire a proprietary interest in the cause of the client or otherwise to become financially interested in the outcome of the litigation. However, it is not improper for a lawyer to protect his or her right to collect a fee for services by the assertion of legally permissible liens, even though by doing so the lawyer may acquire an interest in the outcome of litigation. Although a contingent fee arrangement gives a lawyer a financial interest in the outcome of litigation, a reasonable contingent fee is permissible in civil cases because it may be the only means by which a layperson can obtain the services of a lawyer of his or her choice. But a lawyer, because he or she is in a better position to evaluate a cause of action, should enter into a contingent fee arrangement only in those instances where the arrangement will be beneficial to the client.

EC 5-8. A financial interest in the outcome of litigation also results if monetary advances are made by the lawyer to his or her client. Although this assistance generally is not encouraged, there are instances when it is not improper to make loans to a client. For example, the advancing or guaranteeing of payment of the costs and expenses of litigation by a lawyer may be the only way a client can enforce his or her cause of action, but the ultimate liability for such costs and expenses must be that of the client.

EC 5-9. Occasionally a lawyer is called upon to decide in a particular case whether the lawyer will be a witness or an advocate. If a lawyer is both counsel and witness, he or she becomes more easily impeachable for interest and thus may be a less effective witness. Conversely, the opposing counsel may be handicapped in challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case. An advocate who becomes a witness is in the unseemly and ineffective position of arguing his or her own credibility. The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another, while that of a witness is to state facts objectively.

EC 5-10. Problems incident to the lawyer-witness relationship arise at different stages; they relate to whether a lawyer should accept employment or should withdraw from employment. Regardless of when the problem arises, the lawyer's decision is to be governed by the same basic considerations. It is not objectionable for a lawyer who is a potential witness to be an advocate if it is unlikely that the lawyer will be called as a witness because his or her testimony would be merely cumulative or if the lawyer's testimony will relate only to an

uncontested issue. In the exceptional situation where it will be manifestly unfair to the client for the lawyer to refuse employment or to withdraw when he or she will likely be a witness on a contested issue, the lawyer may serve as advocate even though he or she may be a witness. In making such decision, a lawyer should determine the personal or financial sacrifice of the client that may result from his or her refusal of employment or withdrawal therefrom, the materiality of the lawyer's testimony, and the effectiveness of the lawyer's representation in view of his or her personal involvement. In weighing these factors, it should be clear that refusal or withdrawal will impose an unreasonable hardship upon the client before the lawyer accepts or continues the employment. Where the question arises, doubts should be resolved in favor of the lawyer testifying and against his or her becoming or continuing as an advocate.

EC 5-11. A lawyer should not permit his or her personal interests to influence advice relative to a suggestion by his or her client that additional counsel be employed. In like manner, a lawyer's personal interests should not deter him or her from suggesting that additional counsel be employed; on the contrary, the lawyer should be alert to the desirability of recommending additional counsel when, in the lawyer's judgment, the proper representation of a client requires it. However, a lawyer should advise a client not to employ additional counsel suggested by the client if the lawyer believes that such employment would be a disservice to the client, and the lawyer should disclose the reasons for his or her belief.

EC 5-12. Inability of cocounsel to agree on a matter vital to the representation of their client requires that their disagreement be submitted by them jointly to their client for his or her resolution, and the decision of the client shall control the action to be taken.

EC 5-13. A lawyer should not maintain membership in or be influenced by any organization of employees that undertakes to prescribe, direct, or suggest when or how the lawyer should fulfill his or her professional obligations to a person or organization that employs him or her as a lawyer. Although it is not necessarily improper for a lawyer employed by a corporation or similar entity to be a member of an organization of employees, the lawyer should be vigilant to safeguard his or her fidelity as a lawyer to his or her employer, free from outside influences.

Interests of Multiple Clients

EC 5-14. Maintaining the independence of professional judgment required of a lawyer precludes the lawyer's acceptance or continuation of employment that will adversely affect his or her judgment on behalf of or dilute loyalty to a client. This problem arises whenever a lawyer is asked to represent two or more clients who may have differing interests, whether such interests be conflicting, inconsistent, diverse, or otherwise discordant.

EC 5-15. If a lawyer is requested to undertake or to continue representation of multiple clients having potentially differing interests, the lawyer must weigh carefully the possibility that his or her judgment may be impaired or his or her loyalty divided if he or she accepts or continues the employment. The lawyer should resolve all doubts against the propriety of the representation. A lawyer should never represent in litigation multiple clients with differing interests; and there are few situations in which a lawyer would be justified in representing in litigation multiple clients with potentially differing interests. If a lawyer accepted such employment and the interests did become actually differing, he or she would have to withdraw from employment with likelihood of resulting hardship on the clients; for this reason, it is preferable that the lawyer refuse the employment initially. On the other hand, there are many instances in which a lawyer may properly serve multiple clients having potentially differing interests in matters not involving litigation. If the interests vary only slightly, it is generally likely that the lawyer will not be subjected to an adverse influence and that the lawyer can retain his or her independent judgment on behalf of each client; if the interests become differing, withdrawal is less likely to have a disruptive effect upon the causes of his or her clients.

EC 5-16. In those instances in which a lawyer is justified in representing two or more clients having differing interests, it is nevertheless essential that each client be given the opportunity to evaluate his or her need for

representation free of any potential conflict and to obtain other counsel if he or she so desires. Thus before a lawyer may represent multiple clients, the lawyer should explain fully to each client the implications of the common representation and should accept or continue employment only if the clients consent. If there are present other circumstances that might cause any of the multiple clients to question the undivided loyalty of the lawyer, he or she should also advise all of the clients of those circumstances.

EC 5-17. Typically recurring situations involving potentially differing interests are those in which a lawyer is asked to represent codefendants in a criminal case, coplaintiffs in a personal injury case, an insured and his or her insurer, and beneficiaries of the estate of a decedent. Whether a lawyer can fairly and adequately protect the interests of multiple clients in these and similar situations depends upon an analysis of each case. In certain circumstances, there may exist little chance of the judgment of the lawyer being adversely affected by the slight possibility that the interests will become actually differing; in other circumstances, the chance of adverse affect upon the lawyer's judgment is not unlikely.

EC 5-18. A lawyer employed or retained by a corporation or similar entity owes his or her allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests, and the lawyer's professional judgment should not be influenced by the personal desires of any person or organization. Occasionally a lawyer for an entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent him or her in an individual capacity; in such case the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present.

EC 5-19. A lawyer may represent several clients whose interests are not actually or potentially differing. Nevertheless, a lawyer should explain any circumstances that might cause a client to question the lawyer's undivided loyalty. Regardless of the belief of a lawyer that he or she may properly represent multiple clients, the lawyer must defer to a client who holds the contrary belief and withdraw from representation of that client.

EC 5-20. A lawyer is often asked to serve as an impartial arbitrator or mediator in matters which involve present or former clients. The lawyer may serve in either capacity if he or she first discloses such present or former relationships. After a lawyer has undertaken to act as an impartial arbitrator or mediator, he or she should not thereafter represent in the dispute any of the parties involved.

Desires of Third Persons

EC 5-21. The obligation of a lawyer to exercise professional judgment solely on behalf of his or her client requires that the lawyer disregard the desires of others that might impair the lawyer's free judgment. The desires of a third person will seldom adversely affect a lawyer unless that person is in a position to exert strong economic, political, or social pressures upon the lawyer. These influences are often subtle, and a lawyer must be alert to their existence. A lawyer subjected to outside pressures should make full disclosure of them to his or her client; and if the lawyer or client believes that the effectiveness of his or her representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of the client.

EC 5-22. Economic, political, or social pressures by third persons are less likely to impinge upon the independent judgment of a lawyer in a matter in which he or she is compensated directly by his or her client and the lawyer's professional work is exclusively with the client. On the other hand, if a lawyer is compensated from a source other than a client, the lawyer may feel a sense of responsibility to someone other than the client.

EC 5-23. A person or organization that pays or furnishes lawyers to represent others possesses a potential power to exert strong pressures against the independent judgment of those lawyers. Some employers may be interested in furthering their own economic, political, or social goals without regard to the professional responsibility of the lawyer to his or her individual client. Others may be far more concerned with establishment or extension of legal principles than in the immediate protection of the rights of the lawyer's individual client.

On some occasions, decisions on priority of work may be made by the employer rather than the lawyer with the result that prosecution of work already undertaken for clients is postponed to their detriment. Similarly, an employer may seek, consciously or unconsciously, to further its own economic interests through the action of the lawyers employed by it. Since a lawyer must always be free to exercise his or her professional judgment without regard to the interests or motives of a third person, the lawyer who is employed by one to represent another must constantly guard against erosion of his or her professional freedom.

EC 5-24. To assist a lawyer in preserving his or her professional independence, a number of courses are available to him or her. For example, a lawyer should not practice with or in the form of a professional legal corporation, even though the corporate form is permitted by law, if any director, officer, or stockholder of it is a nonlawyer. Although a lawyer may be employed by a business corporation with nonlawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of his or her professional judgment from any layperson. Various types of legal aid offices are administered by boards of directors composed of lawyers and laypersons. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client he or she serves. Where a lawyer is employed by an organization, a written agreement that defines the relationship between the lawyer and the organization and provides for the lawyer's independence is desirable, since it may serve to prevent misunderstanding as to their respective roles. Although other innovations in the means of supplying legal counsel may develop, the responsibility of the lawyer to maintain his or her professional independence remains constant, and the legal profession must ensure that changing circumstances do not result in loss of the professional independence of the lawyer.

Disciplinary Rules

DR 5-101 Refusing Employment When the Interests of the Lawyer May Impair the Lawyer's Independent Professional Judgment.

(A) Except with the consent of his or her client after full disclosure, a lawyer shall not accept employment if the exercise of the lawyer's professional judgment on behalf of a client will be or reasonably may be affected by the lawyer's own financial, business, property, or personal interests.

(B) A lawyer shall not accept employment in contemplated or pending litigation if he or she knows or it is obvious that the lawyer or a lawyer in his or her firm ought to be called as a witness, except that the lawyer may undertake the employment and the lawyer or a lawyer in his or her firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his or her firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his or her firm as counsel in the particular case.

DR 5-102 Withdrawal as Counsel When the Lawyer Becomes a Witness.

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer or a lawyer in his or her firm ought to be called as a witness on behalf of his or her client, the lawyer shall withdraw from the conduct of the trial and his or her firm, if any, shall not continue

representation in the trial, except that the lawyer may continue the representation and the lawyer or a lawyer in his or her firm may testify in the circumstances enumerated in DR 5-101(B)(1) through (4).

(B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer or a lawyer in his or her firm may be called as a witness other than on behalf of his or her client, the lawyer may continue the representation until it is apparent that his or her testimony is or may be prejudicial to the client.

DR 5-103 Avoiding Acquisition of Interest in Litigation.

(A) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that he or she may:

- (1) Acquire a lien granted by law to secure the lawyer's fee or expenses.
- (2) Contract with a client for a reasonable contingent fee in a civil case.

(B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

DR 5-104 Limiting Business Relations with a Client.

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his or her professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

(B) Prior to conclusion of all aspects of the matter giving rise to his or her employment, a lawyer shall not enter into any arrangement or understanding with a client or a prospective client by which the lawyer acquires an interest in publication rights with respect to the subject matter of his or her employment or proposed employment.

DR 5-105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

(A) A lawyer shall decline proffered employment if the exercise of the lawyer's independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve the lawyer in representing differing interests, except to the extent permitted under DR 5-105(C).

(B) A lawyer shall not continue multiple employment if the exercise of his or her independent professional judgment in behalf of a client will be or is likely to be adversely affected by the lawyer's representation of another client, or if it would be likely to involve the lawyer in representing differing interests, except to the extent permitted under DR 5-105(C).

(C) In the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that the lawyer can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his or her independent professional judgment on behalf of each.

(D) If a lawyer is required to decline employment or to withdraw from employment under a Disciplinary Rule, no partner, associate, or any other lawyer affiliated with the lawyer or his or her firm may accept or continue such employment.

DR 5-106 Settling Similar Claims of Clients.

(A) A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against the clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement, and of the participation of each person in the settlement.

DR 5-107 Avoiding Influence by Others Than the Client.

(A) Except with the consent of his or her client after full disclosure, a lawyer shall not:

(1) Accept compensation for the lawyer's legal services from one other than the client.

(2) Accept from one other than the client any thing of value related to the lawyer's representation of or employment by the client.

(B) A lawyer shall not permit a person who recommends, employs, or pays him or her to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(C) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) A nonlawyer is a corporate director or officer thereof; or

(3) A nonlawyer has the right to direct or control the professional judgment of a lawyer.

DR 5-108 Lawyers--Conflict of Interest.

(A) A lawyer who has personally represented a former client in a matter shall not thereafter represent a current client in the same or a substantially related matter in which the current client's interests are materially adverse to the interests of the former client unless the former client consents after consultation.

(B) When a former client is represented by a lawyer's firm but not personally by the lawyer and the lawyer leaves the firm, the lawyer shall not represent a client whose interests are materially adverse to the former client in the same or a substantially related matter in which the firm with which the lawyer formerly was associated had previously represented the former client, unless the former client consents after consultation.

(C) When a lawyer has terminated an association with a firm, that firm is prohibited from thereafter representing a client with interests adverse to those of a former client personally represented by the formerly associated lawyer, unless the matter is not the same or substantially related to that in which the formerly associated lawyer represented the former client, or unless the former client consents to such representation.

DR 5-108 adopted July 23, 1997; DR 5-108(C) amended October 1, 1997.

DR 5-109 Support Personnel of a Law Firm--Conflict of Interest.

(A) For purposes of this rule, a support person shall mean any person, other than a lawyer, who is associated with a lawyer or a law firm and shall include but is not necessarily limited to the following: law clerks, paralegals, legal assistants, secretaries, messengers, and other support personnel employed by the law firm. Whether one is a support person is to be determined by the status of the person at the time of the participation in the representation of the client.

(B) A lawyer shall not knowingly allow a support person to participate or assist in the representation of a current client in the same or a substantially related matter in which another lawyer or firm with which the support person formerly was associated had previously represented a client:

(1) Whose interests are materially adverse to the current client; and

(2) About whom the support person has acquired confidential information that is material to the matter, unless the former client consents after consultation. The support person shall be considered to have acquired confidential information that is material to the matter unless the support person demonstrates otherwise.

(C) If a support person, who has worked on a matter, is personally prohibited from working on a particular matter under subsection (B), the lawyer or firm with which that person is presently associated will not be prohibited from representing the current client in that matter if:

(1) The former client consents, or

(2) There is no genuine threat that confidential information of the former client will be used with material adverse effect on the former client because the confidential client information communicated to the support person while associated with the former firm is not likely to be significant in the current client's case.

DR 5-109 adopted July 23, 1997.

CANON 6

A LAWYER SHOULD REPRESENT A CLIENT COMPETENTLY

Ethical Considerations

EC 6-1. Because of his or her vital role in the legal process, a lawyer should act with competence and proper care in representing clients. A lawyer should strive to become and remain proficient in his or her practice and should accept employment only in matters which the lawyer is or intends to become competent to handle.

EC 6-2. A lawyer is aided in attaining and maintaining his or her competence by keeping abreast of current legal literature and developments, participating in continuing legal education programs, concentrating in particular areas of the law, and by utilizing other available means. A lawyer has the additional ethical obligation to assist in improving the legal profession, and he or she may do so by participating in bar activities intended to advance the quality and standards of members of the profession. Of particular importance is the careful training of the lawyer's younger associates and the giving of sound guidance to all lawyers who consult him or her. In short, a lawyer should strive at all levels to aid the legal profession in advancing the highest possible standards of integrity and competence and to meet those standards himself or herself.

EC 6-3. While the licensing of a lawyer is evidence that he or she has met the standards then prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which he or she is not qualified. However, a lawyer may accept such employment if in good faith he or she expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to a client. Proper preparation and representation may require the association by the lawyer of professionals in other disciplines. A lawyer offered employment in a matter in which he or she is not and does not expect to become so qualified should either decline the employment or, with the consent of the client, accept the employment and associate a lawyer who is competent in the matter.

EC 6-4. Having undertaken representation, a lawyer should use proper care to safeguard the interests of his or her client. If a lawyer has accepted employment in a matter beyond the lawyer's competence but in which he or she expected to become competent, the lawyer should diligently undertake the work and study necessary to qualify himself or herself. In addition to being qualified to handle a particular matter, a lawyer's obligation to a client requires the lawyer to prepare adequately for and give appropriate attention to his or her legal work.

EC 6-5. A lawyer should have pride in his or her professional endeavors. A lawyer's obligation to act competently calls for higher motivation than that arising from fear of civil liability or disciplinary penalty.

EC 6-6. A lawyer should not seek, by contract or other means, to limit the lawyer's individual liability to a client for malpractice. A lawyer who handles the affairs of a client properly has no need to attempt to limit his or her liability for professional activities and one who does not handle the affairs of a client properly should not be permitted to do so. A lawyer who is a stockholder, member, manager, or partner in or is associated with a professional legal corporation, limited liability company, or limited liability partnership may, however, limit his or her liability for malpractice of associates in the corporation, but only to the extent permitted by law and the Nebraska Supreme Court Rule for Limited Liability Professional Organizations.

Disciplinary Rules

DR 6-101 Failing to Act Competently.

(A) A lawyer shall not:

- (1) Handle a legal matter which the lawyer knows or should know that he or she is not competent to handle, without associating with a lawyer who is competent to handle it.
- (2) Handle a legal matter without preparation adequate in the circumstances.
- (3) Neglect a legal matter entrusted to him or her.

DR 6-102 Limiting Liability to Client.

(A) A lawyer shall not attempt to exonerate himself or herself from or limit his or her liability to a client for the lawyer's personal malpractice.

EC 6-6 amended June 16, 1999.

CANON 7

A LAWYER SHOULD REPRESENT A CLIENT
ZEALOUSLY WITHIN THE BOUNDS OF THE LAW

Ethical Considerations

EC 7-1. The duty of a lawyer, both to a client and to the legal system, is to represent the client zealously within the bounds of the law, which includes Disciplinary Rules and enforceable professional regulations. The professional responsibility of a lawyer derives from his or her membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of men, each member of our society is entitled to have his or her conduct judged and regulated in accordance with the law; to seek any lawful objective through legally permissible means; and to present for adjudication any lawful claim, issue, or defense.

EC 7-2. The bounds of the law in a given case are often difficult to ascertain. The language of legislative enactments and judicial opinions may be uncertain as applied to varying factual situations. The limits and specific meaning of apparently relevant law may be made doubtful by changing or developing constitutional interpretations, inadequately expressed statutes or judicial opinions, and changing public and judicial attitudes. Certainty of law ranges from well-settled rules through areas of conflicting authority to areas without precedent.

EC 7-3. Where the bounds of law are uncertain, the action of a lawyer may depend on whether the lawyer is serving as advocate or adviser. A lawyer may serve simultaneously as both advocate and adviser, but the two roles are essentially different. In asserting a position on behalf of a client, an advocate for the most part deals with past conduct and must take the facts as the advocate finds them. By contrast, a lawyer serving as adviser primarily assists a client in determining the course of future conduct and relationships. While serving as advocate, a lawyer should resolve in favor of a client doubts as to the bounds of the law. In serving a client as adviser, a lawyer in appropriate circumstances should give his or her professional opinion as to what the ultimate decisions of the courts would likely be as to the applicable law.

Duty of the Lawyer to a Client

EC 7-4. The advocate may urge any permissible construction of the law favorable to a client, without regard to the advocate's professional opinion as to the likelihood that the construction will ultimately prevail. His or her conduct is within the bounds of the law, and therefore permissible, if the position taken is supported by the law or is supportable by a good faith argument for an extension, modification, or reversal of the law. However, a lawyer is not justified in asserting a position in litigation that is frivolous.

EC 7-5. A lawyer as adviser furthers the interest of a client by giving a professional opinion as to what the lawyer believes would likely be the ultimate decision of the courts on the matter at hand and by informing the client of the practical effect of such decision. A lawyer may continue in the representation of a client even though the client has elected to pursue a course of conduct contrary to the advice of the lawyer so long as he or she does not thereby knowingly assist the client to engage in illegal conduct or to take a frivolous legal position. A lawyer should never encourage or aid a client to commit criminal acts or counsel a client on how to violate the law and avoid punishment therefor.

EC 7-6. Whether the proposed action of a lawyer is within the bounds of the law may be a perplexing question when his or her client is contemplating a course of conduct having legal consequences that vary according to the client's intent, motive, or desires at the time of the action. Often a lawyer is asked to assist a client in developing evidence relevant to the state of mind of the client at a particular time. A lawyer may properly assist a client in the development and preservation of evidence of existing motive, intent, or desire; obviously, he or

she may not do anything furthering the creation or preservation of false evidence. In many cases a lawyer may not be certain as to the state of mind of a client, and in those situations the lawyer should resolve reasonable doubts in favor of the client.

EC 7-7. In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his or her own. But otherwise the authority to make decisions is exclusively that of the client and, if made within the framework of the law, such decisions are binding on the lawyer. As typical examples in civil cases, it is for the client to decide whether to accept a settlement offer or whether to waive his or her right to plead an affirmative defense. A defense lawyer in a criminal case has the duty to advise a client fully on whether a particular plea to a charge appears to be desirable and as to the prospects of success on appeal, but it is for the client to decide what plea should be entered and whether an appeal should be taken.

EC 7-8. A lawyer should exert his or her best efforts to ensure that decisions of a client are made only after the client has been informed of relevant considerations. A lawyer ought to initiate this decisionmaking process if the client does not do so. Advice of a lawyer to a client need not be confined to purely legal considerations. A lawyer should advise a client of the possible effect of each legal alternative. A lawyer should bring to bear upon this decisionmaking process the fullness of his or her experience as well as an objective viewpoint. In assisting a client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible. A lawyer may emphasize the possibility of harsh consequences that might result from assertion of legally permissible positions. In the final analysis, however, the lawyer should always remember that the decision whether to forego legally available objectives or methods because of nonlegal factors is ultimately for the client and not for himself or herself. In the event that the client in a nonadjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by Disciplinary Rules, the lawyer may withdraw from the employment.

EC 7-9. In the exercise of a lawyer's professional judgment on those decisions which are for his or her determination in the handling of a legal matter, the lawyer should always act in a manner consistent with the best interests of his or her client. However, when an action in the best interests of a client seems to the lawyer to be unjust, he or she may ask the client for permission to forego such action.

EC 7-10. The duty of a lawyer to represent his or her client with zeal does not militate against the lawyer's concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.

EC 7-11. The responsibilities of a lawyer may vary according to the intelligence, experience, mental condition or age of a client, the obligation of a public officer, or the nature of a particular proceeding. Examples include the representation of an illiterate or an incompetent, service as a public prosecutor or other government lawyer, and appearances before administrative and legislative bodies.

EC 7-12. Any mental or physical condition of a client that renders the client incapable of making a considered judgment on his or her own behalf casts additional responsibilities upon the client's lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representative, his or her lawyer may be compelled in court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or of contributing to the advancement of his or her interests, regardless of whether he or she is legally disqualified from performing certain acts, the lawyer should obtain from the client all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for the client, the lawyer should consider all circumstances then prevailing and act with care to safeguard and advance the interests of the client. But obviously a lawyer cannot perform any act or make any decision which the law requires a client

to perform or make, either acting for himself or herself if competent, or by a duly constituted representative if legally incompetent.

EC 7-13. The responsibility of a public prosecutor differs from that of the usual advocate; his or her duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of governmental powers, such as in the selection of cases to prosecute; (2) during trial the prosecutor is not only an advocate but he or she also may make decisions normally made by an individual client, and those affecting the public interest should be fair to all; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts. With respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice: the prosecutor should make timely disclosure to the defense of available evidence, known to the prosecutor, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. Further, a prosecutor should not intentionally avoid pursuit of evidence merely because he or she believes it will damage the prosecutor's case or aid the accused.

EC 7-14. A government lawyer who has discretionary power relative to litigation should refrain from instituting or continuing litigation that is obviously unfair. A government lawyer not having such discretionary power who believes there is lack of merit in a controversy submitted to the lawyer should so advise his or her superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and the lawyer should not use his or her position or the economic power of the government to harass parties or to bring about unjust settlements or results.

EC 7-15. The nature and purpose of proceedings before administrative agencies vary widely. The proceedings may be legislative or quasi-judicial, or a combination of both. They may be ex parte in character, in which event they may originate either at the instance of the agency or upon motion of an interested party. The scope of an inquiry may be purely investigative or it may be truly adversary looking toward the adjudication of specific rights of a party or of classes of parties. The foregoing are but examples of some of the types of proceedings conducted by administrative agencies. A lawyer appearing before an administrative agency, regardless of the nature of the proceeding it is conducting, has the continuing duty to advance the cause of his or her client within the bounds of the law. Where the applicable rules of the agency impose specific obligations upon a lawyer, it is the lawyer's duty to comply therewith, unless the lawyer has a legitimate basis for challenging the validity thereof. In all appearances before administrative agencies, a lawyer should identify himself or herself, the lawyer's client if identity of the client is not privileged, and the representative nature of his or her appearance. It is not improper, however, for a lawyer to seek from an agency information available to the public without identifying his or her client.

EC 7-16. The primary business of a legislative body is to enact laws rather than to adjudicate controversies, although on occasion the activities of a legislative body may take on the characteristics of an adversary proceeding, particularly in investigative and impeachment matters. The role of a lawyer supporting or opposing proposed legislation normally is quite different from the lawyer's role in representing a person under investigation or on trial by a legislative body. When a lawyer appears in connection with proposed legislation, the lawyer seeks to affect the lawmaking process, but when he or she appears on behalf of a client in investigatory or impeachment proceedings, the lawyer is concerned with the protection of the rights of his or her client. In either event, the lawyer should identify himself or herself and his or her client, if identity of the client is not privileged, and should comply with applicable laws and legislative rules.

EC 7-17. The obligation of loyalty to his or her client applies only to a lawyer in the discharge of his or her professional duties and implies no obligation to adopt a personal viewpoint favorable to the interests or desires of the client. While a lawyer must act always with circumspection in order that the lawyer's conduct will not adversely affect the rights of a client in a matter the lawyer is then handling, the lawyer may take positions on public issues and espouse legal reforms he or she favors without regard to the individual views of any client.

EC 7-18. The legal system in its broadest sense functions best when persons in need of legal advice or assistance are represented by their own counsel. For this reason a lawyer should not communicate on the subject matter of the representation of his or her client with a person the lawyer knows to be represented in the matter by a lawyer, unless pursuant to law or rule of court or unless he or she has the consent of the lawyer for that person. If one is not represented by counsel, a lawyer representing another may have to deal directly with the unrepresented person; in such an instance, a lawyer should not undertake to give advice to the person who is attempting to represent himself or herself, except that the lawyer may advise him or her to obtain a lawyer.

Duty of the Lawyer to the Adversary System of Justice

EC 7-19. Our legal system provides for the adjudication of disputes governed by the rules of substantive, evidentiary, and procedural law. An adversary presentation counters the natural human tendency to judge too swiftly in terms of the familiar that which is not yet fully known; the advocate, by his or her zealous preparation and presentation of facts and law, enables the tribunal to come to the hearing with an open and neutral mind and to render impartial judgments. The duty of a lawyer to a client and the duty of a lawyer to the legal system are the same: to represent the client zealously within the bounds of the law.

EC 7-20. In order to function properly, our adjudicative process requires an informed, impartial tribunal capable of administering justice promptly and efficiently according to procedures that command public confidence and respect. Not only must there be competent, adverse presentation of evidence and issues, but a tribunal must be aided by rules appropriate to an effective and dignified process. The procedures under which tribunals operate in our adversary system have been prescribed largely by legislative enactments, court rules and decisions, and administrative rules. Through the years certain concepts of proper professional conduct have become rules of law applicable to the adversary adjudicative process. Many of these concepts are the bases for standards of professional conduct set forth in the Disciplinary Rules.

EC 7-21. The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of that process; further, the person against whom the criminal process is so misused may be deterred from asserting his or her legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

EC 7-22. Respect for judicial rulings is essential to the proper administration of justice; however, a litigant or his or her lawyer may, in good faith and within the framework of the law, take steps to test the correctness of a ruling of a tribunal.

EC 7-23. The complexity of law often makes it difficult for a tribunal to be fully informed unless the pertinent law is presented by the lawyers in the cause. A tribunal that is fully informed on the applicable law is better able to make a fair and accurate determination of the matter before it. The adversary system contemplates that each lawyer will present and argue the existing law in the light most favorable to his or her client. Where a lawyer knows of legal authority in the controlling jurisdiction directly adverse to the position of a client, the lawyer should inform the tribunal of its existence unless the lawyer's adversary has done so; but, having made such disclosure, the lawyer may challenge its soundness in whole or in part.

EC 7-24. In order to bring about just and informed decisions, evidentiary and procedural rules have been established by tribunals to permit the inclusion of relevant evidence and argument and the exclusion of all other considerations. The expression by a lawyer of his or her personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact. It is improper as to factual matters because admissible

evidence possessed by a lawyer should be presented only as sworn testimony. It is improper as to all other matters because, were the rule otherwise, the silence of a lawyer on a given occasion could be construed unfavorably to his or her client. However, a lawyer may argue, on his or her analysis of the evidence, for any position or conclusion with respect to any of the foregoing matters.

EC 7-25. Rules of evidence and procedure are designed to lead to just decisions and are part of the framework of the law. Thus while a lawyer may take steps in good faith and within the framework of the law to test the validity of rules, the lawyer is not justified in consciously violating such rules and the lawyer should be diligent in his or her efforts to guard against unintentional violation of them. As examples, a lawyer should subscribe to or verify only those pleadings that he or she believes are in compliance with applicable law and rules; a lawyer should not make any prefatory statement before a tribunal in regard to the purported facts of the case on trial unless he or she believes that the statement will be supported by admissible evidence; a lawyer should not ask a witness a question solely for the purpose of harassing or embarrassing him or her; and a lawyer should not by subterfuge put before a jury matters which it cannot properly consider.

EC 7-26. The law and Disciplinary Rules prohibit the use of fraudulent, false, or perjured testimony or evidence. A lawyer who knowingly participates in introduction of such testimony or evidence is subject to discipline. A lawyer should, however, present any admissible evidence his or her client desires to have presented unless the lawyer knows, or from facts within the lawyer's knowledge should know, that such testimony or evidence is false, fraudulent, or perjured.

EC 7-27. Because it interferes with the proper administration of justice, a lawyer should not suppress evidence that the lawyer or his or her client has a legal obligation to reveal or produce. In like manner, a lawyer should not advise or cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for the purpose of making him or her unavailable as a witness therein.

EC 7-28. Witnesses should always testify truthfully and should be free from any financial inducements that might tempt them to do otherwise. A lawyer should not pay or agree to pay a nonexpert witness an amount in excess of reimbursement for expenses and financial loss incident to his or her being a witness; however, a lawyer may pay or agree to pay an expert witness a reasonable fee for services as an expert. But in no event should a lawyer pay or agree to pay a contingent fee to any witness. A lawyer should exercise reasonable diligence to see that his or her client and lay associates conform to these standards.

EC 7-29. To safeguard the impartiality that is essential to the judicial process, venirepersons and jurors should be protected against extraneous influences. When impartiality is present, public confidence in the judicial system is enhanced. There should be no extrajudicial communication with venirepersons prior to trial or with jurors during trial by or on behalf of a lawyer connected with the case. Furthermore, a lawyer who is not connected with the case should not communicate with or cause another to communicate with a venireperson or a juror about the case. After the trial, communication by a lawyer with jurors is permitted so long as the lawyer refrains from asking questions or making comments that tend to harass or embarrass the juror or to influence actions of the juror in future cases. Were a lawyer to be prohibited from communicating after trial with a juror, the lawyer could not ascertain if the verdict might be subject to legal challenge, in which event the invalidity of a verdict might go undetected. When an extrajudicial communication by a lawyer with a juror is permitted by law, it should be made considerately and with deference to the personal feelings of the juror.

EC 7-30. Vexatious or harassing investigations of venirepersons or jurors seriously impair the effectiveness of our jury system. For this reason, a lawyer or anyone on his or her behalf who conducts an investigation of venirepersons or jurors should act with circumspection and restraint.

EC 7-31. Communications with or investigations of members of families of venirepersons or jurors by a lawyer or by anyone on his or her behalf are subject to the restrictions imposed upon the lawyer with respect to communications with or investigations of venirepersons and jurors.

EC 7-32. Because of his or her duty to aid in preserving the integrity of the jury system, a lawyer who learns of improper conduct by or toward a venireperson, a juror, or a member of the family of either should make a prompt report to the court regarding such conduct.

EC 7-33. A goal of our legal system is that each party shall have his or her case, criminal or civil, adjudicated by an impartial tribunal. The attainment of this goal may be defeated by dissemination of news or comments which tend to influence judge or jury. Such news or comments may prevent prospective jurors from being impartial at the outset of the trial and may also interfere with the obligation of jurors to base their verdict solely upon the evidence admitted in the trial. The release by a lawyer of out-of-court statements regarding an anticipated or pending trial may improperly affect the impartiality of the tribunal. For these reasons, standards for permissible and prohibited conduct of a lawyer with respect to trial publicity have been established.

EC 7-34. The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans. A lawyer, therefore, is never justified in making a gift or a loan to a judge, a hearing officer, or an official or employee of a tribunal except as permitted by Canon 4D(5) of the Code of Judicial Conduct, but a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with Canon 5B(1) and Canon 5C(2) of the Code of Judicial Conduct.

EC 7-34 amended October 27, 1999.

EC 7-35. All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he or she presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party. For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if he or she is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel or, if there is none, to the opposing party. A lawyer should not condone or lend himself or herself to private importunities by another with a judge or hearing officer on behalf of the lawyer or his or her client.

EC 7-36. Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his or her client zealously, the lawyer should not engage in any conduct that offends the dignity and decorum of proceedings. While maintaining his or her independence, a lawyer should be respectful, courteous, and above-board in his or her relations with a judge or hearing officer before whom the lawyer appears. A lawyer should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration.

EC 7-37. In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his or her conduct, attitude, and demeanor toward opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

EC 7-38. A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of his or her client. A lawyer should follow local customs of courtesy or practice, unless the lawyer gives timely notice to opposing counsel of his or her intention not to do so. A lawyer should be punctual in fulfilling all professional commitments.

EC 7-39. In the final analysis, proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of tribunals and make their

decisional processes prompt and just, without impinging upon the obligation of lawyers to represent their clients zealously within the framework of the law.

Disciplinary Rules

DR 7-101 Representing a Client Zealously.

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his or her client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his or her client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but he or she may withdraw as permitted under DR 2-110, DR 5-102, and DR 5-105.

(3) Prejudice or damage his or her client during the course of the professional relationship, except as required under DR 7-102(B).

(B) In his or her representation of a client, a lawyer may:

(1) Where permissible, exercise professional judgment to waive or fail to assert a right or position of a client.

(2) Refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal.

DR 7-102 Representing a Client Within the Bounds of the Law.

(A) In his or her representation of a client, a lawyer shall not:

(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of a client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which the lawyer is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false.

(7) Counsel or assist a client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) A client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal, except when the information is protected as a privileged communication.

(2) A person other than a client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

DR 7-103 Performing the Duty of Public Prosecutor or Other Government Lawyer.

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he or she knows or it is obvious that the charges are not supported by probable cause.

(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he or she has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

DR 7-104 Communicating With One of Adverse Interest.

(A) During the course of his or her representation of a client, a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented by a lawyer in that matter unless he or she has the prior consent of the lawyer representing such other person or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client.

DR 7-104 amended Feb. 10, 1995.

DR 7-105 Threatening Criminal Prosecution.

(A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

DR 7-106 Trial Conduct.

(A) A lawyer shall not disregard or advise his or her client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose:

(1) Legal authority in the controlling jurisdiction known to him or her to be directly adverse to the position of a client and which is not disclosed by opposing counsel.

(2) Unless privileged or irrelevant, the identities of the clients he or she represents and of the persons who employed him or her.

(C) In appearing in his or her professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that the lawyer has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that the lawyer has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert the lawyer's personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert the lawyer's personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but the lawyer may argue, on his or her analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of the lawyer's intent not to comply.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any established rule of procedure or of evidence.

DR 7-107 Trial Publicity.

(A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(A1) Notwithstanding paragraph (A), a lawyer may state:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the

lawyer knows or reasonably should know it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter and that relates to:

- (1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.
- (2) The possibility of a plea of guilty to the offense charged or to a lesser offense.
- (3) The existence or contents of any confession, admission, or statement given by the accused or his or her refusal or failure to make a statement.
- (4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.
- (5) The identity, testimony, or credibility of a prospective witness.
- (6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7-107(B) does not preclude a lawyer during such period from announcing:

- (1) The name, age, residence, occupation, and family status of the accused.
- (2) If the accused has not been apprehended, any information necessary to aid in his or her apprehension or to warn the public of any dangers the accused may present.
- (3) A request for assistance in obtaining evidence.
- (4) The identity of the victim of the crime.
- (5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.
- (6) The identity of investigating and arresting officers or agencies and the length of the investigation.
- (7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.
- (8) The nature, substance, or text of the charge.
- (9) Quotations from or references to public records of the court in the case.
- (10) The scheduling or result of any step in the judicial proceedings.
- (11) That the accused denies the charges made against him or her.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter and that relates to the trial, parties, or issues in the trial or other matters

that are reasonably likely to interfere with a fair trial, except that he or she may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication if the lawyer knows or reasonably should know it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter and that is reasonably likely to affect the imposition of sentence.

(F) The foregoing provisions of DR 7-107 also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistent with other law applicable to such proceedings.

(G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter and that relates to:

- (1) Evidence regarding the occurrence or transaction involved.
- (2) The character, credibility, or criminal record of a party, witness, or prospective witness.
- (3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.
- (4) His or her opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.
- (5) Any other matter reasonably likely to interfere with a fair trial of the action.

(H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter and relates to:

- (1) Evidence regarding the occurrence or transaction involved.
- (2) The character, credibility, or criminal record of a party, witness, or prospective witness.
- (3) Physical evidence or the performance or results of any examinations or tests or the refusal or failure of a party to submit to such.
- (4) His or her opinion as to the merits of the claims, defenses, or positions of an interested person.
- (5) Any other matter reasonably likely to interfere with a fair hearing.

(I) The foregoing provisions of DR 7-107 do not preclude a lawyer from replying to charges of misconduct publicly made against him or her or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(J) A lawyer shall exercise reasonable care to prevent his or her employees and associates from making an extrajudicial statement that the lawyer would be prohibited from making under DR 7-107.

DR 7-107(A), (A1), (B), (D), (G), and (H) amended November 23, 1999, effective January 3, 2000.

DR 7-108 Communication with or Investigation of Jurors.

(A) Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone he or she knows to be a member of the venire from which the jury will be selected for the trial of the case.

(B) During the trial of a case:

(1) A lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury.

(2) A lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.

(C) DR 7-108(A) and (B) do not prohibit a lawyer from communicating with venirepersons or jurors in the course of official proceedings.

(D) After discharge of the jury from further consideration of a case with which a lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence his or her actions in future jury service.

(E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireperson or a juror.

(F) All restrictions imposed by DR 7-108 upon a lawyer also apply to communications with or investigations of members of a family of a venireperson or a juror.

(G) A lawyer shall reveal promptly to the court improper conduct by a venireperson or a juror, or by another toward a venireperson or a juror or a member of his or her family, of which the lawyer has knowledge.

DR 7-109 Contact with Witnesses.

(A) A lawyer shall not suppress any evidence that the lawyer or his or her client has a legal obligation to reveal or produce.

(B) A lawyer shall not advise or cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for the purpose of making him or her unavailable as a witness therein.

(C) A lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his or her testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending or testifying.

(2) Reasonable compensation to a witness for his or her loss of time in attending or testifying.

(3) A reasonable fee for the professional services of an expert witness.

DR 7-110 Contact with Officials.

(A) A lawyer shall not give or lend any thing of value to a judge, official, or employee of a tribunal except as permitted by Canon 4D(5) of the Code of Judicial Conduct, but a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with Canon 5B(1) and Canon 5C(2) of the Code of Judicial Conduct.

(B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

(1) In the course of official proceedings in the cause.

(2) In writing if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party if he or she is not represented by a lawyer.

(3) Orally upon adequate notice to opposing counsel or to the adverse party if he or she is not represented by a lawyer.

(4) As otherwise authorized by law, or by Canon 3B(7) of the Code of Judicial Conduct.

DR 7-110(A) and (B) 4 amended October 27, 1999.

CANON 8

A LAWYER SHOULD ASSIST IN IMPROVING THE LEGAL SYSTEM

Ethical Considerations

EC 8-1. Changes in human affairs and imperfections in human institutions make necessary constant efforts to maintain and improve our legal system. This system should function in a manner that commands public respect and fosters the use of legal remedies to achieve redress of grievances. By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients.

EC 8-2. Rules of law are deficient if they are not just, understandable, and responsive to the needs of society. If a lawyer believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, he or she should endeavor by lawful means to obtain appropriate changes in the law. A lawyer should encourage the simplification of laws and the repeal or amendment of laws that are outmoded. Likewise, legal procedures should be improved whenever experience indicates a change is needed.

EC 8-3. The fair administration of justice requires the availability of competent lawyers. Members of the public should be educated to recognize the existence of legal problems and the resultant need for legal services, and should be provided methods for intelligent selection of counsel. Those persons unable to pay for legal services should be provided needed services. Clients and lawyers should not be penalized by undue geographical restraints upon representation in legal matters, and the bar should address itself to improvements in licensing, reciprocity, and admission procedures consistent with the needs of modern commerce.

EC 8-4. Whenever a lawyer seeks legislative or administrative changes, the lawyer should identify the capacity in which he or she appears, whether on behalf of himself or herself, a client, or the public. A lawyer may advocate such changes on behalf of a client even though the lawyer does not agree with them. But when a

lawyer purports to act on behalf of the public, the lawyer should espouse only those changes which he or she conscientiously believes to be in the public interest.

EC 8-5. Fraudulent, deceptive, or otherwise illegal conduct by a participant in a proceeding before a tribunal or legislative body is inconsistent with fair administration of justice, and it should never be participated in or condoned by lawyers. Unless constrained by a lawyer's obligation to preserve the confidences and secrets of his or her client, the lawyer should reveal to appropriate authorities any knowledge he or she may have of such improper conduct.

EC 8-6. Judges and administrative officials having adjudicatory powers ought to be persons of integrity, competence, and suitable temperament. Generally, lawyers are qualified, by personal observation or investigation, to evaluate the qualifications of persons seeking or being considered for such public offices, and for this reason they have a special responsibility to aid in the selection of only those who are qualified. It is the duty of lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. Lawyers should protest earnestly against the appointment or election of those who are unsuited for the bench and should strive to have elected or appointed thereto only those who are willing to forego pursuits, whether of a business, political, or other nature, that may interfere with the free and fair consideration of questions presented for adjudication. Adjudicatory officials, not being wholly free to defend themselves, are entitled to receive the support of the bar against unjust criticism. While a lawyer as a citizen has a right to criticize such officials publicly, the lawyer should be certain of the merit of his or her complaint, use appropriate language, and avoid petty criticisms, for unrestrained and intemperate statements tend to lessen public confidence in our legal system. Criticisms motivated by reasons other than a desire to improve the legal system are not justified.

EC 8-7. Since lawyers are a vital part of the legal system, they should be persons of integrity, of professional skill, and of dedication to the improvement of the system. Thus a lawyer should aid in establishing, as well as enforcing, standards of conduct adequate to protect the public by ensuring that those who practice law are qualified to do so.

EC 8-8. Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part time, should not engage in activities in which the lawyer's personal or professional interests are or foreseeably may be in conflict with his or her official duties.

EC 8-9. The advancement of our legal system is of vital importance in maintaining the rule of law and in facilitating orderly changes; therefore, lawyers should encourage, and should aid in making, needed changes and improvements.

Disciplinary Rules

DR 8-101 Action as a Public Official.

(A) A lawyer who holds public office shall not:

(1) Use the lawyer's public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or herself or for a client under circumstances where the lawyer knows or it is obvious that such action is not in the public interest.

(2) Use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of himself or herself or of a client.

(3) Accept any thing of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his or her action as a public official.

DR 8-102 Statements Concerning Judges and Other Adjudicatory Officers.

(A) A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.

(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

DR 8-103 Lawyer Candidate for Judicial Office.

(A) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of Canon 5 of the Code of Judicial Conduct.

DR 8-103(A) amended October 27, 1999.

CANON 9

A LAWYER SHOULD AVOID EVEN THE APPEARANCE OF PROFESSIONAL IMPROPRIETY

Ethical Considerations

EC 9-1. Continuation of the American concept that we are to be governed by rules of law requires that the people have faith that justice can be obtained through our legal system. A lawyer should promote public confidence in our system and in the legal profession.

EC 9-2. Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical conduct of a lawyer may appear to laypersons to be unethical. In order to avoid misunderstandings and hence to maintain confidence, a lawyer should fully and promptly inform a client of material developments in the matters being handled for the client. While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public confidence in the legal system or in the legal profession, the lawyer's duty to clients or to the public should never be subordinate merely because the full discharge of his or her obligation may be misunderstood or may tend to subject the lawyer or the legal profession to criticism. When explicit ethical guidance does not exist, a lawyer should determine his or her conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.

EC 9-3. After a lawyer leaves judicial office or other public employment, the lawyer should not accept employment in connection with any matter in which the lawyer had substantial responsibility prior to his or her leaving, since to accept employment would give the appearance of impropriety even if none exists.

EC 9-4. Because the very essence of the legal system is to provide procedures by which matters can be presented in an impartial manner so that they may be decided solely upon the merits, any statement or suggestion by a lawyer that he or she can or would attempt to circumvent those procedures is detrimental to the legal system and tends to undermine public confidence in it.

EC 9-5. Separation of the funds of a client from those of his or her lawyer not only serves to protect the client but also avoids even the appearance of impropriety, and therefore commingling of such funds should be avoided.

EC 9-6. Every lawyer owes a solemn duty to uphold the integrity and honor of his or her profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his or her fellow lawyers in supporting the organized bar through the devoting of the lawyer's time, efforts, and financial support as his or her professional standing and ability reasonably permit; to conduct himself or herself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.

EC 9-7. A lawyer shall exercise good faith judgment in determining initially whether funds of a client are of such nominal amount or are expected to be held by the lawyer for such a short period of time that the funds shall not be placed in an interest-bearing insured depository account for the benefit of the client. The lawyer should also consider such other factors as (1) the cost of establishing and maintaining the account, service charges, accounting fees, and tax reporting procedures; (2) the nature of the transaction(s) involved; and (3) the likelihood of delay in the relevant proceedings.

EC 9-8. A lawyer should review at reasonable intervals whether changed circumstances require further action respecting the deposit of client funds.

EC 9-9. It is unnecessary to notify clients of the placement of funds which are nominal in amount or are to be held for a short period of time in an interest-bearing account established in accordance with DR 9-102, but there is no impropriety in a lawyer or firm notifying their clients of the deposit of such funds in such an account, and the disposition and use of the interest earned by such account.

Disciplinary Rules

DR 9-101 Avoiding Even the Appearance of Impropriety.

(A) A lawyer shall not accept private employment in a matter upon the merits of which the lawyer has acted in a judicial capacity.

(B) A lawyer shall not accept private employment in a matter in which the lawyer had substantial responsibility while he or she was a public employee.

(C) A lawyer shall not state or imply that he or she is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

DR 9-102 Preserving Identity of Funds and Property of a Client.

(A) All funds of clients paid to a lawyer or law firm shall be deposited in an identifiable account or accounts maintained in the state in which the law office is situated in one or more state or federally chartered banks, savings banks, savings and loan associations, or building and loan associations insured by the Federal Deposit Insurance Corporation, and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay account charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

- (1) Promptly notify a client of the receipt of his or her funds, securities, or other properties.
- (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
- (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them.
- (4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

NOTE: The Trust Accounts and Blanket Bonds Rules contain additional trust account requirements.

DR 9-102(C)(2) amended December 9, 1992; DR 9-102(A) amended December 23, 1992; DR 9-102 and DR 9-102(A). amended September 19, 2001; DR 9-102(C) deleted September 19, 2001.

**RULES CREATING, CONTROLLING, AND REGULATING
NEBRASKA STATE BAR ASSOCIATION**

For the advancement of the administration of justice according to the law; for the advancement of the honor and dignity of the legal profession, and encouragement of cordial intercourse among the members thereof; and for the improvement of the service rendered the public by the Bench and Bar, the rules of this Court organizing and forming the NEBRASKA STATE BAR ASSOCIATION are hereby amended and restated, effective November 1, 2003, to provide as follows:

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE I	NAME	32.1
ARTICLE II	PURPOSE AND AUTHORITY	32.1
	1. Purpose	32.1
	2. Government	32.1
ARTICLE III	MEMBERSHIP	32.1
	1. Requirements	32.1
	2. Classes	32.1
	3. Registration.....	32.4
	4. Dues	32.4
	5. Delinquency and Reinstatement	32.5
	6. Suspension or Disbarment	32.6
	7. Fees	32.6
	8. Resignation	32.6
	9. Reinstatement Following Resignation	32.6
ARTICLE IV	OFFICERS	32.6
	1. Titles	32.6
	2. Eligibility	32.7
	3. Nomination and Election	32.7
	4. Appointive Officers	32.7
	5. Combining of Offices	32.7
	6. Removal of Appointive Officers.....	32.7
	7. Duties and Powers	32.7
	8. Term of Office	32.8
ARTICLE V	HOUSE OF DELEGATES	32.9
	1. Duties and Powers	32.9
	2. Membership	32.9
	3. Nomination and Election	32.10
	4. Term of Office	32.10
	5. Vacancies	32.10
	6. Voting	32.10
	7. Officers	32.11
	8. Personnel and Publications	32.11
	9. Referendum.....	32.11
	10. Ex Officio Members	32.11
	11. ABA Delegates	32.11
ARTICLE VI	EXECUTIVE COUNCIL	32.11
	1. Duties and Powers	32.11
	2. Membership	32.11
	3. District Representatives	32.11
	4. Nomination and Election	32.11
	5. Term of Office	32.12
	6. Voting	32.12

	<u>Page</u>
ARTICLE VII	COMMITTEES AND SECTIONS .....32.12
	1. Budget and Audit Committee 32.12
	2. Other Committees 32.12
	3. Sections..... 32.12
ARTICLE VIII	MEETINGS 32.13
	1. Annual Meeting 32.13
	2. House of Delegates 32.13
	3. Executive Council 32.13
	4. Emergency Meetings 32.13
ARTICLE IX	BUDGET AND AUDIT..... 32.13
	1. Budget Preparation and Approval 32.13
	2. Authorization of Expenditures 32.13
	3. Accounting and Auditing 32.13
	4. Circulation of Budget and Audit 32.13
	5. Fiscal Year 32.13
ARTICLE X	ETHICAL STANDARDS 32.14
ARTICLE XI	BYLAWS 32.14
ARTICLE XII	AMENDMENT 32.14
ARTICLE XIII	ENABLING RULES 32.14
	1. Bylaws 32.14
	2. Effective Date 32.14
	3. Terms of House of Delegates and Executive Council Members 32.14
	4. Terms of Officers 32.14

RULES CREATING, CONTROLLING, AND REGULATING
NEBRASKA STATE BAR ASSOCIATION

Article I

NAME

The name of this Association shall be NEBRASKA STATE BAR ASSOCIATION.

Article II

PURPOSE AND AUTHORITY

1. Purpose. The purposes of this Association are to improve the administration of justice; to foster and maintain high standards of conduct, integrity, confidence, and public service on the part of those engaged in the practice of law; to safeguard and promote the proper professional interests of the members of the Bar; to provide improvements in the education and qualifications required for admission to the Bar, the study of the science of jurisprudence and law reform, and the continuing legal education of the members of the Bar; to improve the relations of the Bar with the public; to carry on a continuing program of legal research; and to encourage cordial relations among the members of the Bar. All of these purposes are to the end that the public responsibilities of the legal profession may be more effectively discharged.

2. Government. The supreme authority of this Association shall be vested in the membership thereof through the exercise of the power of Initiative and Referendum in such manner as may be prescribed in the bylaws. Subject thereto, the control over the business and affairs of this Association shall be vested in a House of Delegates, as provided in Article V of these rules. Subject to the overall control of the House of Delegates, the Executive Council shall function as the administrative and executive organ of the Association as provided in Article VI hereof. The officers of the Association, as hereinafter enumerated, shall have the prerogatives, responsibilities, and qualifications and shall perform the duties of the respective offices, all as provided in Article IV hereof.

Article III

MEMBERSHIP

1. Requirements. All persons who, on the date that these rules go into effect, are admitted to the practice of law in this State, by order of the Nebraska Supreme Court, shall constitute the members of this Association, subject to due compliance with the requirements for membership hereinafter set forth.

2. Classes. Members of this Association shall be divided into four classes, namely: Active members, Inactive members, Law Student members, and Emeritus members.

a. All members who are licensed to engage in the active practice of law in the State of Nebraska, who do not qualify for and apply for Inactive membership status, and who are not Law Student members, shall be Active members.

b. Any member who is not actively engaged in the practice of law in the State of Nebraska, or who is a nonresident of the State of Nebraska and not actively engaged in the practice of law in Nebraska, and who is not an Emeritus member, may, if he or she so elects, be placed in Inactive membership status.

A member desiring to be placed in Inactive membership status shall file written application therefor with the Secretary and, if otherwise qualified, shall be placed in such inactive status classification. No Inactive members shall practice law in Nebraska, or vote or hold office in this Association. Any Inactive member may, on filing application with the Secretary and upon payment of the required dues, and compliance with such requirements as may be imposed by the Supreme Court to show fitness to engage in the active practice of law in this State, become an Active member.

c. Any member who attained the age of 75 years of age during the dues year being billed or has been actively engaged in the practice of law in the State of Nebraska for 50 years or more during the dues year being billed may, if he or she so elects, be placed in an Emeritus membership status. A member desiring to be placed in an Emeritus membership status shall file written application therefor with the Secretary and, if otherwise qualified, shall be placed in the Emeritus status classification. A member electing Emeritus classification shall not be required to pay membership dues to this Association. No Emeritus member shall practice law in Nebraska, or vote or hold office in this Association. Any Emeritus member may, on filing application with the Secretary and upon payment of the required dues and compliance with the requirements as may be imposed by the Supreme Court to show fitness to engage in the active practice of law in this State, become an Active member.

d. Except for the right reserved by law to litigants to prosecute or defend a cause in person, or as provided elsewhere in these rules, no person other than an Active member of this Association shall engage in the practice of law in this State, or in any manner hold himself or herself out as authorized or qualified to practice law in this State. Any court in this State may, on motion and upon such person taking the oath required by Neb. Rev. Stat. § 7-104, allow a member of the Bar of any other state or jurisdiction, in good standing therein, to appear and participate in any particular action or proceeding then pending before such court (for purpose of such business only), upon it further being made to appear to the court, by written showing filed therein, that such person has associated with and is appearing in such action with an Active member of this Association upon whom service may be made in all matters connected with said action, with same effect as if personally made on such foreign attorney in this State; provided, regularly licensed practicing attorneys of other states, the laws of which permit practice in their courts of attorneys from this State, without a local attorney being associated with such attorneys, shall not be required to have an Active member of this Association associated with them in such action. (See Neb. Rev. Stat. § 7-103.)

e. Nothing in these rules shall be construed to bar any Active member from the practice of law pursuant to the provisions of any rules of the Supreme Court authorizing the practice of law by a professional service corporation or a limited liability organization, subject to the limitations provided by such rules.

f. In order to make information available to the public about the financial responsibility of each active member of this Association for professional liability claims, each such member shall, upon admission to the Bar, and with each application for renewal thereof, submit the certification required by this rule. For purposes of this rule, professional liability insurance means:

(i) The insurance shall insure the member against liability imposed upon the member arising out of a professional act, error, or omission in the practice of law.

(ii) Such insurance shall insure the member against liability imposed upon the member by law for damages arising out of the professional acts, errors, and omissions of all nonprofessional employees employed by the member.

(iii) The policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, exclusions, and other matters.

(iv) The policy may provide for a deductible or self-insured retained amount and may provide for the payment of defense or other costs out of the stated limits of the policy.

(v) A professional act, error, or omission is considered to be covered by professional liability insurance for the purpose of this rule if the policy includes such act, error, or omission as a covered activity, regardless of whether claims previously made against the policy have exhausted the aggregate top limit for the applicable time period or whether the individual claimed amount or ultimate liability exceeds either the per claim or aggregate top limit.

Each active member shall certify to this Association on or before January 1 of each year: a) whether or not such member is currently covered by professional liability insurance, other than an extended reporting endorsement; b) whether or not such member is engaged in the private practice of law involving representation of clients drawn from the public; c) whether or not such member is a partner, shareholder, or member in a domestic professional organization as defined by the rule governing Limited Liability Professional Organizations, and d) whether or not the active member is exempt from the provisions of this rule because he or she is engaged in the practice of law as a full-time government attorney or in-house counsel and does not represent clients outside that capacity.

The foregoing shall be certified by each active member of this Association in such form as may be prescribed by this Association and shall be made available to the public by such means as may be designated by the House of Delegates. Failure to comply with this rule shall result in suspension from the active practice of law until such certification is received. An untruthful certification shall subject the member to appropriate disciplinary action. All members shall notify the Secretary in writing within 30 days if a) professional liability insurance providing coverage to the member has lapsed or is not in effect, or b) the member acquires professional liability coverage as defined by this rule.

All certifications not received by April 1 of the current calendar year shall be considered delinquent. The Secretary shall send written notice, by certified mail, to each member then delinquent in the reporting of professional liability insurance status, which notice shall be addressed to such member at his or her last reported address, and shall notify such member of such delinquency. All members who shall fail to provide the certification within 30 days thereafter shall be reported to the Supreme Court by the Secretary, and the Supreme Court shall enter an order to show cause why such member shall not be suspended from membership in this Association. The Supreme Court shall enter such an order as it may deem appropriate. If an order of suspension shall be entered, such party shall not practice law until restored to good standing.

This rule shall not affect this Association, its rules, procedures, structure, or operation in any way; nor shall the adoption of this rule make this Association, its officers, directors, representatives, or membership liable in any way to any person who has suffered loss by error or omission of a lawyer. This rule is adopted solely for the purposes stated herein and not for the purpose of making this Association, its officers, directors, representatives, or membership insurers or guarantors for clients with respect to the lawyer-client relationship.

This rule does not create a claim against this Association for failure to provide accurate information or a report on the insured status of any lawyer, or for implementation of any provision of these rules.

MANDATORY REPORTING OF PROFESSIONAL
LIABILITY INSURANCE COVERAGE

I am engaged in the private practice of law involving representation of clients drawn from the public:
Yes___ No___

I am currently covered by a professional liability insurance policy other than an extended reporting endorsement:
Yes___ No___

I am currently a member of a professional corporation, limited liability company, or a limited liability partnership and maintain the insurance coverage required by the rule governing Limited Liability Professional Organizations:
Yes___ No___

I am engaged in the practice of law as a full-time government attorney or in-house counsel and do not represent clients outside that capacity, and therefore, I am exempt from the provisions of this rule.
Yes___ No___

I hereby certify the truth of the information provided above.

Signature of Attorney

Date

3. Registration. All members not already registered with the Secretary of this Association shall, within 60 days after being admitted to the practice of law by the Supreme Court of this State, register with the Secretary of this Association by setting forth the member's full name, business address, and signature. All members shall promptly notify the Secretary, in writing, of any change in such address.

4. Dues.

a. Payment of Dues. Each member shall pay membership dues to this Association for each calendar year from January 1 to December 31 following, payable in advance on or before January 1 of each year, in such amount as may be fixed by the Supreme Court. All dues shall be paid to the Treasurer of this Association and shall constitute the funds for furthering the purposes of this Association. Different classifications of dues may be established for Active, Inactive, and Law Student members and for those members who have been admitted to the Bar of any State or other jurisdiction for a period of less than 5 years and for those members who are serving in the Armed Forces of the United States, while so serving. Members newly admitted to this Association shall receive a complimentary membership for the remainder of the current calendar year. Annual membership dues for 2001 through 2004 shall be as follows:

Active (Members who have been admitted to the Bar of any State or other jurisdiction for more than 4 calendar years following the calendar year of admission.)	\$240
Junior Active (Members who have been admitted to the bar of any State or other jurisdiction for 4 or fewer calendar years following the calendar year of admission.)	\$140
Senior Active (Members 75 years of age or older during the dues year being billed.)	\$ 65
Inactive	\$ 45
Military (A member actively engaged in the Armed Forces of the United States at the beginning of any calendar year shall be exempt from payment of dues for such year upon submitting to the Secretary, prior to the date of delinquency provided for in this Article, satisfactory proof that he or she is so engaged; upon receipt of such proof, the Secretary shall issue a membership card to the member under the classification held by the member prior to his or her induction in the service and shall cause the records of this Association to show that such card was issued without payment of dues.)	\$ 0
Emeritus	\$ 0

Effective January 1, 1999, and each year thereafter, a late fee of \$25 shall be assessed each Active or Inactive member whose dues are received after January 1, a late fee of \$50 shall be assessed on dues received on or after February 1, and a late fee of \$75 shall be assessed on dues received on or after March 1.

b. Lobbying and Related Activities.

(i) This Association may use dues to analyze and disseminate to its members information on proposed or pending legislative proposals.

(ii) All lobbying activities shall be subject to the following restrictions: The annual dues notice shall offer the members of the Bar an opportunity to direct that the stated amount of their dues intended for lobbying activities be placed instead in a restricted account. Funds from this account shall be budgeted by the Executive Council for activities which will promote the administration of justice or improvements of the legal system. The established budget for lobbying activities shall be reduced by the amount that is directed to the restricted account.

5. Delinquency and Reinstatement. All dues and assessments not paid by April 1 of the current calendar year shall be considered delinquent; and the Secretary shall send written notice, by certified mail, to each member then delinquent in the payment of his or her dues and assessments, which notice shall be addressed to such member at his or her last reported address, and shall notify such member of such delinquency. All members who shall fail to pay delinquent dues and assessments within 30 days thereafter shall be reported to the Supreme Court by the Secretary, and the Supreme Court shall enter an order to show cause why such member shall not be suspended from membership in this Association. The Supreme Court shall, after hearing thereon, enter such an order as it may deem appropriate. If an order of suspension shall be entered, such party shall not practice law until restored to good standing. Whenever a member suspended for nonpayment of dues and/or assessments shall make payment of all arrears, and shall satisfy the Supreme Court of his or her qualification to then return to the active practice of law, such member shall be entitled to reinstatement upon request. The Secretary shall keep a complete record of all suspensions and reinstatements. No person, while his or her membership is suspended, shall be entitled to exercise or receive any of the privileges of membership in this Association.

6. Suspension or Disbarment. Any member who shall be suspended or disbarred from the practice of law by the Supreme Court shall, during the period of such suspension or disbarment, be likewise suspended or barred from membership in this Association. On reinstatement to practice by the Supreme Court, such party shall, on written request and upon payment of the requisite fees and/or assessments, be restored to membership in this Association.

7. Fees. Nothing herein contained shall be construed to limit the power of this Association, or of any of its sections or committees, to assess registration fees or attendance fees for meetings, institutes, or continuing legal education sessions as may be approved or determined from time to time by the House of Delegates or the Executive Council.

8. Resignation. Any member may resign either active or inactive membership in this Association by tendering his or her written resignation to the Clerk of the Supreme Court of Nebraska on a form to be provided. This form shall include an affidavit to be completed by the member seeking to resign, stating that the member has not been suspended or disbarred in any other state or by any court; that the member has not voluntarily surrendered his or her license to practice law in any other state or to any court in connection with any investigation or disciplinary proceeding against the member; that to the member's knowledge he or she is not then under investigation, nor has a complaint or charges pending against him or her with reference to any alleged violation of professional responsibilities as a lawyer; and that the member agrees to be subject to the jurisdiction of the Supreme Court for a period of 3 years from the date his or her resignation is accepted for the purpose of disciplinary proceedings for any alleged violation of his or her professional responsibilities as a lawyer. During this 3-year period, the acceptance of his or her resignation may be set aside by the Supreme Court upon application filed in the Supreme Court by the Counsel for Discipline. If the affidavit is completed, the Supreme Court may accept the resignation, provided the resigning member's dues are not delinquent, or may accept it upon payment of any delinquent dues, unless the member seeking to resign has been suspended for the nonpayment of dues as provided for in § 5 of this Article, in which event the submitted resignation shall not be acted upon until the member seeking resignation has been reinstated as provided for in said section. In the event the affidavit is not fully completed, or any exception is taken to it, the tendered resignation shall be rejected. The Clerk shall keep a complete record of all requests for resignation and all resignations and shall report to the Secretary the names and addresses of members whose resignations have been accepted by the Supreme Court.

9. Reinstatement Following Resignation. Whenever a former member of this Association who resigned is readmitted to the practice of law in Nebraska by the Supreme Court, the member shall pay dues for the year in which he or she is readmitted and be reinstated as a member of this Association.

Article III.; Rule 2(c) through (f), amended March 19, 2003, effective November 1, 2003; Rule 4a amended February 25, 1998; Rule 4a amended October 9, 1998; Rule 4a amended July 27, 2000; Rule 4a amended March 19, 2003, effective November 1, 2003; Rule 8 amended March 19, 2003, effective November 1, 2003.

Article IV

OFFICERS

1. Titles. The officers of this Association shall consist of the following:

- a. President,
- b. President-Elect,
- c. Chair of the House of Delegates,
- d. Chair-Elect of the House of Delegates,

- e. Secretary,
- f. Treasurer,
- g. Executive Director, and
- h. Such other officer or officers as may be designated by the bylaws.

2. Eligibility. Any Active member in good standing shall be eligible to hold any office for which he or she is elected or appointed in this Association. An appointive officer need not be a member of this Association.

3. Nomination and Election. The following officers shall be nominated and elected in the manner provided by the bylaws:

- a. President, by succession to that office by the President-Elect;
- b. President-Elect;
- c. Chair of the House of Delegates, by succession to that office by Chair-Elect of the House of Delegates;
- d. Chair-Elect of the House of Delegates; and
- e. Any other officer hereafter provided by the rules or the bylaws of the Association.

4. Appointive Officers. The following officers shall be appointed by the Executive Council: Secretary, Treasurer, Executive Director, and any other officer provided for by the bylaws of this Association other than those required to be elected under the preceding section hereof.

5. Combining of Offices. The offices of Secretary, Treasurer, Executive Director, and any other appointive offices provided for in the bylaws may be combined, in any combination, by the Executive Council.

6. Removal of Appointive Officers. Any appointive officer may be removed from office at any time by the Executive Council.

7. Duties and Powers.

a. The President shall be the Chief Executive Officer of this Association, shall preside at all meetings of this Association and of the Executive Council and shall perform the duties usually pertaining to that office, shall appoint the members and chairs of all committees, and shall perform such other duties and responsibilities as may be provided by the bylaws.

b. The President-Elect shall perform such duties as are assigned to him or her by the President, shall have and perform the duties and responsibilities of the President in case of the absence or incapacity of the President, and shall perform such other duties and responsibilities as may be provided by the bylaws.

c. The Chair of the House of Delegates shall preside at all meetings of the House of Delegates, shall be the Executive Officer thereof, and shall perform such other duties and responsibilities as may be specifically determined by the House of Delegates or as may be provided by the bylaws.

d. The Chair-Elect of the House of Delegates shall have the duties and responsibilities of the Chair in the absence or incapacity of the Chair and shall perform such other duties and responsibilities as may be specifically determined by the House of Delegates or as may be provided by the bylaws.

e. The Secretary shall be the custodian of the records and archives of this Association; shall maintain the membership and all other records of this Association; shall report the minutes of all meetings of this Association, the Executive Council, and the House of Delegates; and shall perform such other duties and responsibilities as may be provided by the bylaws and these rules.

f. The Treasurer shall be the custodian of and shall supervise the collection and disbursement of all funds and properties of this Association, shall disburse the funds of this Association as provided in Article IX hereof, and shall have such other duties and responsibilities as may be provided by the bylaws and these rules.

g. The Executive Director shall have such responsibilities and perform such duties as shall be delegated to him or her by the Executive Council and the House of Delegates and shall perform such other duties and responsibilities as may be provided by the bylaws.

h. The death, resignation, incapacity to act, or other termination or suspension of active membership in this Association of any officer as may be determined by any procedure provided therefor by the bylaws shall create an immediate vacancy in the office of any such officer of this Association.

i. A vacancy occurring in an elective office of this Association shall be filled as follows: The President-Elect shall assume the office of the President if such office becomes vacant. The Chair of the House of Delegates shall assume the office of President if both the offices of President and President-Elect are vacant. The Chair-Elect of the House of Delegates shall assume the office of Chair of the House if such office becomes vacant or if the Chair of the House of Delegates has assumed the office of President. A vacancy in the office of Chair-Elect of the House of Delegates shall be filled by special election to be conducted by the House of Delegates. If a President-Elect Designate shall have been designated, he or she shall assume the office of President-Elect if it becomes vacant and a new President-Elect Designate shall be nominated and elected as soon as practical in the manner provided in § 8(b) of this Article IV.

j. Any officer succeeding to the office of President through the filling of a vacancy occurring therein shall serve until the end of the second Annual Meeting following such succession. Any officer filling a vacancy in the office of the Chair of the House of Delegates or Chair-Elect of the House of Delegates shall have such term of office as may be provided by the bylaws.

k. In the event of a vacancy in any appointive office, such vacancy shall be promptly filled by the Executive Council.

8. Term of Office.

a. The President and President-Elect shall hold office beginning with the close of this Association's Annual Meeting and shall serve until the close of the next succeeding Annual Meeting subject to the provisions for holding-over in the event of the filling of a vacancy therein as hereinbefore set forth. The Chair of the House of Delegates and the Chair-Elect of the House of Delegates shall hold office for such term or terms as may be provided in the bylaws. Members of the Executive Council shall hold office for the terms provided in Article VI hereof. All other officers shall hold office for the terms specified by the appointing authorities or as may be fixed by the bylaws.

b. At least 90 days prior to this Association's Annual Meeting, the District members of the Executive Council, by a majority vote thereof, shall make nomination for the office of President-Elect of this Association for the following year. Such nomination shall be filed with the Secretary of this Association, who shall within 10 days thereafter mail notice of such nomination to the Active members of this Association setting forth the time and place fixed for the filing of additional nominations. Such notice shall further advise that additional nominations may be made by written petition. Within 30 days after the mailing of such notice, any 25 or more Active members of this Association may make additional nominations by signing a nominating petition which shall, in each instance, be accompanied by the nominee's written consent to serve if elected. In the event the Secretary shall receive such additional nominations, the time, manner, and method of conducting an election and canvassing the same shall be provided by the bylaws. The nominee so elected or, if no nominations shall be made, other than by the Executive Council, the nominee of the Executive Council shall be President-Elect Designate.

c. The nomination and election of the Chair-Elect of the House of Delegates shall be made by the House of Delegates in such manner as such House may provide.

d. Provisions shall be made by the bylaws for the method of conducting and canvassing the election for any elective office in this Association in any case where there is more than one nominee for such office.

Article IV: Rule 8(b) amended March 19, 2003, effective November 1, 2003.

Article V

HOUSE OF DELEGATES

1. Duties and Powers. The House of Delegates shall be the governing body of this Association; shall exercise overall jurisdiction over the affairs of this Association; shall determine and implement the policies and objectives of this Association; shall, consistent with these rules and the purposes of this Association, prepare, adopt, and amend bylaws for the government and operation of this Association, including the provisions for an annual meeting of this Association; and shall perform such other functions as are provided by these rules and the bylaws.

2. Membership. The elective members of the House of Delegates shall consist of representatives elected from among the Active members of this Association residing in each of the Districts set forth below in this rule on the basis of one delegate for each 60 Active members of this Association, or major fraction thereof (50 percent or greater) residing in such District; provided, however, that each such District shall have at least one such elective delegate. For purposes of this Article, the Districts are as follows, and each district is composed of the counties indicated:

District 1: Johnson, Nemaha, Pawnee, and Richardson;

District 2: Cass, Otoe, and Sarpy;

District 3: Lancaster;

District 4: Douglas;

District 5: Butler, Hamilton, Polk, Saunders, Seward, and York;

District 6: Burt, Dodge, and Washington;

- District 7: Fillmore, Nuckolls, Saline, and Thayer;
- District 8: Cedar, Dakota, Dixon, and Thurston;
- District 9: Antelope, Cuming, Knox, Madison, Pierce, Stanton, and Wayne;
- District 10: Adams, Clay, Franklin, Harlan, Kearney, Phelps, and Webster;
- District 11: Hall and Howard;
- District 12: Buffalo and Sherman;
- District 13: Arthur, Dawson, Hooker, Keith, Lincoln, Logan, McPherson, and Thomas;
- District 14: Chase, Dundy, Frontier, Furnas, Gosper, Hayes, Hitchcock, Perkins, and Red Willow;
- District 15: Boyd, Brown, Cherry, Holt, Keya Paha, and Rock;
- District 16: Box Butte, Dawes, Grant, Sheridan, and Sioux;
- District 17: Garden, Morrill, and Scotts Bluff;
- District 18: Gage and Jefferson;
- District 19: Banner, Cheyenne, Deuel, and Kimball;
- District 20: Blaine, Custer, Garfield, Greeley, Loup, Valley, and Wheeler; and
- District 21: Boone, Colfax, Merrick, Nance, and Platte.

3. Nomination and Election. The elective members of the House of Delegates in each District shall be nominated and elected by the Active members of this Association residing in such District, and the bylaws shall provide the procedure for nominating and electing such members of the House, including provisions for out-of-state Active members to qualify as members for voting purposes within one of the Districts.

4. Term of Office. Each elective member of the House of Delegates shall hold office for a term of 4 years and until his or her successor is elected and qualified. Elections shall be held in odd-numbered districts in the year 1971 and every 4 years thereafter, and in even-numbered districts in the year 1973 and every 4 years thereafter. Newly elected members shall take office at the conclusion of the Annual Meeting of this Association following their election.

5. Vacancies. Any vacancy in the office of any elected delegate shall be filled, for the unexpired term thereof, by vote of the remaining members of the House of Delegates at its next annual or semiannual meeting.

6. Voting. Only elected members of the House of Delegates shall be entitled to vote upon any matter submitted to such House of Delegates, provided any member appointed to fill a vacancy in the office of an elected member shall be qualified to vote while serving out such term.

7. Officers. The officers of the House of Delegates shall be the Chair, the Chair-Elect, and the Secretary, whose nomination, election, term of office, and duties shall be provided in these rules and the bylaws. Unless the House of Delegates provides otherwise, the Secretary of this Association shall serve as the Secretary of the House of Delegates.

8. Personnel and Publications. The House of Delegates shall have the power and the duty to fully administer this Article, including the power to employ necessary personnel and to establish the policies of this Association relating to official publications thereof.

9. Referendum. A referendum of the membership of this Association on any action taken by the House of Delegates shall be conducted whenever the House of Delegates, by a vote of one-third of the elected members thereof, shall so direct by resolution, or whenever a petition signed by 10 percent of the Active members of this Association residing in each of three-fourths of the Districts shall be filed with the Secretary. The Secretary shall conduct such referendum under such rules as shall be prescribed by the bylaws.

10. Ex Officio Members. The House of Delegates in the bylaws may provide for nonvoting ex officio members of the House of Delegates and may determine what members of this Association may speak and exercise the privileges of the floor other than the privilege of voting. Meetings of the House of Delegates shall be open to all Active members of this Association.

11. ABA Delegates. The House of Delegates shall elect the delegates of this Association to the American Bar Association as may be provided and authorized in the bylaws of the American Bar Association.

Article V: Rule 1 amended March 19, 2003, effective November 1, 2003.

Article VI

EXECUTIVE COUNCIL

1. Duties and Powers. The Executive Council shall function as the administrative and executive organ of this Association and shall carry out and implement the duties and responsibilities delegated to it by these rules, the bylaws, and the House of Delegates. In the absence of other nominating petitions, the Executive Council shall nominate candidates for the offices of elective members of the House of Delegates and for the District members of the Executive Council.

2. Membership. The Executive Council shall consist of the President, President-Elect, President-Elect Designate, Chair, Chair-Elect of the House of Delegates, and six elected District members. The immediate Past President of this Association shall also serve as a member of the Executive Council for the year following the expiration of his or her term of office as President.

3. District Representatives. There shall be one District member of the Executive Council elected from each of the six Supreme Court Judicial Districts as such districts are now numbered and constituted or as they may hereafter be constituted. Each District member shall be an Active member of this Association who resides in the district which he or she represents and shall be elected by the Active members of this Association residing within such district and out-of-state Active members who qualify as members of the District for voting purposes as provided in the bylaws.

4. Nomination and Election. The bylaws shall provide for the nomination of District members by petition of Active members of the district and for the election of District members by secret mail ballot.

5. Term of Office. The term of office of District members shall be 4 years, commencing at the close of the Annual Meeting following election, and no District member shall serve consecutive terms. The terms of District members shall be staggered so that there shall be one member elected in each year. Elections shall be held in the following order: Supreme Court Districts 3, 6, 4, 1, 2, and 5. In case of a vacancy in office of any District member, the remaining members of the Executive Council shall have the power to fill such vacancy by appointment to serve until the next regular election.

6. Voting. Only District members shall vote on nominations for Association office to be made by the Executive Council; the Executive Council shall not nominate any one of its current District members for any elective office in this Association. The District members of the Executive Council shall appoint an Active member to fill any vacancy in the office of Delegate to the House of Delegates of the American Bar Association in the event of a vacancy in such office.

Article VI: Rules 4, 5, and 6 amended March 19, 2003, effective November 1, 2003.

Article VII

COMMITTEES AND SECTION

1. Budget and Planning Committee. There shall be a Budget and Planning Committee of this Association, consisting of not more than 13 members, who shall be appointed and whose terms shall be set in accordance with the bylaws, which committee shall perform the functions assigned to it in Article IX hereof.

2. Other Committees. Other committees of this Association may be created or abolished from time to time and shall have such jurisdiction and be elected or appointed in such manner with such tenure as fixed by the bylaws. Nonmembers, including laypersons, who by reason of their backgrounds or expertise can contribute toward the work of committees may be appointed by committee chairs to serve on committees as nonvoting committee members.

3. Sections. Sections of this Association may be created or abolished from time to time by the House of Delegates in such manner and with such functions as may be provided by the bylaws.

Article VII: Rules 1 and 2 amended March 19, 2003, effective November 1, 2003.

Article VIII

MEETINGS

1. Annual Meeting. This Association shall have one regular meeting annually at a time and place to be fixed by the Executive Council. Each member of this Association shall be notified thereof by the Secretary by mail.

2. House of Delegates. The House of Delegates shall meet during the Annual Meeting and may be recessed from time to time throughout the Annual Meeting. The House of Delegates shall also hold a meeting in April, May, or June of each year at a time and place to be fixed by the House of Delegates. The President, Chair of the House of Delegates, or any 10 members of the House of Delegates may call a special session of the House of Delegates upon giving 10 days' written notice of the time, place, and purpose thereof to the elected members of the House of Delegates. A majority of the elected members of the House of Delegates shall constitute a quorum for the transaction of business.

3. Executive Council. An annual meeting of the Executive Council shall be held at the time and place selected for the holding of the Annual Meeting, and such other meetings thereof shall be held as may be called by the President, three District members, or as provided by the bylaws. Six members of the Executive Council shall be a quorum for the transaction of business.

4. Emergency Meetings. In case of extreme emergency, the Executive Council, with the approval of the Supreme Court, may dispense with the calling of the Annual Meeting, but in such event shall call, in lieu thereof, a special session of the House of Delegates. In the case of extreme emergency, the Executive Council may call a special meeting, in such manner as may be determined by such Council, of all persons licensed to practice law in Nebraska.

Article VIII: Rules 1 and 2 amended March 19, 2003, effective November 1, 2003.

Article IX

BUDGET AND AUDIT

1. Budget Preparation and Approval. The Budget and Planning Committee of this Association, consisting of not more than 13 members, shall study the income and expenses of this Association and shall prepare and submit to the Executive Council a proposed budget for each fiscal year of this Association. The Executive Council shall, upon receipt of such proposed budget, pass upon the same, and shall thereupon prepare and submit an annual budget of this Association's receipts and expenditures to the House of Delegates for its consideration and approval. Such proposed budget shall not be effective until 30 days after it shall be approved by a majority vote of the House of Delegates at a meeting for which at least 30 days' notice, including a copy of the proposed budget, has been given. The House of Delegates by majority vote thereof may amend or modify the proposed budget prior to its final adoption.

2. Authorization of Expenditures. After the budget is adopted by the House of Delegates, no expenditures shall be made for this Association except as provided thereby, provided, however, that in case of emergency, the President may authorize additional expenditures not to exceed \$1,000 in any one instance; and provided further, that, in the case of emergency, the Executive Council may, by vote of two-thirds of its members, authorize additional expenditures not exceeding the total sum of \$50,000 in any 1 year. No other expenditures shall be made except on approval by the House of Delegates.

3. Accounting and Auditing. The Executive Council shall cause proper books of account to be kept and shall prepare an annual audit thereof by a certified public accountant. Such audit shall contain a balance sheet and a statement of operations for the fiscal year involved, shall be submitted to the House of Delegates for approval at its next meeting, and shall be distributed to the members of the House of Delegates at least 30 days prior to the date of such meeting.

4. Circulation of Budget and Audit. The Executive Council, prior to the Annual Meeting of this Association, shall file with the Clerk of the Supreme Court and shall cause to be distributed to the members of this Association a copy of the current annual budget, the proposed budget for the succeeding year, and an annual statement showing a balance sheet and operating statement for the last preceding fiscal year.

5. Fiscal Year. The books and records of this Association shall be kept, and the affairs of this Association shall be managed, on a fiscal year basis to be fixed by the bylaws.

Article IX: Rules 1 through 5 amended March 19, 2003, effective November 1, 2003 (Rule 3 deleted and Rules 4 – 6 renumbered).

Article X

ETHICAL STANDARDS

Effective September 1, 2005, the ethical standards relating to the practice of law in this State shall be the Nebraska Rules of Professional Conduct as adopted by the Nebraska Supreme Court on June 8, 2005, together with such amendments and additions thereto as may from time to time be approved by the Supreme Court of Nebraska.

Article X amended July 13, 2005, effective September 1, 2005.

Article XI

BYLAWS

Suitable bylaws, not inconsistent with these rules, shall be adopted by the House of Delegates.

Article XII

AMENDMENT

Recommendations to the Supreme Court of amendments to these rules may be adopted by a two-thirds vote of the elected members present at a regular or special meeting of the House of Delegates, provided that no recommendation shall be considered (except by the unanimous consent of the elective members present) unless a written or printed copy of the proposed recommendation shall have been included in the call for the meeting. Recommendations to the Supreme Court of amendments to these rules may also be adopted by the exercise of the power of initiative as vested in the membership under Article II of these rules.

Article XIII

ENABLING RULES

1. Bylaws. The present bylaws of this Association shall continue, so far as applicable, under these rules until new bylaws hereunder shall be adopted.
2. Effective Date. These rules shall become effective on January 1, 1971.
3. Terms of House of Delegates and Executive Council Members. All previously elected members of the House of Delegates and of the Executive Council shall complete their respective terms as existing under the rules of this Association, prior to the effective date hereof. Upon the effective date of this rule, all elected members thereof shall take office upon the termination of the terms of such previously elected members.
4. Terms of Officers. In the event these amended rules shall become effective prior to the date of the Annual Meeting of this Association, as previously fixed, all officers serving at the time of such effective date shall finish out their respective terms, and their successors shall be elected in accordance with the provisions hereof.

LIMITED LIABILITY PROFESSIONAL ORGANIZATIONS

I.

A. As of December 1, 1999, attorneys who are licensed to practice law in Nebraska may do so in the form of professional corporations, limited liability companies, or limited liability partnerships (herein referred to as “domestic professional organizations”) permitted by the laws of Nebraska to conduct the practice of law, provided that such professional organizations maintain the mandatory minimum levels of professional liability insurance set forth at section I.C.7 below and are established and operated in accordance with the provisions of this rule and the Nebraska Rules of Professional Conduct, and provided that a certificate of authority is granted by the Nebraska Supreme Court pursuant to section II.A of this rule.

B. As of December 1, 1999, attorneys may practice law in Nebraska in forms similar to domestic professional organizations formed pursuant to the laws of a jurisdiction other than Nebraska (herein referred to as “foreign professional organizations”), and the laws of such other jurisdiction shall govern (i) the organization, (ii) internal affairs, and (iii) all its other corporate aspects, provided that such foreign professional organization is operated in accordance with the applicable provisions of this rule, including the mandatory minimum professional liability insurance requirement and liability provisions of I.C.7. Whether or not such provisions are set forth in the organizational documents of a foreign professional organization, they are applicable and binding by operation of this rule.

C. The provisions of this rule shall apply to all foreign and domestic professional organizations (hereinafter collectively referred to as “professional organizations”) having as shareholders, officers, directors, partners, employees, members, or managers one or more attorneys who engage in the practice of law in Nebraska, whether such professional organizations are formed under Nebraska law or under laws of another state or jurisdiction. All professional organizations conducting the practice of law in Nebraska shall comply with the following requirements, and the articles of organization of any domestic professional organization shall contain provisions complying with the following requirements:

1. The name of the professional organization organized under this rule shall contain the words “professional corporation,” “limited liability company,” or “limited liability partnership,” or abbreviations thereof such as “P.C.,” “L.L.C.,” or “L.L.P.” In addition, any professional corporation organized under this rule shall have as a part of its firm name the words “A Limited Liability Organization,” or an abbreviation thereof such as “L.L.O.,” following its designation as a professional corporation or P.C. The name of the professional organization shall meet the ethical standards established for the names of law firms according to the standards of professional conduct promulgated by the Supreme Court and the Nebraska Rules of Professional Conduct;

2. All members of the professional organization who engage in the practice of law within the State of Nebraska shall be persons duly licensed by the Nebraska Supreme Court to practice law in the State of Nebraska, and at all times own their own interest in their own right, and all members of the professional organization who engage in the practice of law outside this state shall be persons duly licensed by the states, territories, or other jurisdictions in which such persons engage in the practice of law, and at all times own their own interest in their own right;

3. Provisions shall be made requiring any member who ceases to be eligible to be a member to dispose of all of his or her interest in the professional organization forthwith, either to the professional organization or to a person having the qualifications described in I.C.2 above;

4. The management of the professional organization shall have the qualifications of the persons described in section I.C.2;

5. The professional organization shall be organized solely for the purpose of conducting the practice of law, and only through persons qualified to practice law in the State of Nebraska if such persons engage in the practice of law within this state, or through persons qualified to practice law in the states, territories, or other jurisdictions in which such persons engage in the practice of law;

6. No professional organization may engage in the practice of law except by and through the person or persons of its licensed member or members or licensed professional employees, all of whom shall retain their professional licenses in good standing and shall be subject to all rules, regulations, standards, and requirements pertaining to their professional activities. The provisions of this rule shall not be construed to abolish, repeal, modify, restrict, or limit the standards for professional conduct or the law now in effect applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional services;

7. (a) A member or professional employee of a professional organization shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him or her, or by any person under his or her direct supervision and control, while rendering professional services on behalf of the professional organization to the person for whom the professional services were being rendered.

(b) All professional organizations operating under this rule shall maintain professional liability insurance as set forth herein. The articles of organization shall provide that any shareholder, partner, or member who has not directly and actively participated in the act, error, or omission for which liability is claimed shall not be liable, except as provided in clause (v) of this subparagraph, for any of the damages caused if at the time the act, error, or omission occurs the professional organization has professional liability insurance which meets the following minimum standards:

(i) The insurance shall insure the professional organization against liability imposed upon it arising out of the practice of law by attorneys employed by the professional organization in their capacities as attorneys.

(ii) Such insurance shall insure the professional organization against liability imposed upon it by law for damages arising out of the professional acts, errors, and omissions of all nonprofessional employees.

(iii) The policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, exclusions, and other matters.

(iv) The insurance shall be in an amount for each claim of at least \$250,000 multiplied by the number of attorneys employed by the professional organization, and if the policy provides for an aggregate top limit of liability per year for all claims, the limit shall not be less than \$500,000 multiplied by the number of attorneys employed by the professional organization; provided, however, that no professional organization shall be required to carry total limits of insurance in excess of \$1,000,000 for each claim or be required to carry an aggregate top limit of liability for all claims per year of more than \$5,000,000.

(v) The policy may provide for a deductible or self-insured retained amount and may provide for the payment of defense or other costs out of the stated limits of the policy. In either or both such events, the liability assumed by the shareholders, partners, or members of the professional organization shall include the amount of such deductible or retained self-insurance and shall include the amount, if any, by which the payment of defense costs may reduce the insurance remaining available for the payment of claims below the minimum limits of insurance required by this rule if the ultimate liability for the claim exceeds the amount of insurance remaining to pay for it.

(vi) A professional act, error, or omission is considered to be covered by professional liability insurance for the purpose of this rule if the policy includes such act, error, or omission as a covered activity, regardless of whether claims previously made against the policy have exhausted the aggregate top limit for the applicable time period or whether the individual claimed amount or ultimate liability exceeds either the per claim or aggregate top limit.

(c) The articles of incorporation, partnership agreement, operating agreement, or other governing document or agreement of the professional organization shall also provide, and each shareholder, partner, or member shall be deemed to agree, that if it is determined that the mandatory professional liability insurance as set forth above has lapsed or is otherwise not in effect at the time of the commission of any professional act, error, or omission by any of the shareholders, officers, directors, partners, members, managers, or employees of the professional organization, each of the shareholders, partners, or members of the professional organization at the time of the commission of any such professional act, error, or omission shall be jointly and severally liable to the extent that the assets of the organization are insufficient to satisfy any liability incurred by the corporation for the acts, errors, and omissions of the shareholder, partner, or member and other employees of the organization while they are shareholders, partners, or members, to the same extent as if the shareholder, partner, or member were practicing in the form of a general partnership.

8. Except as provided by section I.C.7, the relevant states' rules of liability applicable to the particular foreign professional organization shall apply to limited liability organizations organized hereunder.

9. The liability assumed by the shareholders, partners, or members of the professional organization pursuant to section I.C.7 is limited to liability for professional acts, errors, or omissions which constitute the practice of law and shall not extend to actions or undertakings that do not constitute the practice of law. Liability, if any, for any and all actions or undertakings, other than professional acts, errors, or omissions, shall be as generally provided by law and shall not be changed, affected, limited, or extended by this rule.

10. A professional organization that discontinues the practice of law may nevertheless continue in operation for an additional period of up to 2 years for the purpose of dissolving and winding up the administrative business of the professional organization.

Rule IC(1) amended January 12, 2000; Rule IA and IC(1) amended July 13, 2005, effective September 1, 2005.

II.

A. All professional organizations, both domestic and foreign, shall file with the Clerk of the Supreme Court an application, along with a \$25 issuance fee as required by statute or this rule, for a Certificate of Authority from the Nebraska Supreme Court to operate in this state. Such applications by domestic

professional organizations shall be accompanied, as applicable, by the articles of incorporation, articles of organization, statement of qualification, or partnership agreement of such organization. If such accompanying documents meet with the Supreme Court's approval, the Supreme Court will issue a Certificate of Authority to the domestic professional organization to operate under this rule. Applications by foreign professional organizations shall be submitted as set forth at II.D below.

The Certificate of Authority issued by the Supreme Court under this rule shall expire 1 year from its date of issuance. All professional organizations operating under this rule, both domestic and foreign, shall annually apply in writing for a Certificate of Authority from the Supreme Court. Such application shall be accompanied by (1) a current list of the names and addresses of shareholders, members, or partners and a current list of the names and addresses of professional employees; (2) if not previously filed, any certified copies required to be on file pursuant to Section II.C below; and (3) a \$25 issuance fee.

B. At the time of filing the original articles of organization with the Clerk of the Supreme Court, the domestic professional organization shall file a written list of members setting forth the names and addresses of each and a written list containing the names and addresses of all persons who are not members who are employed by the professional organization and who are authorized to practice law in Nebraska. The position in the professional corporation of each person identified in the firm name also shall be stated.

C. A copy certified by the Secretary of State of the articles of organization of any domestic professional organization formed pursuant to this rule shall be filed with the Clerk of the Supreme Court, together with a certified copy of all amendments thereto.

D. Foreign professional organizations shall submit to the Clerk of the Supreme Court an application for a Certificate of Authority from the Nebraska Supreme Court to operate in this state. Such application shall be accompanied by a written list of names and addresses as provided by section II.B. The foreign professional organization's application for a Certificate of Authority, which is executed by a member of the professional organization, shall set forth or include the following:

1. The name of the foreign professional organization;
2. The state or other jurisdiction or country where organized, the date of its organization, and a statement or certificate issued by an appropriate authority in that jurisdiction that the foreign professional organization exists in good standing under the laws of the jurisdiction of its organization;
3. The nature of the business or purposes to be conducted or promoted in the state;
4. The address of the registered office and the name and address of the resident agent for service of process;
5. An affirmative statement that the foreign professional organization will operate within the purview of this rule and the Nebraska Rules of Professional Conduct; and
6. Such additional information as may be necessary or appropriate in order to enable the Supreme Court to determine whether such foreign professional organization is entitled to a certificate of authority to transact business in this state.

E. The professional organization shall do nothing which if done by an attorney employed by it would violate the standards of professional conduct established for such attorney by the Supreme Court. The professional organization shall at all times comply with the standards of professional conduct and the provisions of this rule. Any violation of this rule by the professional organization shall be grounds for the

Supreme Court to terminate or suspend its right to practice law or to revoke the professional organization's certificate of authority to practice under this rule.

F. Nothing in this rule shall be deemed to diminish or change the obligation of each attorney employed by the professional organization to conduct his or her practice in accordance with the standards of professional conduct; any attorney who by act or omission causes the professional organization to act, or fail to act, in a way which violates such standards of professional conduct, including any provision of this rule, shall be deemed personally responsible for such act or omission and shall be subject to discipline therefor.

G. Nothing in this rule shall be deemed to modify the attorney-client privilege specified by statute, nor any comparable common-law privilege.

Rule IIA and IIB amended January 12, 2000; Rule IID(5) amended July 13, 2005, effective September 1, 2005.

III.

Any such professional organization may adopt a pension, profit-sharing (whether cash or deferred), health and accident, insurance, or welfare plan for all or part of its employees including lay employees, provided that such plan does not require or result in the sharing of any specific or identifiable fees with lay employees and that any payments made to lay employees or into any such plan in behalf of lay employees are based upon their compensation or length of service or both rather than the amount of fees or income received.

IV.

Except as provided by this rule, professional organizations shall not practice law.

This rule shall not apply to organizations offering prepaid legal services to a defined and limited class of clients, to nonprofit charitable or benevolent organizations organized and operating primarily for a purpose other than the provision of legal services and which furnish legal services as an incidental activity in furtherance of their primary purpose, or to nonprofit organizations which have as their primary purpose the furnishing of legal services to indigent persons, provided that (1) the legal work serves the intended beneficiaries of the organizational purpose, (2) the staff attorney responsible for the matter signs all papers prepared by the organization, and (3) the relationship between the staff attorney and client meets the attorney's professional responsibilities to the client and is not subject to interference, control, or direction by the organization's board or employees except those of a supervising attorney licensed to practice law in Nebraska.

Rule IV amended July 13, 2005, effective September 1, 2005.

Adopted June 16, 1999.

Nebraska Rules of Professional Conduct

Nebraska Rules of Professional Conduct

Effective for Conduct Occurring On or After September 1, 2005

TABLE OF CONTENTS

Preamble
Scope

Rule 1.0 Terminology

Article 1 - Client-Lawyer Relationship

Rule 1.1 Competence
Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer
Rule 1.3 Diligence
Rule 1.4 Communications
Rule 1.5 Fees
Rule 1.6 Confidentiality of Information
Rule 1.7 Conflict of Interest: Current Clients
Rule 1.8 Conflict of Interest: Current Clients: Specific Rules
Rule 1.9 Duties to Former Clients
Rule 1.10 Imputation of Conflicts of Interest: General Rule
Rule 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees
Rule 1.12 Former Judge, Arbitrator, Mediator or Other Third-Party Neutral
Rule 1.13 Organization as Client
Rule 1.14 Client With Diminished Capacity
Rule 1.15 Safekeeping Property
Rule 1.16 Declining or Terminating Representation
Rule 1.17 Sale of Law Practice Rule
Rule 1.18 Duties to Prospective Client

Article 2 - Counselor

Rule 2.1 Advisor
Rule 2.2 Evaluation for Use by Third Persons
Rule 2.3 Lawyer Serving as Third-Party Neutral

Article 3 - Advocate

Rule 3.1 Meritorious Claims and Contentions
Rule 3.2 Expediting Litigation
Rule 3.3 Candor Toward the Tribunal
Rule 3.4 Fairness to Opposing Party and Counsel
Rule 3.5 Impartiality and Decorum of the Tribunal
Rule 3.6 Trial Publicity
Rule 3.7 Lawyer as Witness
Rule 3.8 Special Responsibilities of a Prosecutor
Rule 3.9 Advocate in Nonadjudicative Proceedings

Article 4 - Transactions with Persons Other Than Clients

- Rule 4.1 Truthfulness in Statements to Others
- Rule 4.2 Communication With Person Represented by Counsel
- Rule 4.3 Dealing With Unrepresented Person
- Rule 4.4 Respect for Rights of Third Persons

Article 5 - Law Firms and Associations

- Rule 5.1 Responsibilities of a Partner or Supervisory Lawyer
- Rule 5.2 Responsibilities of a Subordinate Lawyer
- Rule 5.3 Responsibilities Regarding Nonlawyer Assistants
- Rule 5.4 Professional Independence of a Lawyer
- Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law
- Rule 5.6 Restrictions on Rights to Practice
- Rule 5.7 Responsibilities Regarding Law-Related Services

Article 6 - Public Service

- Rule 6.1 Voluntary Pro Bono Service
- Rule 6.2 Accepting Appointments
- Rule 6.3 Membership in Legal Services Organization
- Rule 6.4 Law Reform Activities Affecting Client Interests
- Rule 6.5 Nonprofit and Court Annexed Limited Legal Services Programs

Article 7 - Information About Legal Services

- Rule 7.1 Communications Concerning a Lawyer's Services
- Rule 7.2 Advertising
- Rule 7.3 Direct Contact With Prospective Clients
- Rule 7.4 Communication of Fields of Practice
- Rule 7.5 Firm Names and Letterheads

Article 8 - Maintaining the Integrity of the Profession

- Rule 8.1 Bar Admission and Disciplinary Matters
- Rule 8.2 Judicial and Legal Officials
- Rule 8.3 Reporting Professional Misconduct
- Rule 8.4 Misconduct
- Rule 8.5 Disciplinary Authority; Choice of Law

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.3. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

[22] A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

RULE 1.0 TERMINOLOGY

- (a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.
- (b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

- (c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.
- (d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.
- (e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.
- (f) "Knowingly," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
- (g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation or a member of an association authorized to practice law.
- (h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.
- (i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
- (j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.
- (k) "Screened" denotes the isolation of a lawyer or support person from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer or support person is obligated to protect under these Rules or other law.
- (l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.
- (m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.
- (n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

COMMENT

Confirmed in Writing

[1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more lawyers constitute a firm within paragraph (c) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud

[5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

[6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2(b), 1.6(a) and 1.7(b). The communication necessary to obtain such consent will vary according to the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. See Rules 1.7(b) and 1.9(a). For a definition of "writing" and "confirmed in writing," see paragraphs (n) and (b). Other Rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8(a) and (g). For a definition of "signed," see paragraph (n).

Screened

[8] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.11, 1.12 or 1.18. The definition, as well as Comments [9] and [10] to this rule, also generally apply to the screening of support persons pursuant to Rule 1.9(e)(2).

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other materials relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

Article 1 – Client-Lawyer Relationship

RULE 1.1 COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, preparation and judgment reasonably necessary for the representation.

COMMENT

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what

kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency, a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(b).

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (b) and (c), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

COMMENT

Allocation of Authority Between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified

in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Agreements Limiting Scope of Representation

[5] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[6] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[7] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions

[8] Paragraph (c) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[9] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[10] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[11] Paragraph (c) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (c) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (c) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[12] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

RULE 1.3 DILIGENCE

A lawyer shall act with reasonable diligence and promptness in representing a client.

COMMENT

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's

affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer).

RULE 1.4 COMMUNICATIONS

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;**
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;**
- (3) keep the client reasonably informed about the status of the matter;**
- (4) promptly comply with reasonable requests for information; and**
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.**

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

COMMENT

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating With Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations – depending on both the importance of the action under

consideration and the feasibility of consulting with the client – this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation, a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

RULE 1.5 FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
- (2) a contingent fee for representing a defendant in a criminal case.

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

- (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
- (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
- (3) the total fee is reasonable.

(f) Upon reasonable and timely request by the client, a lawyer shall provide, without charge, an accounting for fees and costs claimed or previously collected. Such an accounting shall include at least the following information:

(1) Itemization of all hourly charges, costs, interest assessments, and past due balances.

(2) For hourly rate charges, a description of the services performed and a notation of the person who performed those services. The description shall be of sufficient detail to generally apprise the client of the nature of the work performed.

COMMENT

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Prohibited Contingent Fees

[6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes Over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

RULE 1.6 CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) to prevent the client from committing a crime or to prevent reasonably certain death or substantial bodily harm;**
- (2) to secure legal advice about the lawyer's compliance with these Rules;**
- (3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or**
- (4) to comply with other law or a court order.**

(c) The relationship between a member of the Nebraska State Bar Association Committee on the Nebraska Lawyers Assistance Program or an employee of the Nebraska Lawyers Assistance Program and a lawyer who seeks or receives assistance through that committee or that program shall be the same as that of lawyer and client for the purposes of the application of Rule 1.6.

COMMENT

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. A lawyer may disclose information relating to the representation necessary to prevent a client from committing a crime. Paragraph (b)(1) also recognizes the overriding value of life and physical integrity and

permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. For example, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[7] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(2) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[8] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(3) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[9] A lawyer entitled to a fee is permitted by paragraph (b)(3) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[10] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(4) permits the lawyer to make such disclosures as are necessary to comply with the law.

[11] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(4) permits the lawyer to comply with the court's order.

[12] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[13] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(4). In exercising the discretion conferred by

this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the nature of the future crime, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 1.2(c), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

Withdrawal

[14] If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1). After withdrawal, the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise permitted by Rule 1.6. Neither this Rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like. Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b).

Acting Competently to Preserve Confidentiality

[15] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

[16] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

Former Client

[17] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;**
- (2) the representation is not prohibited by law;**
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and**
- (4) each affected client gives informed consent, confirmed in writing.**

COMMENT

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0(e) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: (1) clearly identify the client or clients; (2) determine whether a conflict of interest exists; (3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and (4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person

the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child,

sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

[12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j).

Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

[16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(m)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances, it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases, the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(n) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that

there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(b).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;**
- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and**
- (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.**

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

- (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and**
- (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.**

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;**

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

COMMENT

Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0(e) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

Use of Information Related to Representation

[5] Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients. Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(c), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

Gifts to Lawyers

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights

[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i).

Financial Assistance

[10] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person Paying for a Lawyer's Services

[11] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

[12] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under Rule 1.7(b), the informed consent must be confirmed in writing.

Aggregate Settlements

[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be

discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0(e) (definition of informed consent). Lawyers representing a class of plaintiffs or defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims

[14] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation

[16] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship

presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.

Imputation of Prohibitions

[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (a) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not enter into a business transaction with a client of another member of the firm without complying with paragraph (a), even if the first lawyer is not personally involved in the representation of the client. The prohibition set forth in paragraph (j) is personal and is not applied to associated lawyers.

RULE 1.9 DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

(d) A lawyer shall not knowingly allow a support person to participate or assist in the representation of a current client in the same or a substantially related matter in which another lawyer or firm with which the support person formerly was associated had previously represented a client:

(1) whose interests are materially adverse to the current client; and

(2) about whom the support person has acquired confidential information that is material to the matter, unless the former client gives informed consent, confirmed in writing.

(e) If a support person, who has worked on a matter, is personally prohibited from working on a particular matter under Rule 1.9(d), the lawyer or firm with which that person is presently associated will not be prohibited from representing the current client in that matter if:

(1) the former client gives informed consent, confirmed in writing, or

(2) the support person is screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the support person and the firm have a legal duty to protect.

(f) For purposes of Rules 1.9(d) and (e), a support person shall mean any person, other than a lawyer, who is associated with a lawyer or a law firm and shall include but is not necessarily limited to the following: law clerks, paralegals, legal assistants, secretaries, messengers and other support personnel employed by the law firm. Whether one is a support person is to be determined by the status of the person at the time of the participation in the representation of the client.

COMMENT

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment [9]. Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental

considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought. As to the application of paragraph (d), the support person shall be considered to have acquired confidential information that is material to the matter unless the support person demonstrates otherwise.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0(e). With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

COMMENT

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comments [2] - [4].

Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. See Rule 1.9(d) through (f). Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(k) and 5.3.

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[6] Rule 1.10(c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For a definition of informed consent, see Rule 1.0(e).

[7] Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11(b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

[8] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

**RULE 1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER
AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES**

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

COMMENT

[1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0(e) for the definition of informed consent.

[2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the

advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so by the government agency under paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by paragraph (d). As with paragraphs (a)(1) and (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

[4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

[5] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 1.13 Comment [6].

[6] Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0(k) (requirements for screening procedures). These paragraphs do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

[7] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

[9] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[10] For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

**RULE 1.12 FORMER JUDGE, ARBITRATOR, MEDIATOR
OR OTHER THIRD-PARTY NEUTRAL**

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

COMMENT

[1] This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges. Compliance Canons A(2), B(2) and C of the Model Code of Judicial Conduct provide that a part-time judge, judge pro tempore or retired judge recalled to active service, may not "act as a lawyer in any proceeding in which he served as a judge or in any other proceeding related thereto." Although phrased differently from this Rule, those Rules correspond in meaning.

[2] Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 1.0(e) and (b). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.3.

[3] Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

[4] Requirements for screening procedures are stated in Rule 1.0(k). Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[5] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

RULE 1.13 ORGANIZATION AS CLIENT

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

COMMENT

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations.

"Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Paragraph (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0(f), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Often, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter or get another legal opinion; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

[5] Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.8, 1.16, 3.3 or 4.1. Paragraph (c) of this Rule supplements Rule 1.6(b) by providing an additional basis upon which the lawyer may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6(b)(1)–(4). Under paragraph (c), the lawyer may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the

violation, but it is required that the matter be related to the lawyer's representation of the organization. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rule 1.6(b)(1) may permit the lawyer to disclose confidential information. In such circumstances, Rule 1.2(c) may also be applicable, in which event, withdrawal from the representation under Rule 1.16(a)(1) may be required.

[7] Paragraph (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a claim arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Government Agency

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope.

Clarifying the Lawyer's Role

[10] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances, the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[11] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[12] Paragraph (g) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions

[13] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated

associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[14] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

COMMENT

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as 5 or 6 years of age, and certainly those of 10 or 12, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the

guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(c).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decisionmaking tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decisionmaking autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on

behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

RULE 1.15 SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of 5 years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

COMMENT

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order. See, e.g., ABA Model Financial Recordkeeping Rule.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust

account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.

[6] A lawyers' fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the rules of professional conduct or other law;**
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or**
- (3) the lawyer is discharged.**

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;**
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;**
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;**
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;**
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;**
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or**
- (7) other good cause for withdrawal exists.**

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

COMMENT

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(b) and 6.5. See also Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Optional Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if

the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client Upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

RULE 1.17 SALE OF LAW PRACTICE

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

- (a) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;**
- (b) The seller gives written notice to each of the seller's clients regarding:**
 - (1) the proposed sale;**
 - (2) the client's right to retain other counsel or to take possession of the file; and**
 - (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.**

If a client cannot be given notice, that matter shall not be included in the sale and the sale otherwise shall be unaffected and the seller shall comply with the requirements of Rule 1.16 for withdrawal from representation.

- (c) The fees charged clients shall not be increased by reason of the sale.**

COMMENT

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Sale of Entire Practice or Entire Area of Practice

[2] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[3] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Model Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale, including the identity of the purchaser, and must be told that the decision to consent or make other arrangements must be made within 90 days. If nothing is heard from the client within that time, consent to the sale is presumed.

[4] All elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

[5] The sale may not be financed by increases in fees charged the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[6] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[7] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale (see Rule 1.16).

Applicability of the Rule

[8] This Rule applies to the sale of a law practice of a deceased, disabled, retiring or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[9] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[10] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

RULE 1.18 DUTIES TO PROSPECTIVE CLIENT

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee there from; and

(ii) written notice is promptly given to the prospective client.

COMMENT

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody or rely on the lawyer's advice. A lawyer's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a).

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the

matter. See Rule 1.0(e) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0(k) (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15.

Article 2 – Counselor

RULE 2.1 ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

COMMENT

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a

client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

RULE 2.2 EVALUATION FOR USE BY THIRD PERSONS

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

COMMENT

Definition

[1] An evaluation may be performed at the client's direction or when impliedly authorized in order to carry out the representation. See Rule 1.2. Such an evaluation may be for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[2] A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be

made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duties Owed to Third Person and Client

[3] When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information

[4] The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily, a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations that are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. In no circumstances is the lawyer permitted to knowingly make a false statement of material fact or law in providing an evaluation under this Rule. See Rule 4.1.

Obtaining Client's Informed Consent

[5] Information relating to an evaluation is protected by Rule 1.6. In many situations, providing an evaluation to a third party poses no significant risk to the client; thus, the lawyer may be impliedly authorized to disclose information to carry out the representation. See Rule 1.6(a). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the lawyer must first obtain the client's consent after the client has been adequately informed concerning the important possible effects on the client's interests. See Rules 1.6(a) and 1.0(e).

Financial Auditors' Requests for Information

[6] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

RULE 2.3 LAWYER SERVING AS THIRD-PARTY NEUTRAL

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the

lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

COMMENT

[1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decisionmaker depends on the particular process that is either selected by the parties or mandated by a court.

[2] The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

[4] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0(m)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

Article 3 – Advocate

RULE 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

COMMENT

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

[3] The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

RULE 3.2 EXPEDITING LITIGATION

In the lawyer's representation of a client, a lawyer shall not file a suit, assert a position, conduct a defense, delay litigation or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

COMMENT

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

RULE 3.3 CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

COMMENT

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(c) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(c), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done — making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(c). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus, the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing

documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

RULE 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

- (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;**
- (b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;**
- (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;**
- (d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;**
- (e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a**

witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

COMMENT

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

[3] With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

[4] Paragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also Rule 4.2.

RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

(a) A lawyer shall not:

(1) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(2) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(3) communicate with a juror or prospective juror after discharge of the jury if:

(i) the communication is prohibited by law or court order;

(ii) the juror has made known to the lawyer a desire not to communicate; or

(iii) the communication involves misrepresentation, coercion, duress or harassment; or

(4) engage in conduct intended to disrupt a tribunal.

(b) A lawyer shall reveal promptly to the court improper conduct by a venireperson or a juror, or by another toward a venireperson or a juror or a member of his or her family, of which the lawyer has knowledge.

COMMENT

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the ABA Model Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, unless authorized to do so by law or court order.

[3] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(m).

RULE 3.6 TRIAL PUBLICITY

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

- (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;**
- (2) information contained in a public record;**
- (3) that an investigation of a matter is in progress;**
- (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 there exists the likelihood of substantial harm to an individual or to the public interest; and**
- (7) in a criminal case, in addition to subparagraphs (1) through (6):**
 - (i) the identity, residence, occupation and family status of the accused;**

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

COMMENT

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such rules.

[3] The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

[4] Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

[5] There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate 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) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense 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;

- (3) 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;
- (4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
- (5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
- (6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

[8] See Rule 3.8(f) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

RULE 3.7 LAWYER AS WITNESS

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;**
- (2) the testimony relates to the nature and value of legal services rendered in the case; or**
- (3) disqualification of the lawyer would work substantial hardship on the client.**

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

COMMENT

[1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

Advocate-Witness Rule

[2] The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

[3] To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(3). Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

[4] Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in Rules 1.7, 1.9 and 1.10 have no application to this aspect of the problem.

[5] Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, paragraph (b) permits the lawyer to do so except in situations involving a conflict of interest.

Conflict of Interest

[6] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer the representation involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent, confirmed in writing. In some cases, the lawyer will be precluded from seeking the client's consent. See Rule 1.7. See Rule 1.0(b) for the definition of "confirmed in writing" and Rule 1.0(e) for the definition of "informed consent."

[7] Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.

RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;**
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;**
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;**

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

COMMENT

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply, however, to an accused appearing *pro se* with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.

[5] Paragraph (f) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

[6] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

RULE 3.9 ADVOCATE IN NONADJUDICATIVE PROCEEDINGS

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

COMMENT

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body must deal with it honestly and in conformity with applicable rules of procedure. See Rules 3.3(a) through (c), 3.4(a) through (c) and 3.5.

[2] Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

[3] This Rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by Rules 4.1 through 4.4.

Article 4 – Transactions With Persons Other Than Clients

RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or**
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.**

COMMENT

Misrepresentation

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by Client

[3] Under Rule 1.2(c), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(c) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6.

RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

COMMENT

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounseled disclosure of information relating to the representation.

[2] This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

[3] The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

[4] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[6] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[9] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

RULE 4.3 DEALING WITH UNREPRESENTED PERSON

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

COMMENT

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(d).

[2] The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

RULE 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

COMMENT

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

[2] Paragraph (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this Rule, "document" includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

[3] Some lawyers may choose to return a document unread, for example, when the lawyer learns before receiving the document that it was inadvertently sent to the wrong address. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

Article 5 – Law Firms and Associations

RULE 5.1 RESPONSIBILITIES OF A PARTNER OR SUPERVISORY LAWYER

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENT

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of

other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).

RULE 5.2 RESPONSIBILITIES OF A SUBORDINATE LAWYER

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

COMMENT

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise, a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

- (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or**
- (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.**

COMMENT

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See Comment [1] to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

- (1) an agreement by a lawyer with the lawyer's firm, partner or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;**
- (2) a lawyer who purchases the practice of a deceased, disabled or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;**
- (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and**
- (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.**

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;**
- (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or**
- (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.**

COMMENT

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

[2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

**RULE 5.5 UNAUTHORIZED PRACTICE OF LAW;
MULTIJURISDICTIONAL PRACTICE OF LAW**

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

- (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or**
- (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.**

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

- (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;**
- (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;**
- (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or**
- (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.**

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

COMMENT

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a lawyer who is not admitted to practice generally in this jurisdiction violates paragraph (b) if the lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the lawyer is not physically present here. Such a lawyer must not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1 and 7.5(b).

[5] There are occasions in which a lawyer admitted to practice in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c). Services may be "temporary" even though the lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to lawyers who are admitted to practice law in any United States jurisdiction, which includes the District of Columbia and any state, territory or commonwealth of the United States. The word "admitted" in paragraph (c) contemplates that the lawyer is authorized to practice in the jurisdiction in which the lawyer is admitted and excludes a lawyer who while technically admitted is not authorized to practice, because, for example, the lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a lawyer admitted only in another jurisdiction associates with a lawyer licensed to practice in this jurisdiction. For this paragraph to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a lawyer does not violate this Rule when the lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a lawyer who is not admitted to practice in this jurisdiction to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the lawyer is authorized to practice law or in which the lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a lawyer admitted only in another jurisdiction may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate lawyers may conduct research, review documents, and attend meetings with witnesses in support of the lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a lawyer admitted to practice law in another jurisdiction to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. The lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so require.

[13] Paragraph (c)(4) permits a lawyer admitted in another jurisdiction to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted. A variety of factors evidence such a relationship. The lawyer's client may have been previously represented by the lawyer, or may be resident in or have substantial contacts with the jurisdiction in which the lawyer is admitted. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction. In other cases, significant aspects of the lawyer's work might be conducted in that jurisdiction or a significant aspect of the matter may involve the law of that jurisdiction. The necessary relationship might arise when the client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their lawyer in assessing the relative merits of each. In addition, the services may draw on the lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign or international law.

[15] Paragraph (d) identifies two circumstances in which a lawyer who is admitted to practice in another United States jurisdiction, and is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a lawyer who is admitted to practice law in another jurisdiction and who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The lawyer's ability to represent the employer outside the jurisdiction in which the lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the lawyer's qualifications and the quality of the lawyer's work.

[17] If an employed lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a lawyer may provide legal services in a jurisdiction in which the lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent.

[19] A lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4(b).

[21] Paragraphs (c) and (d) do not authorize communications advertising legal services to prospective clients in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

RULE 5.6 RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

COMMENT

[1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

RULE 5.7 RESPONSIBILITIES REGARDING LAW-RELATED SERVICES

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

COMMENT

[1] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] Rule 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., Rule 8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements of the Rules of Professional Conduct as provided in paragraph (a)(1). Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example through separate entities or different support staff within the law firm, the Rules of Professional Conduct apply to the lawyer as provided in paragraph (a)(2) unless the lawyer takes reasonable measures to assure that the recipient of the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not apply.

[4] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity's operations, the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[5] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with Rule 1.8(a).

[6] In taking the reasonable measures referred to in paragraph (a)(2) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances, the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the Rule cannot be met. In such a case, a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent required by Rule 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls complies in all respects with the Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients may be served by lawyers' engaging in the delivery of law-related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation and patent, medical or environmental consulting.

[10] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially Rules 1.7(a)(2) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of Rule 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with Rules 7.1 through 7.3, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law.

[11] When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. See also Rule 8.4 (Misconduct).

Article 6 – Public Service

RULE 6.1 VOLUNTARY PRO BONO SERVICE

A lawyer should aspire to render pro bono legal services. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

COMMENT

[1] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually.

[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers from performing the pro bono services outlined in paragraphs (a)(1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers may fulfill their pro bono responsibility by performing services outlined in paragraph (b).

[6] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro

bono services. A lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[7] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[8] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide pro bono legal services.

[9] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

RULE 6.2 ACCEPTING APPOINTMENTS

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;**
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or**
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.**

COMMENT

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause, a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

RULE 6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

COMMENT

[1] Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

RULE 6.4 LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

COMMENT

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefited.

**RULE 6.5 NONPROFIT AND COURT-ANNEXED
LIMITED LEGAL SERVICES PROGRAMS**

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

COMMENT

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services – such as advice or the completion of legal forms – that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(b). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

Article 7– Information About Legal Services

RULE 7.1 COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

COMMENT

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead a prospective client.

[4] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

RULE 7.2 ADVERTISING

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

COMMENT

[1] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign

language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule. But see Rule 7.3(a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend a Lawyer

[5] Lawyers are not permitted to pay others for channeling professional work. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, banner ads and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. See Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them.

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by laypersons to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for prospective clients. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of prospective clients; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not refer prospective clients to lawyers who own, operate or are employed by the referral service.)

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with prospective clients, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

RULE 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

- (1) is a lawyer; or**
- (2) has a family, close personal or prior professional relationship with the lawyer.**

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

- (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or**
- (2) the solicitation involves coercion, duress or harassment.**

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client shall include the words "This is an advertisement" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, and in the subject line of an email, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2). "This is an advertisement" shall appear in type size at least as large as the print of the address and shall be located in a conspicuous place on the envelope or postcard.

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

COMMENT

[1] There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation and over-reaching.

[2] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who

may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to prospective client, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic conversations between a lawyer and a prospective client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[4] There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

[6] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[7] The requirement in Rule 7.3(c) that certain communications be marked "This is an advertisement" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[8] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through

memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See 8.4(a).

RULE 7.4 COMMUNICATION OF FIELDS OF PRACTICE

- (a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.**
- (b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.**
- (c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.**
- (d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:**
- (1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and**
 - (2) the name of the certifying organization is clearly identified in the communication.**

COMMENT

[1] Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty" or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services.

[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[3] Paragraph (d) permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

RULE 7.5 FIRM NAMES AND LETTERHEADS

- (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if:**
- (1) the trade name includes the name of at least one of the lawyers practicing under said name. A law firm consisting solely of the name or names of deceased or retired members of the firm does not have to include the name of an active member of the firm;**

(2) the trade name does not imply a connection with a government entity, with a public or charitable legal services organization or any other organization, association or institution or entity, unless there is, in fact, a connection; and

(3) the trade name is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

COMMENT

[1] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

[2] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

Article 8 – Maintaining the Integrity of the Profession

RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

COMMENT

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.

RULE 8.2 JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

COMMENT

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

COMMENT

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice. Once a lawyer is employed in a professional capacity, the lawyer shall not, in the course of such employment, engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers or court personnel on the basis of the person's race, national origin, gender, religion, disability, age, sexual orientation or socio-economic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law or

(g) willfully refuse, as determined by a court of competent jurisdiction, to timely pay a support order, as such order is defined by Nebraska law.

COMMENT

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct

an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(c) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

RULE 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

COMMENT

Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other

lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See, Rules 6 and 22, *ABA Model Rules for Lawyer Disciplinary Enforcement*. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5(a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

[6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

Nebraska Supreme Court Rule Regarding Use of Standardized Model
for Delivery of Substance Abuse Services

**Nebraska Supreme Court Rule Regarding Use of Standardized Model
for Delivery of Substance Abuse Services**

Substance abuse evaluations and treatment referrals for adult felony drug offenders ordered by the courts of the State of Nebraska, or by judges presiding over non-probation-based programs or services such as a drug court or other similar specialized programs as defined herein, shall comply with the minimum standards established by the Standardized Model for Delivery of Substance Abuse Services as promulgated by the Nebraska Supreme Court Office of Probation Administration, set forth in Appendix A of this rule, if all or any portion of the cost for such evaluation or treatment referral is reimbursed by funds provided pursuant to Neb. Rev. Stat. § 29-2262.07 or state funds appropriated to the Community Corrections Council for substance abuse treatment which is made available by the Council to Probation Administration. Nothing in this rule shall preclude an offender from obtaining, at his or her own expense, additional substance abuse evaluations or treatment referrals which may or may not comply with the minimum standards referred to herein.

For purposes of this rule, non-probation-based programs and services shall mean those programs and services defined and authorized by Neb. Rev. Stat. §§ 29-2246(12) and 29-2252(16) which are operating pursuant to an interlocal agreement with state probation.

The Supreme Court recommends the use of the Standardized Model for all other offenders in Nebraska courts when substance abuse evaluations and treatment referrals are ordered.

Adopted by the Nebraska Supreme Court November 30, 2005, to be effective January 1, 2006.

Nebraska Supreme Court Rule Regarding Use of Standardized Model
for Delivery of Substance Abuse Services

Standardized Model for Delivery of Substance Abuse Services
Appendix A

I. Policy:

The Standardized Model for Delivery of Substance Abuse Services for juvenile and adult probation clients is used to recognize the connection between substance abuse and crime and address it effectively through treatment. Reliable data indicates that treatment, even coerced treatment, works. It is the intent of the Administrative Office of Probation (hereinafter Probation Administration) to provide a meaningful opportunity for offender rehabilitation in an effort to reduce recidivism, promote good citizenship, and enhance public safety. It is the Chief Probation Officer's responsibility, as well as that of the Intensive Supervision Probation (hereinafter ISP) Coordinator and the Drug Court Coordinator, to ensure that communication between probation officers and providers be consistent, open, and focused on criminogenic risk and need factors that, when reduced, will improve the offender's ability to live a productive and crime-free life.

Each probation district officer, under the direction of the Chief Probation Officer; each ISP Officer, under the direction of the ISP Coordinator; and each Drug Court Officer, under the direction of the Drug Court Coordinator, shall maintain an updated Registered Substance Abuse Providers List which shall be provided by and maintained in the office of Probation Administration.

II. Definitions:

For purposes of the Standardized Model for Delivery of Substance Abuse Services, the following definitions shall apply:

Case Manager — Working under the general supervision of the Chief Probation Officer, this is a highly responsible support staff position. The work involves managing and coordinating activities associated with the supervision of administrative and low-risk probation cases.

Chief Probation Officer — A Probation Administration administrative and supervisory employee appointed by the Probation Administrator pursuant to Neb. Rev. Stat. § 29-2253(3) and (4) who is charged with the management of a probation district or assigned ISP region.

Drug Court Coordinator — A Probation Administration employee appointed via an interlocal agreement as authorized by Neb. Rev. Stat. § 29-2252(16) and who reports directly to the Chief Probation Officer of the district.

Drug Court Officer — A Probation Administration employee appointed via an interlocal agreement as authorized by Neb. Rev. Stat. § 29-2252(16). This person is charged with the responsibility of case management for adult and juvenile offenders and reports directly to the Drug Court Coordinator of the district.

ISP Coordinator — A supervising probation officer employed by Probation Administration who is responsible for the daily operation of the ISP unit within the respective ISP region. The ISP Coordinator reports directly to the ISP Chief Probation Officer of the region.

ISP Officer — This position has the same statutory responsibilities and authority as a traditional probation officer and is primarily responsible for the case management of high-risk offenders placed on Intensive Supervision Probation. The ISP Officer reports directly to the ISP Coordinator.

Nebraska Supreme Court Rule Regarding Use of Standardized Model
for Delivery of Substance Abuse Services

Probation Officer — This position routinely engages in performing a wide variety of investigatory and supervisory responsibilities involving offenders. Probation Officers have the authority to arrest and detain offenders as provided by Neb. Rev. Stat. § 29-2266 (2) and (3).

Registered Substance Abuse Provider (Registered Provider) — An individual or agency with a clear understanding of the Standardized Model which (1) agrees to adhere to all elements of this Model; (2) holds a valid license, which includes within its scope of practice the ability to administer substance abuse evaluations and/or treatment; (3) meets the basic educational requirements set forth at Section III. F(2) of this Model; and (4) registers its services with and is approved by Probation Administration.

Registered Substance Abuse Providers List — An up-to-date list of Registered Substance Abuse Providers maintained by Probation Administration.

III. Procedures:

A. Screening Assessment

The **Simple Screening Instrument (SSI)** (Attachment 1) is an assessment tool used to determine the presence of a current substance abuse problem and identify the need for further evaluation. The SSI is effective for adults and juveniles; is highly sensitive and detects all substances; and requires 10 to 15 minutes for completion.

The SSI shall be utilized by probation officers or designated staff to screen offenders for alcohol and other drug abuse (AOD) as a stand-alone assessment or in combination with Probation's computerized assessment screening.

1. The SSI shall be administered face-to-face by a trained probation officer or case manager.
2. The SSI shall be completed in conjunction with the presentence investigation (PSI) or predisposition investigation (PDI) as part of the body of the investigation. It shall be incorporated into the "Drugs and Alcohol" section of the investigation. A copy of the SSI shall be attached to the investigation.
3. If a chemical dependency issue is suspected and no PDI or PSI is ordered, the probation officer/case manager shall administer the SSI and use the results as a screen for further evaluation, referral, or modified order of probation.
4. The SSI shall be utilized as a tool of case management guiding the probation officer/case manager regarding the need for referral for a substance abuse service.
5. If the court orders a substance abuse evaluation prior to a **Simple Screening Instrument (SSI)** (Attachment 1) and **Standardized Risk Assessment Reporting Format for Substance Abusing Offenders (SRARF)** (Attachment 2) being completed, these instruments shall be administered for data purposes in conjunction with a referral for an evaluation. In the event the court has already ordered and received a completed substance abuse evaluation, a SSI shall still be completed for case management purposes.
6. Administration of the SSI:
 - Explain purpose to client.
 - Ask questions in a straightforward manner.
 - Probe, listen, and empathize.
 - Pause between questions; allow time to discuss when appropriate.
 - Generally, adhere to the exact wording.

Nebraska Supreme Court Rule Regarding Use of Standardized Model
for Delivery of Substance Abuse Services

- Feedback responses to offender when appropriate.
 - Don't "lead" offender into answers.
7. Scoring the SSI:
- DO NOT score questions #1 and #15 - too general.
 - DO NOT score questions #17 and #18 - gambling. *
 - DO NOT score observational items.
 - Persons with AOD problems will usually score 4 or higher -- refer for substance abuse evaluation.
 - Score of less than 4 does not rule out an AOD problem; use observations to assist with decision to refer for substance abuse evaluation.

* If either #17 or #18 on the SSI is answered "Yes," refer for gambling evaluation.

B. Risk Assessment

The **Standardized Risk Assessment Reporting Format for Substance Abusing Offenders (SRARF)** is used to give treatment providers an indication of the offender's risk of re-arrest.

The probation officer/case manager will use his or her professional judgment and information gleaned from other Probation risk assessment tools (OSW, Risk/Needs) to complete the SRARF.

1. The probation officer/case manager shall record on the SRARF the relative level of risk of re-arrest posed by the offender as either low, medium, or high.
2. Special concerns, comments, or complicating factors important to the provider's understanding the offender's current risk shall be documented, for example, sexual assault on a 3-year-old, 2nd offense DUI but really is the 3rd, family member's death.

C. Evaluation Referral and Confidentiality

To ensure consistent and accurate diagnoses and recommendations for treatment and to formalize information-sharing between the justice system and substance abuse providers, all referrals for substance abuse evaluations shall be made to a Registered Provider who is chosen by the offender from the Registered Substance Abuse Providers List.

1. When referring an offender for a substance abuse evaluation, a **Referral for Substance Abuse Evaluation Form** (Attachment 3) shall be completed and signed by the offender. This affords a preliminary release to the Registered Provider concerning the need for collateral information from the Probation office. A copy of this form shall be retained in the offender's probation file.
2. The probation officer shall provide upon request of the offender's agency of choice (Registered Substance Abuse Providers List) collateral information concerning the results of the SSI, the SRARF, the prior offense record, and BAC (Blood Alcohol Content) if applicable.
3. After a Registered Provider has been selected by the offender, probation officers shall ensure a release of information has been signed and remains on file during the period an offender is under presentence investigation, is on probation, is involved in non-probation-based services/programs and being supervised by a probation officer, or remains in treatment.

Nebraska Supreme Court Rule Regarding Use of Standardized Model
for Delivery of Substance Abuse Services

D. Evaluations

Only substance abuse evaluations in compliance with the Standardized Model shall be received by the Probation office. Pursuant to the Standardized Model, each substance abuse evaluation received shall be completed and signed by a Registered Provider, who, within his or her scope of practice, is permitted to conduct substance abuse evaluations and has agreed to adhere to all elements of Nebraska's Standardized Model. All Registered Providers shall use the **Nebraska Standardized Reporting Format for Substance Abuse Evaluations for all Justice Referrals** (Attachment 4).

1. Substance abuse evaluations not adhering to this format shall be reported to your direct supervisor, Chief Probation Officer, ISP Coordinator, or Drug Court Coordinator to determine whether referral to Probation Administration is necessary.
2. A **Registered Substance Abuse Providers List** shall be provided by and maintained in the office of Probation Administration. It is the responsibility of the district to obtain and maintain up-to-date copies. Chief Probation Officers, ISP Coordinators, and Drug Court Coordinators are expected to provide input to Probation Administration concerning the addition and/or deletion of local providers to the Registered Substance Abuse Providers List.
3. As determined by Probation Administration, certain offenders may be eligible for payment of their evaluations via the Fee for Service Voucher Program as long as the referring probation officer receives supervisory approval and a Registered Provider is utilized for this service.

E. Treatment

To ensure that programs serving substance abusing offenders are meeting minimum standardized levels of care, probation officers/case managers shall refer such offenders to Registered Providers who have agreed to adhere to these levels of care. It is critical that levels of care are consistent with and linked to criminogenic risk and need factors.

1. Probation officers/case managers shall refer offenders for substance abuse services pursuant to either the **Substance Abuse Services for Adult Criminal Justice Clients Continuum of Care** (see Attachment 5) or the **Substance Abuse Services for Juvenile Justice Clients Continuum of Care** (Attachment 6).
2. When referring an offender for substance abuse treatment, a **Referral for Substance Abuse Evaluation Form** shall be completed by the probation officer and signed by the offender. This affords a preliminary release (if necessary) for the Registered Provider to obtain collateral information from the Probation office. A copy of the form shall be retained in the offender's probation file.
3. The probation officer shall provide upon request of the offender's agency of choice (Registered Substance Abuse Providers List) collateral information concerning the results of the SSI, the SRARF, the prior offense record and BAC (Blood Alcohol Content) if applicable.
4. After a Registered Provider has been selected by the offender, probation officers shall ensure a release of information has been signed and remains on file during the period of time an offender is under a presentence investigation or under supervision.
5. A Registered Substance Abuse Providers List shall be provided by Probation Administration. It is the responsibility of the district/region to obtain and maintain up-to-date copies. Chief Probation Officers are expected to provide input to Probation Administration concerning the addition and/or deletion of local providers to the Registered Provider list.

Nebraska Supreme Court Rule Regarding Use of Standardized Model
for Delivery of Substance Abuse Services

6. As determined by Probation Administration, certain offenders may be eligible for payment of their treatment via the Fee for Service Voucher Program as long as the referring probation officer receives supervisory approval and a Registered Provider is utilized for this service.

F. Registered Providers

Probation shall consider for registration only those individuals or agencies who have a clear understanding of the connection between substance abuse and criminal offending and meet the following criteria:

1. Registered Providers must hold a valid license that includes in its scope of practice the ability to administer substance abuse evaluations and/or treatment.
2. Registered Providers must have completed an approved basic education course regarding criminogenic factors contributing to an offender's law violating behavior and participate in 12 continuing education hours every 2 years following. A curriculum list and further information regarding the basic education course requirements shall be available through Probation Administration and the Judicial Branch Web site.
3. Registered Providers must have an understanding of the model process and agree to the requirements of the **Standardized Model for Substance Abuse Services** for probation clients to include:
 - The Simple Screening Instrument (SSI)
 - The Standardized Risk Assessment Reporting Format for Substance Abusing Offenders (SRARF)
 - The Nebraska Standardized Reporting Format for Substance Abuse Evaluations for all Justice Referrals
 - Substance Abuse Services for Adult Criminal Justice Clients Continuum of Care
 - Use The Addiction Severity Index (ASI) for adult offenders or the Comprehensive Adolescent Severity Inventory (CASI) for juvenile offenders to assist in appropriate data collection and objective placement level of treatment recommendations
 - Use a validated assessment tool developed and approved for assisting in the diagnosis of addiction
 - Use the Nebraska Standardized Reporting Format for Substance Abuse Evaluation
 - Register their services prior to delivery in a database and provide data from those services in accordance with all confidentiality requirements
 - Provide services in accordance with defined levels of care and minimum standards
4. Registered Providers may be entitled to a direct payment for delivery of a substance abuse service depending on the eligibility of the offender referred for service. The criteria for offender eligibility are determined by Probation Administration and payment for services is coordinated through the Fee for Service Voucher Program.
5. Providers may register their services, at no cost, with Probation Administration's office. Application forms and a complete listing of Registered Providers will be posted on the Judicial Branch Web site.

G. Special Considerations

When a probation officer/case manager receives and finds an evaluation or recommendation to be inconsistent or lacking information (criminal history, prior evaluation or treatment, drug testing self-report, other collateral, etc.) and/or fails to address other criminogenic risk factors, he or she shall:

Nebraska Supreme Court Rule Regarding Use of Standardized Model
for Delivery of Substance Abuse Services

1. Call the Registered Provider to discuss missing or conflicting information.
2. Inquire of the Registered Provider whether the new or missing information changes the evaluation/recommendation.
3. Bring any unresolved discrepancies to the court's attention with a recommendation for a subsequent evaluation.

H. Data Collection

Data collected through the SSI and SRARF provides an understanding of Nebraska's substance abusing population. Probation staff will enter SSI and SRARF data into the Nebraska Criminal Justice Information System (NCJIS) and the Nebraska Probation Management Information System (NPMIS). NCJIS and NPMIS are currently not integrated data systems, and therefore, data entry is necessary in both systems.

1. Probation officers/case managers or designated staff shall enter online SSI and SRARF data directly into NCJIS.
2. Probation officers/case managers or designated staff shall capture SSI scores and SRARF risk levels and submit to a support staff person designated by the Chief Probation Officer, ISP Coordinator, or Drug Court Coordinator for data collection or entered directly by a probation officer into NPMIS.
3. Upon the completion of a substance abuse evaluation, the following information shall be entered into NPMIS (under the "Model" tab) by probation officers/case managers or designated staff:
 - the date completed
 - ideal level of care
 - available level of care

I. Training

Through the Administrative Office of Courts/Probation, training for probation officers/case managers is required concerning basic and continuing education pertaining to substance abuse, the Standardized Model, and instruments utilized, in order to properly assess and supervise offenders under Probation's authority. All probation officers/case managers shall:

- Understand the policies and procedures associated with the Standardized Model.
- Be trained on the principles of criminogenic risk and need factors (to include but not limited to criminal thinking and motivational interviewing).
- Be trained on the nature of substance abuse addiction in adults and juveniles during the first year of employment (35 hours required). Subsequent yearly training (8 hours) to include, but not limited to, relapse prevention, strength-based treatment principles, and American Society for Addiction Medicine (ASAM) criteria.
- Understand the operation of the Nebraska Substance Abuse Service Delivery System.
- Be trained on the Standardized Model, the process and tools utilized, to include:
 - Administration of the Simple Screening Instrument (SSI)
 - Administration of the Standardized Risk Assessment Reporting Format for Substance Abusing Offenders (SRARF)
 - Nebraska Standardized Reporting Format for Substance Abuse Evaluations for all Justice Referrals
 - Understanding the Addiction Severity Index (ASI) and Comprehensive Adolescent Severity Inventory (CASI)

Nebraska Supreme Court Rule Regarding Use of Standardized Model
for Delivery of Substance Abuse Services

- Standardized Levels of Care Continuum for Substance Abuse Services for Juvenile and Adult Criminal Justice Clients
- Understand the incorporation of the Standardized Model into the presentence investigation and case management.
- Understand the proper use of NCJIS and NPMIS concerning data collection associated with the Standardized Model.

Attachments:

[Attachment 1](#) — Simple Screening Instrument (SSI)

[Attachment 2](#) — Standardized Risk Assessment Reporting Format for Substance Abusing Offenders (SRARF)

[Attachment 3](#) — Referral for Substance Abuse Evaluation Form - General Letter to Providers

[Attachment 4](#) — Nebraska Standardized Reporting Format for Substance Abuse Evaluations for all Justice Referrals

[Attachment 5](#) — Substance Abuse Services for Adult Criminal Justice Clients Continuum of Care

[Attachment 6](#) — Substance Abuse Services for Juvenile Justice Clients Continuum of Care

SIMPLE SCREENING INSTRUMENT

Interviewer reads the following to the client: "The questions that follow are about your use of alcohol and other drugs. Mark the response that best fits for you. Answer the questions in terms of your experiences in the past 6 months."		
In the past 6 months,		
1. Have you used alcohol or other drugs? (Such as wine, beer, hard liquor, pot, coke, heroin, or other opiates, uppers, downers, hallucinogens, or inhalants.)	Yes	No
a. When did you first use alcohol or other drugs (excluding tobacco)?	___/___/___	
b. When did you last use alcohol or other drugs (excluding tobacco)?	___/___/___	
2. Have you felt that you use too much alcohol or other drugs?	Yes	No
3. Have you tried to cut down or quit using alcohol or other drugs?	Yes	No
4. Have you gone to anyone for help because of your drinking or drug use? (Such as Alcoholics Anonymous, Narcotics Anonymous, Cocaine Anonymous, counselors, or a treatment program.)	Yes	No
5. Have you had any of the following?		
a. Have you ever had blackouts or other periods of memory loss?	Yes	No
b. Have you ever injured your head after drinking or using drugs?	Yes	No
c. Have you ever had convulsions, delirium tremens ("DT's")?	Yes	No
d. Have you ever had hepatitis or other liver problems?	Yes	No
e. Have you ever felt sick, shaky, or depressed when you stopped drinking or using?	Yes	No
f. Have you ever experienced a crawling feeling under the skin after you stopped using drugs?	Yes	No
g. Have you ever been injured after drinking or using?	Yes	No
h. Have you ever used needles to shoot drugs?	Yes	No
i. Have you ever been depressed or suicidal?	Yes	No
6. Has drinking or drug use caused problems between you and your family or friends?	Yes	No
7. Has drinking or drug use caused problems at school or at work? (Including attendance.)	Yes	No
8. Have you been arrested or had other legal problems? (Such as bouncing bad checks, driving while intoxicated, theft, or drug possession.)	Yes	No
9. Have you lost your temper or gotten into arguments or fights while using alcohol or drugs?	Yes	No
10. Have you needed to drink or use drugs more and more to get the effect you want?	Yes	No
11. Have you spent a lot of time thinking about or trying to get alcohol or drugs?	Yes	No
12. When drinking or using drugs, are you more likely to do something you wouldn't normally do, such as break rules, break the law, sell things that are important to you, or have unprotected sex with someone?	Yes	No
13. Have you felt bad or guilty about your alcohol or drug use?	Yes	No
The next questions are about your lifetime experiences.		
14. Have you <u>ever</u> had a drinking or drug problem?	Yes	No
15. Have any of your family members <u>ever</u> had a drinking or drug problem?	Yes	No
16. Do you feel that you have a drinking or drug problem <u>now</u> ?	Yes	No
The next questions are about your experience with gambling.		
17. Have you ever had to lie to people important to you about how much you gambled?	Yes	No
18. Have you ever felt the need to bet more and more money?	Yes	No

SIMPLE SCREENING INSTRUMENT (cont'd)

Scoring for SSI (For official use only)		
Individual ID: _____		Date: _____
Location: _____		
Items 1, 15, 17 & 18 are NOT scored. The following items are scored as a 1 (yes) and 0 (no):		
___ 2	___ 7	___ 12
___ 3	___ 8	___ 13
___ 4	___ 9	___ 14
___ 5 (any items listed)	___ 10	___ 16
___ 6	___ 11	
Total Score: _____		Score Range: 0-14
<u>Preliminary interpretation of responses:</u>		
Score	Degree of Risk for AOD Abuse	
0-1 . . . . .	.None to low	
2-3 . . . . .	.Minimal	
>/=4 . . . . .	.Moderate to high: Refer for further substance abuse evaluation	

Observation Checklist for Interviewer: Did you observe any of the following while screening this individual?

a. Needle track marks	Yes	No
b. Skin abscesses, cigarette burns, or nicotine stains	Yes	No
c. Tremors (shaking and twitching of hands and eyelids)	Yes	No
d. Unclear speech: slurred, incoherent, or too rapid	Yes	No
e. Unsteady gait: staggering or off balance	Yes	No
f. Dilated (enlarged or constricted (pinpoint) pupils)	Yes	No
g. Scratching	Yes	No
h. Swollen hands or feet	Yes	No
i. Smell of alcohol or marijuana on breath	Yes	No
j. Drug paraphernalia such as pipes, paper, needles, or roach clips	Yes	No
k. "Nodding out" (dozing or falling asleep)	Yes	No
l. Agitation	Yes	No
m. Inability to focus	Yes	No
n. Burns on the inside of the lips	Yes	No

Interviewer Comments: _____

The ***SIMPLE SCREENING INSTRUMENT*** is a component of the
NEBRASKA STANDARDIZED MODEL FOR ASSESSING SUBSTANCE ABUSING OFFENDERS
A Partnership Initiative Between the Nebraska Justice and Substance Abuse Systems

Client's Name _____
 Rater's Name _____

Today's Date _____
 Date of Birth _____

RISK ASSESSMENT REPORTING FORMAT

Instructions: This instrument is used to give treatment providers an indication of the offender's risk of rearrest. Justice system personnel should indicate whether, in your professional judgement, the offender's circumstances in each of the following areas indicate an increased likelihood of rearrest.

- | | Yes | No |
|---|--------------------------|--------------------------|
| 1. Age
Examples: The offender was relatively young at the time of first arrest/conviction.
The offender is currently 12 or younger. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Prior Record
Examples: The offender's arrest record causes concern.
The offender has had prior terms of probation/parole.
The offender has absconded or been revoked. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Offense Types
Examples: The offender has prior arrests for theft/auto theft/burglary/robbery.
The offender has an arrest for assault, sexual assault, or weapons. | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Attitude
Examples: The offender does not accept responsibility/rationalizes behavior.
The offender is unwilling to change. | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Personal Relations
Examples: The offender's personal relationships are unstable or disorganized.
The offender has gang associations. | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Substance Use
Examples: The offender is involved in occasional or frequent use of alcohol/drugs.
The use of alcohol/drugs causes any disruption of functioning. | <input type="checkbox"/> | <input type="checkbox"/> |

For Juveniles Only:

For Adults Only:

- | | Yes | No |
|---|--------------------------|--------------------------|
| 7. School/Employment
(Check "Yes" if offender has dropped out and is not employed.)
Examples: The offender has behavior or attendance problems at school or work.
The offender is placed below expected grade. | <input type="checkbox"/> | <input type="checkbox"/> |

- | | Yes | No |
|---|--------------------------|--------------------------|
| 7. Employment
(Check "No" if full-time student.)
Examples: The offender has unsatisfactory employment or is unemployed.
The offender has not been regularly employed or in school for the last year. | <input type="checkbox"/> | <input type="checkbox"/> |

- | | | |
|---|--------------------------|--------------------------|
| 8. Maltreatment
Examples: The offender has been reported to be the victim of either neglect or abuse (emotional, physical, or sexual). | <input type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|

Nebraska Supreme Court Rule Regarding Use of Standardized Model for Delivery of Substance Abuse Services
Attachment 2: *Standardized Risk Assessment Reporting Format for Substance Abusing Offenders (Risk Inventory)*

Overall Impression:

In your professional judgement, indicate the relative level of risk of rearrest posed by this offender.

Low

Medium

High

Comments/Concerns/Complicating Factors (e.g., trauma, victim, mental health, other identified needs):

The ***RISK ASSESSMENT REPORTING FORMAT*** is a component of the
NEBRASKA STANDARDIZED MODEL FOR ASSESSING SUBSTANCE ABUSING OFFENDERS
A Partnership Initiative Between the Nebraska Justice and Substance Abuse Systems

STANDARDIZED MODEL COMMUNICATION BETWEEN PROBATION AND PROVIDER OF SUBSTANCE ABUSE SERVICES

To: Approved Provider (refer to approved provider list)
FROM: Probation Officer/Case Manager
RE: Referral for Substance Abuse Evaluation/Treatment Form

Name of Offender: _____

Docket: _____ Page: _____

Current Charge(s): _____

The undersigned individual named above is being referred to you/your agency for the substance abuse service listed above. Please forward a signed authorization to the probation officer/case manager listed above and the individual's Simple Screening Instrument (SSI), Standardized Risk Assessment Reporting Format for Substance Abusing Offenders (SRARF), prior criminal record, and BAC (Blood Alcohol Content) (if applicable), will be forwarded to you. Thank you.

Date: _____ Date: _____

Probationer/Defendant

Probation Officer/Case Manager

**NEBRASKA STANDARD REPORTING FORMAT
FOR SUBSTANCE ABUSE EVALUATIONS
FOR ALL JUSTICE REFERRALS**

A. DEMOGRAPHICS

B. PRESENTING PROBLEM / PRIMARY COMPLAINT

1. External leverage to seek evaluation
2. When was client first recommended to obtain an evaluation
3. Synopsis of what led client to schedule this evaluation

C. MEDICAL HISTORY

D. WORK / SCHOOL / MILITARY HISTORY

E. ALCOHOL / DRUG HISTORY SUMMARY

1. Frequency and amount
2. Drug and/or alcohol of choice
3. History of all substance use / misuse / abuse
4. Use patterns
5. Consequences of use (physiological, legal, interpersonal, familial, vocational, etc.)
6. Periods of abstinence / when and why
7. Tolerance level
8. Withdrawal history and potential
9. Influence of living situation on use
10. Other addictive behaviors (e.g., gambling)
11. IV drug use
12. Prior SA evaluations and findings
13. Prior SA treatment

F. LEGAL HISTORY (Information from Criminal Justice System)

1. Criminal History and other information
2. Drug testing results
3. Simple Screening Instrument (SSI) results
4. Risk Assessment Reporting Format for Substance Abusing Offenders (SRARF) results

G. FAMILY / SOCIAL PEER HISTORY

H. PSYCHIATRIC / BEHAVIORAL HISTORY

1. Previous mental health diagnosis
2. Prior mental health treatment

**Nebraska Supreme Court Rule Regarding Use of Standardized Model for Delivery of Substance Abuse Services
Attachment 4: *Nebraska Standardized Reporting Format for Substance Abuse Evaluations for all Justice Referrals***

I. COLLATERAL INFORMATION (Information from Family/Friends/Criminal Justice/Other)

Report any information about the client's use history, pattern, and/or consequences learned from other sources.

J. OTHER DIAGNOSTIC / SCREENING TOOLS – SCORE AND RESULTS

Report the results and score from any other substance abuse assessment tool used that is not the ASI or CASI.

K. CLINICAL IMPRESSION

1. Summary of evaluation
 - a. Behavior during evaluation (agitated, mood, cooperative)
 - b. Motivation to change
 - c. Level of denial or defensiveness
 - d. Personal agenda
 - e. Discrepancies of information provided
2. Substance abuse diagnostic impression (including justification)
 - a. Identify the substance abuse diagnostic impression
 - b. May include Axis I-V (include information gained from other sources on psychiatric or medical diagnosis, if known)
3. Strengths identified (for the client and the family)
4. Problems identified

L. RECOMMENDATIONS

1. Primary / ideal level of care recommendation
 - Identify the substance abuse level of care and service(s) that would best meet the need of the client.
2. Available level of care / barriers to ideal recommendation
 - If the substance abuse level of care and service(s) are not available or there is some other reason the client cannot receive that service, identify those reasons. Include the next best substance abuse level of care and service that the client will be referred to.
3. Client / family response to recommendation
 - a. Document the client's response to the level of care and service recommendation.
 - b. Include the family's response to the level of care and service recommendation.

**Nebraska Supreme Court Rule Regarding Use of Standardized Model for Delivery of Substance Abuse Services
Attachment 4: Nebraska Standardized Reporting Format for Substance Abuse Evaluations for all Justice Referrals**

ATTACHMENT A: PERTINENT BIOPSYCHOSOCIAL INFORMATION

	YES	NO	Notes
1. MEDICAL / HEALTH STATUS			
a. Eating disorders issues			
b. Infectious diseases present			
c. Head trauma history			
d. Organ disease (liver, heart, other)			
e. Pregnancy			
f. Medication status and history			
g. Other pertinent medical problems			
h. Nutritional			
2. EMPLOYMENT / SCHOOL / MILITARY			
a. Employment history			
b. Financial responsibility problems			
c. Work ethic / goal setting problems			
d. Military history			
e. Attendance issues			
f. Performance / goal setting problems			
g. Learning disabilities present			
h. Cognitive functioning difficulties			
3. FAMILY / SOCIAL DESCRIPTION			
a. History of use / treatment			
b. Family communication issues			
c. Family conflict evident (domestic, sexual, physical, neglect, etc.)			
4. DEVELOPMENTAL			
a. Abandonment issues			
b. Significant childhood experiences			
5. SOCIAL COMPETENCY / PEER RELATIONSHIPS			
a. Authority issues present			
b. Assertiveness issues present			
c. Submissiveness issues present			
d. Social support network			
e. Substance-using peers prominent			
f. Isolation issues			
g. Use of free time / hobbies			
h. Group v. individual activities			
i. Gang membership / affiliation			
6. PSYCHIATRIC / BEHAVIORAL			
a. Need for mental health treatment evident			
b. Danger to self or others present			
c. Legal issues past or present			
d. Violence by history			
e. Impulsivity by history			
f. High risk behaviors by history			
7. INDIVIDUALIZED NEEDS			
a. Spirituality			
b. Cultural issues impacting AOD use			
c. Anti-social values / beliefs			

SUBSTANCE ABUSE SERVICES FOR ADULT CRIMINAL JUSTICE CLIENTS

The terms listed are for use by all substance abuse providers and criminal justice entities in referring criminal justice system clients to substance abuse services provided in Nebraska.

LEVEL OF CARE (LOC): General category that includes several similar types of services.

Substance Abuse Services: The specific service name that more specifically identifies the type of actual substance abuse service a client will receive.

Adult: Age 19 and above.

NOTE: Not all of these services are available in Nebraska; some services may be available in some areas but not in others. This service array is intended to be a balanced array of substance abuse services that could meet various needs at different levels of severity.

LOC: EMERGENCY SERVICES

(very short term, unscheduled service availability in time of crisis in a variety of settings)

Crisis Phone Line	Clinician on-call for early intervention/screening/referral; available 24/7.
Mobile Crisis / Crisis Response Teams	Teams of professional and/or paraprofessionals that offer on-site screening usually in the home; brief interventions to stabilize the crisis and refer for SA Crisis/Crisis Respite or other appropriate service, and a thorough SA evaluation; available 24/7; includes access to a LADC.
SA Emergency Shelter or SA Respite	Residential- or home-based service for a short-term placement of an individual in a substance abuse crisis; most clients are not intoxicated but program has capability to supervise alcohol/drug social setting detoxification (non-medical); length of stay varies by legal status, but emphasis is very short term (less than 7 days); 24/7 availability of on-site clinically managed and monitored services as needed; client is medically stable; very limited nursing coverage/can be on-call.
Emergency Community Support	Support service for persons once a MH or SA crisis has been stabilized; 1:1 staff to client work to ensure client focuses on relapse and recovery management, and skill teaching, assistance with housing, ensure attendance at medical appointments or SA non-residential treatment services; coordination of a care plan; coordinating services, transportation; 24/7 on call; service is very short term; often provided concurrently with another SA service to ensure client stays connected with services; LoS varies but not longer than 30-90 days.
Emergency Stabilization and Treatment	Service to stabilize acute withdrawal and/or intoxication symptoms and return person to independent living in the community or engage and refer the person to a recovery program; supportive services therapy, brief SA assessment, primary clinical treatment for substance abuse disorder implemented, and coordination of services to help the client alleviate a substance abuse crisis; LoS varies but not longer than 14 days; on-site clinically managed and monitored; medically stable; limited nursing coverage.
Social Detox	Residential service for the short-term placement for an adult needing alcohol/drug detoxification (non-medical); length of stay varies but usually not more than 5-7 days depending on the drugs involved; 24/7 on-site availability of clinically managed and monitored; medically stable; limited nursing coverage.
Medical Detox	24-hour medically supervised alcohol/drug detoxification where severe medical issues are involved; 24/7; medical staff coverage.
Emergency Protective Custody (EPC)	Crisis Center services provided in a medical facility to stabilize a person in psychiatric and/or substance abuse crisis; clinically managed detox with legal hold; 24/7; admission on involuntary basis by EPC legal hold because of alleged dangerousness to self or others; generally 7 day or less stay to stabilize, begin emergency treatment and referral to most appropriate service to meet client's need; LoS not longer than 7 days, or if the client is on an EPC hold may continue to a commitment hearing.
Civil Protective Custody (CPC)	Residential services; 24-hour legal hold to keep someone involuntarily in a social detox service.

LOC: ASSESSMENT SERVICES

(screening and evaluation tools used to determine the level of a SA problem and make appropriate service)

Screening	General screening by provider to identify a substance abuse problem and refer for a complete SA assessment, early intervention or treatment; includes screen for mental health and gambling issues. <u>Criminal Justice referrals will have had an SSI screen done by criminal justice system staff.</u>
Emergency SA Evaluation	SA evaluation needed on an unscheduled basis and completed <u>within 24 hours of request</u> ; <i>all evaluations completed for justice clients must be completed by a clinician licensed by the State of Nebraska to assess and treat substance abuse problems and who has completed the Standardized Model requirements and state-approved ASI and criminal justice behaviors/thinking training; available from any state-licensed SA service provider; Evaluation/Assessment Tool Required: Addiction Severity Index (ASI); Approved State Reporting Format: SA</i> Evaluation/Assessment results are required to be provided in the state-approved reporting format only.
SA Evaluation	<i>All SA evaluations completed for justice clients must be completed by a clinician licensed by the State of Nebraska to assess and treat substance abuse problems and who has completed the Standardized Model requirements and state-approved ASI and criminal justice behaviors/thinking training; available from any state-licensed SA service provider; Evaluation/Assessment Tool Required: Addiction Severity Index (ASI); Approved State Reporting Format: SA</i> Evaluation/Assessment results are required to be provided in the state-approved reporting format only.

LOC: NON-RESIDENTIAL SERVICES

(least intensive services based on clinical need offered in a variety of community settings; client lives independently)

NOTE: Persons MUST be psychiatrically and medically stable to be admitted to the non-residential services.

NON-RESIDENTIAL SERVICES: A range of services for persons at risk of developing, or who have substance abuse problems, specific functional deficits, problems with intoxication or withdrawal, but few biomedical complications. Clients may have significant deficits in the areas of readiness to change, relapse, continued use or continued problem potential or recovery environment and, thus, are in need of interventions directed by licensed addiction specialists rather than medical or psychiatric personnel in a variety of non-residential settings. Level 1 is the most intensive and Level 5 is the least intensive service in this level of care.

Lv 5 Prevention and Education	Education and other activities designed to prevent abusing substances.
Lv 5 Intervention	Intervention counseling and education for persons experimenting or currently using substances but who are NOT abusing or dependent; staff supervised EDUCATION programs are very structured with a specific outcome for the client; LoS varies (i.e., minimally one staff supervised 6- or 8-hour class; other options might include eight 1-hour sessions, three to four 4-hour sessions, or other); includes support group or self-help referrals.
Lv 5 Methadone Maintenance	Administration of methadone medication to enable an opiate-addicted person to be free of heroin; methadone replacement for heroin is a lifetime maintenance program; counseling therapy interventions are included in the service.
Lv 5 Care Monitoring SAMH	Monitoring service designed for persons eligible under the definition for Community Support Mental Health or Substance Abuse, who have made significant progress in recovery and stable community living, or for those clients unwilling to accept the more intensive and rehabilitative community support service; this service monitors a client's progress in community living, provides crisis/relapse intervention/prevention as needed, provides oversight and follow-up functions as identified in the client's monitoring plan (i.e., services, appointments, reminders), and intervenes to protect current gains and prevent losses or decompensation/relapse; contact with client as needed.
Lv 4 Outpatient Counseling	Individual and/or group counseling/therapy by a clinician licensed in Nebraska to treat substance-use disorders that disrupt a client's life; treatment focus is on changing behaviors, modifying thought patterns, coping with problems, improving functioning, and other services to achieve successful outcomes and prevent relapse. LoS varies depending on individual illness and response to treatment (i.e., may average 10-12 sessions at 1-4 hours per week but treatment frequencies and duration will vary); includes brief therapy model (3-5 sessions); group therapy sessions include approx 3-8 persons; family counseling is included.
Lv 3 Community Support	Support for persons with chemical dependency and functional deficits; 1:1 staff-to-client support (face to face) in residence or other non-office location to ensure client focus on rehabilitating his/her social and relationship skills; aiding client in use of appropriate coping skills; active relapse and recovery management and skill teaching; provides client advocacy; assistance with housing, accessing transportation, and a variety of other case management activities; ensure attendance at medical appointments or SA non-residential treatment; coordination of a care plan and services; 24/7 on-call availability of community support worker; often provided concurrently with another non-residential SA non-residential service.
Lv 2 Intensive Outpatient Counseling	Intensive group and individual counseling for persons with substance abuse disorders or chemical dependence; counseling provided by a clinician licensed in Nebraska to treat substance abuse disorders; offered in day or evening, before or after work; more intensive than Outpatient Therapy and less intensive than Partial Care; service includes a combination of group sessions 3-5 times/week plus individual sessions 1-3 hours/week; total services to the client averages 10-15 hours per week; hours per week are tapered to a prescribed schedule or client need as the client transitions to the less intensive Outpatient Therapy or other service; LoS varies with individual response to treatment but the intensity of the service averages 5-6 weeks in duration.
Lv 1 Partial Care	Very intensive day treatment program by clinician licensed in Nebraska to treat substance abuse disorders for clients with substance abuse or dependence problems; medical backup; includes individual and group counseling and medication monitoring services; services are provided 5 days per week at 6-8 hours of daily including a minimum of 4 hours daily of primary SA treatment; LoS varies but average is 5-6 weeks; highest intensity, non-residential service.

LOC: RESIDENTIAL SERVICES

(treatment services provided in a 24 hour community based residential setting)

NOTE: Persons MUST be psychiatrically and medically stable to be admitted to the residential services.

CLINICALLY MANAGED RESIDENTIAL SERVICES: An array of residential services for persons who need a structured, safe living environment to develop recovery skills; have specific functional deficits; minimal problems with intoxication or withdrawal and few biomedical complications; client may have significant deficits in the areas of readiness to change, relapse, continued use or continued problem potential or recovery environment, and thus is in need of interventions directed by addiction specialists rather than medical or psychiatric personnel. Level 1 is the most intensive and Level 3 is the least intensive service in this level of care.

Lv 3 Halfway House	CLINICALLY MANAGED, LOW INTENSITY: Non-medical transitional residential program for persons who as with chemical dependency or substance abuse disorder who are successfully moving from more intensive treatment to independent living and seeking to re-integrate into the community; structured living environment and semi-structured activities designed to develop recovery living and relapse prevention skills; assistance in maintaining or accessing employment and developing the skills necessary for an independent life free from substance abuse outside of residential treatment; service has capacity to address mental health issues; counseling is provided by a clinician licensed in Nebraska to treat substance abuse disorders; LoS varies but is usually not longer than 3-6 months.
Lv 2 Therapeutic Community	CLINICALLY MANAGED, MEDIUM INTENSITY: Non-medical transitional residential treatment for persons with chemical dependency; treatment includes psychosocial skill building through a longer term, highly structured set of peer-oriented activities incorporating defined phases of progress; services include individual and group counseling/therapy, relapse prevention, education, vocational and skill building; service has the capacity to address mental health issues; counseling is provided by a clinician licensed in Nebraska to treat substance abuse disorders; program is staff secure; LoS varies but is usually not longer than 10-18 months.
Lv 2 Dual Residential (MH/SA)	CLINICALLY MANAGED, MEDIUM-HIGH INTENSITY: Non-medical, simultaneous, integrated substance abuse and mental health residential treatment for persons with co-occurring primary chemical dependence AND primary major mental illness (schizophrenia, bi-polar, major depression, major psychosis); structured, supervised service includes addiction recovery counseling and activities, medication management and education, and psychosocial rehabilitation services; focus on mental functioning, not psychiatric care; staff include dually credentialed clinicians (LADC/LMHP) and/or both LMHPs and LADCs; LoS varies but is usually not longer than 4-8 months.
Lv 2 Extended Residential	CLINICALLY MANAGED, MEDIUM-HIGH INTENSITY: Non-medical longer term, medium intensity residential service for chronic chemically dependent persons who are at a high risk for relapse and/or potential harm to self or others; clients have significant deficits in ability to perform activities of daily living and/or cognitive deficits; counseling is provided by a clinician licensed in Nebraska to treat substance abuse disorders; program is staff secure; LoS ranges from 8-24 months; service has capability to address mental health issues.
Lv 1 Short Term Residential	CLINICALLY MANAGED, HIGH INTENSITY: Non-medical residential community treatment for persons with a primary chemical dependency, an entrenched dependency pattern of usage and an inability to remain drug-free outside of a 24-hour care; highly structured, intensive, shorter term comprehensive addiction recovery service including individual, group counseling/therapy, and relapse prevention; medication monitoring; service has the capacity to address mental health issues; counseling is provided by a clinician licensed in Nebraska to treat substance abuse disorders; program is staff secure; LoS varies but is usually not longer than 14-30 days.

SUBSTANCE ABUSE SERVICES FOR JUVENILE JUSTICE CLIENTS

The terms listed are for use by all substance abuse providers and justice entities in referring justice system clients to substance abuse services provided in Nebraska.

LEVEL OF CARE (LOC): General category that includes several similar types of services.

Substance Abuse Services: The specific service name that more specifically identifies the type of actual substance abuse service a consumer will receive.

Children/Youth: Age 18 and below (note that Medicaid SA services apply for ages 21 and below).

NOTE: Not all of these services are available in Nebraska; some services may be available in some areas but not in others. This service array is intended to be a balanced array of substance abuse services that could meet various needs at different levels of severity.

LOC: EMERGENCY SERVICES

(very short term, unscheduled service availability in time of crisis in a variety of settings)

Crisis Phone Line	Clinician on-call for early intervention/screening/referral; available 24/7.
Mobile Crisis or Crisis Response Team	A two-member team that offers on-site crisis stabilization, SA and MH screening usually at the crisis location, brief interventions to stabilize the crisis, and referrals for SA Crisis Respite and thorough SA evaluation; available 24/7; includes access to a LADC.
Emergency Crisis Stabilization	Supportive services therapy, brief SA assessment, and coordination of srvc's to help a child and/or family to alleviate a crisis and facilitate involvement in ongoing services; services may be provided in a variety of settings (I.e. residential or non-residential, dependent on severity of crisis).
SA Emergency Shelter or SA Respite	Residential- or home-based service for a short-term placement of a youth or child in a substance abuse crisis; program has capability to supervise alcohol/drug social setting detoxification (non-medical); length of stay varies by legal status, but emphasis is short term (less than 14 days); 24/7 availability of on-site clinically managed and monitored services; medically stable; limited nursing coverage.
Medical Detox	24-hour medically supervised alcohol/drug detoxification where severe medical issues are involved; 24/7; medical staff coverage.

LOC: ASSESSMENT SERVICES

(screening or evaluation tools used to determine the level of a SA problem and make appropriate service referral; generally provided in a non-residential setting)

Screening	General preliminary screening by provider to identify a substance abuse problem and refer for a complete SA evaluation and early intervention or treatment; includes a screening for mental health and gambling issues. For Justice referrals, the Simple Screening Instrument (SSI) that indicates the need for a further evaluation is completed by the criminal justice system and is sent to the SA provider.
Emergency SA Evaluation	SA evaluation needed on an urgent and unscheduled basis; a provider is available <u>within 24 hours</u> to do a complete evaluation; all evaluations completed for justice clients must be completed by a clinician licensed by the State of Nebraska to assess and treat substance abuse problems and who has completed the Standardized Model requirements, and the state approved CASI training and the criminal justice behaviors/thinking training; available from any licensed SA service provider; <u>Evaluation Tool Required:</u> Comprehensive Adolescent Severity Inventory (CASI); <u>Approved State Reporting Format:</u> SA Evaluation results are required to be provided in a state-approved format only.
SA Evaluation	SA evaluation for justice clients must be completed by a clinician licensed by the State of Nebraska to assess and treat substance abuse problems and who has completed the Standardized Model requirements, and the state-approved CASI training and the criminal justice behaviors/thinking training; available at any state-approved SA service provider; <u>Evaluation Tool Required:</u> Comprehensive Adolescent Severity Inventory (CASI); <u>Approved State Reporting Format:</u> SA Evaluation results are required to be provided in a state-approved reporting format only.

LOC: NON-RESIDENTIAL SERVICES

(least intensive services based on clinical need offered in a variety of community settings; youth/child lives independently with family, guardian, relatives, or other).

NON-RESIDENTIAL SERVICES: A range of services for youth at risk of developing or who have substance abuse problems, specific functional deficits, problems with intoxication or withdrawal, but few biomedical complications. Youth may have significant deficits in the areas of readiness to change, relapse, continued use or continued problem potential or recovery environment and thus is in need of interventions directed by addiction specialists rather than medical or psychiatric personnel in a variety of non residential settings. Level 1 is the most intensive and Level 5 is the least intensive service level of care.

Lv 5	Prevention and Education	Education and other activities designed to prevent abusing substances.
Lv 5	Intervention	Intervention counseling and education for persons experimenting or currently using substances but who are NOT abusing or dependent; staff supervised EDUCATION programs are very structured with a specific outcome for the client; LoS varies (i.e., minimally one staff supervised 6- or 8-hour class; other options might include eight 1-hour sessions, three to four 4-hour sessions, or other); includes support group or self-help referrals.
Lv 5	Care Monitoring SAMH	Monitoring service designed for youth eligible under the definition for Community Support Substance Abuse, who have made significant progress in recovery and stable community living, or for those youth unwilling to accept the more intensive and rehabilitative community support service; this service monitors youth progress in community living, provides crisis/relapse intervention/prevention as needed, provides oversight and follow-up functions as identified in the youth's monitoring plan (i.e., services, appointments, reminders), and intervenes to protect current gains and prevent losses or decompensation/relapse; contact with youth as needed.
Lv 4	Outpatient Counseling	Individual and/or group counseling/therapy by a licensed addiction specialist for a variety of substance-use disorders which disrupt a client's life; treatment focus is on permanent change of behaviors and modifying thought patterns, coping with problems, improving functioning, and other services to achieve successful outcomes and prevent relapse. LoS varies depending on individual illness and response to treatment (i.e., may average 10-12 sessions at 1-4 hours per week but treatment frequencies and duration will vary); includes brief therapy model (3-5 sessions); group therapy sessions include approx 3-8 persons; family counseling is included.
Lv 3	Community Support	Support for children and youth with chemical dependency, habitual use/abuse, and functional deficits; 1:1 staff-to-client support in school, residence or other non-office location to ensure child's focus on rehabilitating his/her social and relationship skills; aiding the child in using appropriate coping skills; child, guardian, and family relationship building; relapse and recovery management and skill teaching; provides client advocacy; assistance with schooling, housing, accessing transportation, and a variety of other case management activities; ensure attendance at medical appointments or SA non-residential treatment services; coordination of a care/case plan and services; 24/7 on-call availability of community support worker; often provided concurrently with another SA non-residential service.
Lv 2	Intensive Outpatient Counseling	Intensive group and individual therapy and counseling for persons with substance abuse disorders or chemical dependence; provide essential education and treatment counseling components while allowing clients to apply new skills within real world environments; counseling provided by a licensed addiction specialist; offered in day or evening, before or after work or school; more intensive than Outpatient Therapy and less intensive than partial care; service includes a combination of group sessions 3-5 times/week plus individual sessions 1-3 hours/week; total services to the client average 10-15 hours per week; hours per week are tapered to a prescribed schedule or client need as the client transitions to the less intensive Outpatient Therapy or other service; LoS varies with individual response to treatment but the intensity of the service averages 5-6 weeks in duration.
Lv 1	Partial Care	Very intensive day treatment program by licensed addiction specialists under supervision for clients with substance abuse disorders or chemical dependence problems; medical backup; includes individual and group counseling, medication monitoring services; services may occur during school hours, but education must be available through other resources; client needs are of higher intensity need than Intensive Outpatient; services are provided 5 days per week at 6-10 hours daily including minimum of 4 hours daily of primary SA treatment; LoS varies but averages 5-6 weeks; highest intensity, non-residential service.

LOC: RESIDENTIAL SERVICES

(treatment services provided in a 24 hour community based residential setting)

CLINICALLY MANAGED RESIDENTIAL SERVICES: An array of residential services for youth who need a safe living environment to develop recovery skills; have specific functional deficits; minimal problems with intoxication or withdrawal and few biomedical complications; youth may have significant deficits in the areas of readiness to change, relapse, continued use or continued problem potential or recovery environment and thus is in need of interventions directed by addiction specialists rather than medical or psychiatric personnel. Level 1 is the most intensive and Level 3 is the least intensive service level of care.

L _v 3 Halfway House or SA Group Home	CLINICALLY MANAGED, LOW INTENSITY: Non-medical transitional residential program of substance abuse treatment for youth who are transitioning from more intensive treatment to family/independent living; structured living environment and semi-structured activities designed to develop/support recovery living and relapse prevention skills; maintaining the skills necessary for a life free from substance abuse outside of residential treatment; service has ability to arrange for services or support/coordinate access to school, work, concurrent emotional/behavioral/other treatment activities; staffing must include LADC; treatment plan must include relapse prevention planning (crisis); LoS varies but averages 3-6 months.
L _v 2 Therapeutic Community or SA Therapeutic Group Home	CLINICALLY MANAGED, MEDIUM INTENSITY: Non-medical residential program of substance abuse treatment for youth with chronic substance use, repeated relapse and/or resistance to treatment whose substance use recovery efforts are effected by emotional, behavioral, or cognitive problems; 24-hour structured therapy to promote sustained focus on recovery tasks; program relies on a treatment community or milieu as the agent of change for acquiring recovery and basic life skills; skills are built through a longer term, highly structured set of peer-oriented activities; services include individual and group counseling/therapy, relapse prevention (crisis), education, vocational and skill building; treatment goals include motivation to change, anger management, conflict resolution, values clarification, and limit setting; program facilitates integration into the community; treatment services are directed by addiction specialists and access to medical/other consultation; program is staff secure and has ability to arrange for services or support/coordinate access to school, work; LoS varies from 6-18 months. TC or SA-TGH programs specialize in serving youth in the justice system, many with conduct or personality disorders.
L _v 2 SA Extended Residential or SA Residential Treatment Center	CLINICALLY MANAGED, MEDIUM-HIGH INTENSITY: Non-medical longer term, medium intensity residential service for adolescents who are chemically dependent and who are at high risk for relapse and/or potential harm to self or others; clients have significant deficits in ability to perform activities of daily living and/or cognitive deficits; skills training emphasizes impulsive behavior change and other behavior deficits; service may be combined for chemically dependent youth transitioning from Short Term Residential who need longer term structured treatment; LoS ranges from 4-24 months; service has capability to address mental health issues; staffing includes LADCs; program is staff secure.
L _v 1 Short Term Residential	CLINICALLY MANAGED, HIGH INTENSITY: Enhanced non-medical residential program of primary substance abuse treatment for youth with an entrenched dependency pattern of usage and an inability to remain drug free outside of a 24-hour care; highly structured, intensive, shorter term comprehensive addiction recovery service including group counseling/therapy and relapse prevention; that is of shorter duration but at a higher intensity level; access to medical evaluation and consultation available 24/7; significant emphasis is on readiness to change and treatment engagement; experience induces the adolescent into a peer group; promote coordination of the multiple systems surrounding the youth and implement strategies for ongoing engagement in treatment; physician monitoring and nursing care observation available as needed; addiction treatment by licensed addiction specialists/LADCs; interdisciplinary staff including LMHP, psychologists as needed; administer/monitor medications; program is staff secure. LoS varies but averages 30-45 days.

NEBRASKA SUPREME COURT RULE REGARDING THE USE OF
NEBRASKA JUROR QUALIFICATION FORM

This rule shall become effective on January 1, 2006, and shall govern the content and use of the Nebraska Juror Qualification Form in all district and county courts of the State of Nebraska.

The Nebraska Juror Qualification Form, attached as [Appendix A](#) to this rule, has been adopted by the Nebraska Supreme Court pursuant to Neb. Rev. Stat. § 25-1629.01 (Supp. 2005). All district and county courts shall use the attached form when the use of a juror qualification form is required by statute unless a request for approval of any amendments to such form has been approved by the Supreme Court. Such requests shall be submitted in writing and on a disk or CD in a Microsoft Word compatible format to the Clerk of the Supreme Court for submission to the Court. Any language to be added to the form shall be underscored and any language to be deleted from the form shall be overstruck.

The CONFIDENTIAL JUROR INFORMATION section of the Nebraska Juror Qualification Form, Part VII, shall be detachable and shall be removed by the clerks of the district and county courts or jury commissioners and stored in a confidential manner by such clerk or commissioner until the end of the jury term. No one shall be permitted access to these detached sections except as set forth in this rule. The clerk or commissioner shall deliver the detached confidential information to an approved research agent of the Nebraska Supreme Court. The Nebraska Minority and Justice Implementation Committee (NMJIC) and the Nebraska Racial Justice Initiative (NRJI) have been approved by the Nebraska Supreme Court as such research agents. The confidential juror information may also be maintained, stored, and transmitted to the approved research agent by electronic means by any court which possesses such capabilities.

Nothing in this rule shall prohibit the use of case-specific supplemental juror questionnaires to the extent that the supplemental questions do not duplicate any information requested in the Nebraska Juror Qualification Form.

Adopted December 14, 2005; effective January 1, 2006; amended January 25, 2006.

Nebraska Juror Qualification Form

_____ County

[address line]

All qualified citizens in Nebraska should have the opportunity to be considered for jury service and should likewise fulfill their obligation to serve as jurors when summoned. You are therefore required under penalty of law to answer all questions (unless otherwise indicated) and return this form, properly signed, to the Jury Commissioner, within ten (10) days.

ANY PERSON WHO KNOWINGLY FAILS TO COMPLETE AND RETURN OR WHO WILLFULLY MISREPRESENTS A MATERIAL FACT ON THIS FORM FOR THE PURPOSE OF AVOIDING OR SECURING SERVICE AS A JUROR SHALL BE GUILTY OF CONTEMPT OF COURT.

If you are unable to fill out this form, another person may complete it for you, and that person must sign the form and provide an explanation at the end of this document.

Name: _____

Last

First

Middle

Address: _____

City

Zip Code

Telephone: _____ / _____ / _____

Daytime

Evening

Cellular Telephone

(If information is already provided above and is not correct, please provide correct information.)

Part I

JUROR REQUEST NOT TO SERVE. (If you meet the criteria for one of the following and wish to be excused from serving on that basis, you may skip Parts II, III, IV, and V; please complete Parts VI and VII and return the forms.) You will be notified if the Court grants your request to be excused from jury service.

- 1. I am 65 years of age or older and do not wish to serve on a jury. _____ date of birth
2. I have a physical or mental impairment which makes me incapable of rendering satisfactory jury service. (This option requires submission of a physician's letter setting forth the nature of your impairment.)
3. I am a nursing mother and wish to be excused from serving on a jury until such time as I am no longer nursing an infant. (This option requires submission of a physician's letter affirming age of child and nursing status.)
4. I am on active military duty and have been exempted from jury duty. (This designation requires submission of a written notice of the exemption determination from an authorized commander. Upon receipt of such determination, you will receive notice confirming your release from jury duty.)
5. Within the past five (5) years, I have (a) served as a juror for more than four (4) calendar weeks* or (b) served on a grand jury, and I wish to be excused.
i. Approximate dates of service _____
ii. Court _____
iii. County _____
iv. Approximate number of total days served _____

*Actually selected and sworn to serve as a juror.

Part II

JUROR REQUIREMENTS.

- YES NO 6. Are you a citizen of the United States?
If "NO," what is your country of citizenship? _____
YES NO 7. Do you reside in this county?
If "NO," in which county do you reside? _____
YES NO 8. Can you read, speak, and understand the English language?
If "NO," what is your primary language? _____
YES NO 9. Are you 19 years or older?

Part III JUROR DISQUALIFICATION.

- YES NO 10. Are you a judge of any court, clerk or deputy clerk of the Supreme Court or District Court?
- YES NO 11. Are you a sheriff or jailer?
- YES NO 12. Are you or your spouse currently a party to a case in the District or County Court of this county?
If "YES," give title of case and case number. _____
- YES NO 13. Have you ever been convicted of a criminal offense potentially punishable by one (1) year or more of imprisonment?
If "YES," in which state? _____
If "YES," in which county? _____
If "YES," in which year? _____
(Does not apply if conviction was set aside or pardon issued.)

Part IV JUROR INFORMATION.

- 14. Sex: _____ Male _____ Female
- 15. Date of Birth _____
- 16. Who is your employer? _____ Occupation? _____
Employer's telephone number: _____
- 17. Name of spouse (if applicable)? _____
- 18. Is your spouse also being summoned for jury duty at this time? _____ Yes _____ No
- 19. Spouse's employer? _____ Spouse's Occupation? _____
Telephone number of spouse's employer: _____
- 20. Are there any special accommodations you require to serve as a juror? If so, please describe:

Part V JUROR REQUEST FOR POSTPONEMENT. You will be notified by mail if the Court decides to grant your request.

- _____ 21. I am a full-time student and wish to be excused from serving on a jury at this time.
Name of School _____
(This option requires written confirmation from the Registrar's Office indicating full-time status.)

Part VI CERTIFICATION. I, the undersigned, certify under penalty of perjury that the answers to the above questions regarding my qualifications to serve as a juror are true and correct to the best of my knowledge and belief.

_____ **SIGN** _____
HERE  _____
Date Signature

If completed by other than summoned person, explain: _____

RULE REGARDING GUARDIAN AD LITEM
TRAINING FOR ATTORNEYS

Commencing January 1, 2008, an attorney to be appointed by the courts as a guardian ad litem for a juvenile in a proceeding brought under Neb. Rev. Stat. § 43-247(3)(a) of the Nebraska Juvenile Code shall have completed six (6) hours of specialized training provided by the Administrative Office of the Court (see Appendix A). Thereafter, in order to maintain eligibility to be appointed and to serve as a guardian ad litem, an attorney shall complete three (3) hours of specialized training per year as provided by the Administrative Office of the Court. Courts shall appoint attorneys trained under this rule in all § 43-247(3)(a) cases when available; provided, however, that if the judge determines that an attorney with the training required herein is unavailable within the county, he or she may appoint an attorney without such training.

Appendix A

The Nebraska Supreme Court, through the Administrative Office of the Court, shall provide specialized training for guardians ad litem, at no or nominal cost, which shall take place at various intervals throughout the year and at various locations throughout the state. The Administrative Office of the Court shall be responsible for the development of the specific curriculum for the training of guardians ad litem in the State of Nebraska. The Administrative Office of the Court shall direct the development of the specific curriculum with consultation from qualified experts, groups, or organizations, including but not limited to the National Council of Juvenile and Family Court Judges, the American Bar Association Center on Children and Law, and the Child Welfare League of America with any potential costs of this consultation paid by the Nebraska Court Improvement Project. The Administrative Office of the Court shall direct the provision of the initial six-hour training in each judicial district. Such training shall be directed in a way which ensures statewide uniformity, such as the provision of training by a core group of presenters throughout the state. Responsibility for payment of the costs of the training itself shall be assumed by the Supreme Court through the Court Improvement Project. Travel and meal costs shall not be provided by the Court.

After the initial year of this Rule's implementation, the Administrative Office of the Court shall arrange and provide training at no or nominal cost which shall take place at various intervals throughout the year and at various locations throughout the State. These training sessions shall include the six-hour basic training for new guardians ad litem as well as three-hour advanced training for guardians ad litem who have completed the six-hour training.

The Administrative Office of the Court shall provide notice regarding scheduled training sessions. The Administrative Office of the Court shall maintain a list of attorneys who are current in their required guardian ad litem training and shall make such list available to all judges with juvenile court jurisdiction.

The specialized training sessions shall provide training, information, and education regarding the role, duties, and responsibilities of a guardian ad litem, which shall include, but not be limited to, the following areas:

Rule Regarding Guardian Ad Litem Training for Attorneys

1. Overview of the Juvenile Court System;
2. Statutory duties and authority of a guardian ad litem, including any performance standards adopted by the Nebraska Supreme Court;
 - a. Requirements of guardian ad litem report.
 - b. Instructions for preparing a guardian ad litem report.
 - c. Ethical issues and the role of a guardian ad litem.
3. Issues which impact or impair the functioning of families, including but not limited to:
 - a. Dynamics of child abuse and neglect;
 - b. Substance abuse and mental health issues;
 - c. Poverty, employment, and housing;
 - d. Domestic violence;
 - e. Physical, psychological, and psychiatric health issues;
 - f. Education;
 - g. Visitation and demonstration of parental skills.
4. Training in the techniques of gathering relevant information and resources:
 - a. Interviewing skills, regarding both children and adults;
 - b. How to obtain and interpret reports from other professionals and providers;
 - c. Inquiry into appropriateness and stability of juveniles' placement.
5. Psychological aspects of children, including child development issues;
6. Permanency Planning: Family preservation, reunification, adoption, guardianship, another permanent planned living arrangement;
 - a. Appropriate parental-child relationship, bonding, attachment, and effects of separation and loss;
 - b. Developmental considerations: age appropriate visitation, with particular emphasis on the needs and vulnerabilities of children age 0-5.
7. Cultural, ethnic diversity, and gender issues;
8. Relevant state and federal statutes and case law;
9. Indian Child Welfare Act;
10. Legal advocacy, mediation, and negotiation skills.

Adopted June 28, 2006; amended April 11, 2007; effective January 1, 2008.

RULE GOVERNING USE OF DIGITAL SIGNATURES
BY AUTHORIZED COURT PERSONNEL

1. **Statutory authority.** This rule is promulgated under the authority of Neb. Rev. Stat. § 86-611(3) (Cum. Supp. 2004).

2. **Purpose.** The purpose of this rule is to establish standards for use of digital signatures by authorized personnel of the Nebraska Courts.

3. **Scope.** This rule shall apply to all Nebraska judges and court personnel authorized to use digital signatures. The use of digital signatures is not mandated by this rule but is available to authorized court personnel who wish to utilize this technology.

4. **Authorized Court Personnel.** For purposes of this rule governing the use of digital signatures, authorized court personnel shall be defined as, and limited to, the following persons only:

- a. district court judges,
- b. separate juvenile court judges,
- c. county court judges,
- d. workers' compensation court judges,
- e. clerks of the district court,
- f. clerk magistrates,
- g. clerk of the workers' compensation court, and
- h. judicial administrators

5. **Acceptable technology and practices.** For a digital signature to be valid for use under this rule, it must be created by technologies and practices that are accepted for use by the Nebraska Supreme Court and conform to the definitions set forth below:

- a. unique to the person using it;
- b. capable of verification;
- c. under the sole control of the person using it;
- d. linked to data in such a manner that if the data is changed, the digital signature is invalidated; and
- e. conforms to the rules governing use of digital signatures adopted and promulgated by the Nebraska Supreme Court.

6. **Terms of use.** Digital signatures may be used by authorized court personnel in the issuance of all documents produced:

- a. By the JUSTICE system or automated Docket application under the control of the JUSTICE system, including, but not limited to, orders and warrants.
 - i. The JUSTICE system and the Docket application are maintained by the Nebraska Supreme Court for exclusive use by authorized court personnel.
 - ii. JUSTICE is the Nebraska Supreme Court's Case and Financial Management System for Nebraska trial courts. JUSTICE is not available in the Douglas County District Court, the Douglas County Separate Juvenile Court, or the Nebraska Workers' Compensation Court.

Rule Governing Use of Digital Signatures by Authorized Court Personnel

iii. Docket is a JUSTICE system application which provides interactive programs designed to record judicial proceedings in the courtroom thereby creating a printed record for a judge to digitally sign and issue an official document.

b. By the Nebraska Workers' Compensation Court Case Management System under the control of the Nebraska Workers' Compensation Court, including, but not limited to, orders.

i. The Nebraska Workers' Compensation Court Case Management System provides interactive programs designed to support the court's adjudicatory and administrative functions.

ii. The Nebraska Workers' Compensation Court Case Management System is maintained by the Nebraska Workers' Compensation Court for exclusive use by authorized court personnel.

c. By the Douglas County Case Management System (DCCMS) under the control of the Douglas County District Court and the Douglas County Separate Juvenile Court, including, but not limited to, orders and warrants.

i. The DCCMS system is maintained by DOT.Comm for exclusive use by authorized court personnel of the Douglas County District Court and the Douglas County Separate Juvenile Court.

ii. DCCMS is the Douglas County District Court, Douglas County Separate Juvenile Court, and Douglas County Clerk of District Court's system application which provides interactive programs designed to support the court's adjudicatory and administrative functions.

d. For all procedural and statutory purposes, a document with a digital signature by authorized court personnel shall have the same force and effect as a document with a manual or handwritten signature by the same authorized court personnel.

e. Unauthorized use of any court's case management system will invalidate the document which was issued through the unauthorized application.

f. The designated original of any document is the case file copy with the digital signature affixed by the authorized court personnel and file stamped by the clerk.

7. **Authority.** Only the Nebraska Supreme Court may promulgate rules governing the use of digital signatures for authorized court personnel. Any other rule, regulation, or policy now in effect purporting to govern the use of digital signatures by authorized court personnel is superseded by this rule.

8. **Local rules.** Each county court, district court, and the Nebraska Workers' Compensation Court, by action of a majority of its judges, may from time to time recommend a local rule governing the use of digital signatures by authorized court personnel in each applicable judicial district and Nebraska Workers' Compensation Court which is not inconsistent with this rule or inconsistent with any directive of the Supreme Court or statutes of the State of Nebraska. Such recommended rule shall be submitted in writing and on a disk in a Microsoft Word compatible format. Any such recommended rule shall not become effective until approved by the Supreme Court and published in the Nebraska Advance Sheets.

Adopted July 19, 2006.

INTERIM RULE FOR ELECTRONIC FILING AND
SERVICE SYSTEM (PILOT PROJECT)

1. Definitions.

(a) Electronic Filing System. Electronic filing system (E-Filing System) approved by the Nebraska Supreme Court for filing and service of pleadings, motions, and other papers (Documents) via the Internet through the court-authorized service provider.

(b) Electronic Filing. Electronic filing (E-Filing) is the transmission of Documents to the Clerk of the Court, and from the court, via the E-Filing System.

(c) Electronic Service. Electronic service (E-Service) is the transmission of Documents to any party in a case via the E-Filing System. Any party or attorney who has registered to use the E-Filing System has agreed to receive service, other than service of a summons or initial pleading, via the E-Filing System.

2. E-Filing and E-Service are authorized on a pilot project basis for certain cases filed in specified district and county courts in Nebraska, as set forth in a schedule by the Administrative Office of the Court, as revised from time to time. At the discretion of the Chief Justice, in consultation with the presiding judge of the particular court, E-Filing and E-Service may be suspended in certain courts that are experiencing technical difficulties.

3. For purposes of the pilot project, only attorneys licensed to practice law in Nebraska may register to use the E-Filing System. Any attorney so registered may make an entry of appearance through E-Filing.

4. Under the pilot project, cases may be commenced under Neb. Rev. Stat. § 25-501 through an E-Filing; however, service of the initial pleading and the summons may not be made by E-Service. The electronic filing of a complaint or other initial pleading from which printed copies can be made shall be deemed compliant with the requirement of Neb. Rev. Stat. § 25-504.01 to supply copies of a complaint. The court clerk shall print sufficient copies for service with the summons. The party filing such complaint or pleading electronically shall be deemed to have consented to pay the reasonable expense of printing such copies. The summons and any required attachments to the summons shall be provided in printed form by the court clerk and shall be served in accordance with Neb. Rev. Stat. § 25-505.01 et seq., unless service is waived or otherwise excused by law. E-Service is for service of pleadings and other documents after service of summons as otherwise required. If an attorney who has entered an appearance in a case has not registered for E-Filing and E-Service, then service of the e-filed pleading upon that attorney shall be made as otherwise required by law.

Rule 4 amended December 20, 2006.

5. For cases under the pilot project, Documents which are required by Neb. Ct. R. of Pldg. in Civ. Actions 5 to be filed in the office of the court clerk may be filed through an E-Filing.

6. All Documents electronically received by the court clerk by 11:59:59 p.m. central time shall be deemed to have been filed on that date.

7. For cases under the pilot project, subsequent to the initial pleading and summons, Documents which are required to be served pursuant to Neb. Ct. R. of Pldg. in Civ. Actions 5 and in the manner required by Neb. Rev. Stat. § 25-534 may be served through E-Service or through a combination of E-Service and

other authorized means of service. A Document electronically received by the E-Filing provider for service by 11:59:59 p.m. central time shall be deemed to have been served on that date.

8. A printed copy of an E-Filed or E-Served Document with original signatures shall be maintained by the filing party and made available for inspection by other parties or the court upon request, but shall not be filed with the court. Where these rules require a party to maintain a Document, the filer is required to maintain the Document for a period of 2 years after the final resolution of the action, including the final resolution of all appeals.

9. A motion for leave to file Documents under seal may be E-Filed. Documents to be filed under seal pursuant to an order of the court shall not be E-Filed.

10. Use of the E-Filing System by an attorney shall constitute compliance with the Neb. Ct. R. of Pldg. in Civ. Actions 11 signature requirement and the attorney using the E-Filing System shall be subject to all other requirements of Neb. Ct. R. of Pldg. in Civ. Actions 11 and Neb. Rev. Stat. § 25-824 et seq. Signatures of parties, witnesses, and notaries and notary stamps may be typed using the signature format “/s/ [typed name]” and using the stamp format “seal” and commission expiration date and E-filed to satisfy signature and certification requirements, once the filing party has possession of the original signatures and stamps.

11. A court may transmit orders, notices, and other court entries via the E-Filing System to attorneys registered to use the E-Filing System.

12. Neb. Ct. R. of Pldg. in Civ. Actions 10 shall apply to E-Filed Documents. An E-Filed Document shall not be transmitted to the District Court Clerk/County Court Clerk Magistrate by any other means unless the court at any later time requests a printed copy bearing original signatures.

13. E-Service shall not constitute service by mail for purposes of computing a prescribed period pursuant to Neb. Rev. Stat. § 25-534; however, as noted above in rule 1(c), by registering to use to the E-Filing System, a party or attorney agrees that E-Service shall be the equivalent of service by delivery under that statute.

14. A document that requires the signatures of opposing parties or counsel (such as a stipulation) may be electronically filed by typing the names of each signing party or counsel, but the filer is required to first obtain the original signatures of all opposing parties or counsel on a printed document.

15. Attorneys who E-File shall not submit paper, self-addressed, stamped envelopes for the purpose of receiving a signed order or file-stamped copies of pleadings back from the court in active cases. Local courts shall use E-Filing to distribute such court orders or file-stamped copies of pleadings.

16. Upon satisfactory proof that E-Filing or E-Service of a Document is not completed because of (1) an error in the transmission of the Document to the E-File System service provider which was unknown to the sending party or (2) a failure to process the electronic filing when received by the court clerk, the court may enter an order permitting the Document to be filed as of the date it was first attempted to be sent electronically. Notwithstanding the foregoing, no order may be entered under this rule which expands the statutory time period for commencing an action or perfecting an appeal unless there is an affirmative showing that the failure to make a timely filing was due solely to an E-Filing System internal transmission error or a processing error by the court clerk.

Interim Rule for Electronic Filing and Service System (Pilot Project)

17. Upon a showing of substantial good faith compliance with the E-Filing System interim rule, the court may waive nonjurisdictional defects in an E-Filing or E-Service if it finds that no harm has occurred to any party as a result of the defective E-Filing or E-Service.

18. If an E-Filing court case is appealed, the clerk of the E-Filing court shall prepare a paper file from the electronic files of the case to submit to the appellate court.

19. In the event of a change of attorneys in an E-Filed case from a registered E-filing attorney to an attorney who is not a registered E-Filing attorney, the case will revert to paper. In that circumstance, the clerk will prepare a paper file from the electronic file.

20. If the clerk of the court ceases to maintain an electronic file, the clerk will prepare a complete and certified copy of the electronic file in paper form.

21. Only cases filed after January 1, 2005, shall be eligible to participate.

Rule 21 amended December 20, 2006.

COMMENT

The court-authorized service provider for the pilot project is LexisNexis and the State of Nebraska Office of the Chief Information Officer.

At present, the system is not set up to allow E-Filing or E-Service by pro se litigants or attorneys not licensed to practice law in Nebraska. The Supreme Court contemplates that E-Filing and E-Service participants may be expanded in the future.

The references to central time are used in this interim rule because the pilot court locations are all located in the U.S. central time zone.

Adopted September 27, 2006.