

RULES OF THE DISTRICT COURT OF THE
SECOND JUDICIAL DISTRICT

EFFECTIVE SEPTEMBER 22, 1995
(Including Amendments)

SCOPE AND EFFECTIVE DATE

These rules for the district courts of the Second Judicial District shall become effective upon approval by the Supreme Court and publication in the Nebraska Advance Sheets and shall supplement the Uniform District Court Rules of Practice and Procedure adopted by the Supreme Court.

Adopted effective September 22, 1995.

RULE 2-1

ANNUAL TERM OF COURT

The regular term of the court in each county shall be deemed to commence on January 1 of each calendar year, and shall be deemed to conclude on December 31 of the same calendar year. No order opening or closing such term shall be required.

Adopted effective September 22, 1995.

RULE 2-2

PRELIMINARY MATTERS

A. Motion Days-Motion days in all counties shall be on Mondays at the times listed below. In the event a motion day is a recognized holiday, each judge, at his or her option, may designate the next recognized working day as a motion day. Unless otherwise prescribed by the assigned judge, preliminary matters are called as shown below:

Sarpy County

Courtroom No. 1	Courtroom No. 2	Courtroom No. 4
(ZASTERA)	(ARTERBURN)	(KELCH)
8:30 Drug Court	8:15 Arraignments	8:15 Arraignments
10:45 Arraignments/Criminal	10:30 Criminal	9:00 Criminal
1:30 Law/Equity	1:30 Domestic	1:00 Domestic
2:00 Domestic	3:30 Law/Equity	3:00 Law/Equity

Otoe County (Rehmeier)

Time:	
8:30 a.m.	Domestic
9:00 a.m.	Law/Equity
9:30 a.m.	Criminal/Contempt

Cass County (Rehmeier)

Time:	
1:00 p.m.	Domestic
2:00 p.m.	Law/Equity
3:00 p.m.	Criminal/Contempt

Amended effective June 8, 2005; amended effective April 19, 2006; amended effective April 11, 2007 amended effective October 16, 2007; amended effective December 10, 2008.

B. Unless otherwise ordered by the court, all motions (except for temporary allowances), written objections, and other filings of a similar nature, shall cite the legal authorities relied upon, and shall contain a notice of hearing with a date and time selected as set forth above not less than five (5) nor more than thirty (30) days from filing. Absent a notice of hearing or specific directions by the court, the matter will be automatically calendared on the first motion day after five (5) days have passed following filing.

C. Motions (except for contempt or to vacate a judgment) shall be submitted on affidavits and arguments of counsel, unless otherwise ordered. If a moving party fails to appear in support of a pleading at the prescribed time, the same shall be deemed submitted without argument.

D. Hearing on motions for summary judgment, motions to suppress evidence, temporary replevin orders, temporary injunctions, motions for new trial and matters requiring more than five (5) days notice shall be set only after conferring with the assigned trial judge.

E. When a motion is ruled upon, the party required to plead further shall be allowed ten (10) days to further plead, except as is otherwise ordered by the court.

F. Child Support Enforcement-In Sarpy County, child support enforcement cases shall be heard by the Statewide-Referee.

G. Alternative Services-Motions for service by publication are submitted ex parte to the assigned trial judge when filed. The motion shall be accompanied by an affidavit of factual matters establishing the defendant(s) cannot, with reasonable diligence, be served by personal service, residence service, certified mail, or any other matter that would provide the party with actual notice of the proceedings and an opportunity to be heard.

Adopted effective September 22, 1995; amended effective March 5, 1999; Rule 2-2(C) and (F) amended January 3, 2003; Rule 2-2(A) deleted and (B) – (H) renumbered to (A)-(H) and Rule F amended effective October 16, 2007; Rule 2-2(A) amended effective December 10, 2008.

RULE 2-3

STIPULATIONS AND AGREEMENTS

All stipulations not made in open court or in chambers and recorded by the reporter and all agreements of counsel or parties to a suit, must be reduced to writing and signed by the parties making the same and filed with the clerk, or they will not be recognized or considered by the court.

Adopted effective September 22, 1995.

RULE 2-4

CORRESPONDENCE WITH THE COURT

All correspondence to the court regarding pending litigation shall refer to the subject case by case title, number and county, and a copy of such correspondence shall be mailed to opposing counsel. If the correspondence entails the transmittal of pleadings or journal entries, orders, or decrees, pre-addressed stamp envelopes required for those purposes shall be enclosed therewith.

Adopted effective September 22, 1995.

RULE 2-5

PROOF OF SERVICE

Except as otherwise provided by statute, or by order of the court, proof of service of any pleading, motion, or other paper required to be served shall be made by: (1) a certificate by or on behalf of counsel showing the name and address on whom service was had; (2) written receipt of the opposing party or his or her attorney; (3) affidavit of the person making service; (4) return of the county sheriff; or (5) other proof satisfactory to the court. Failure to make proof of service will not affect the validity of the service, and the court may at any time allow the proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to substantial rights of any party affected thereby.

Adopted effective September 22, 1995.

RULE 2-6

REDUCTION IN SUPPORT FOR PERIODS OF VISITATION

The following provision shall apply to any decree providing for a reduction in child support payments while the non-custodial parent has possession of said child or children:

(1) The non-custodial parent shall prepare and sign an affidavit stating the inclusive dates that the non-custodial parent had possession of the minor child or children with the name of said child or children showing the amount of support to be reduced.

(2) This affidavit shall be filed with the clerk of the district court within thirty (30) days after said possession and a copy mailed to the custodial parent or it shall be presumed that the non-custodial parent did not have possession of the child or children for the affected time period.

(3) Within thirty (30) days after receipt of the copy of said affidavit, the custodial parent may file an objection or counter-affidavit, and if this is done, a hearing date will be set to determine the matter.

(4) Failure of the custodial parent to file an objection or counter-affidavit within thirty (30) days shall constitute a waiver to contest the reduction of child support issue.

(5) Counsel for the parties shall advise the parents of this provision.

Adopted effective September 22, 1995.

RULE 2-7

CONSENTS TO ADOPTION

(1) Applications for an order consenting to adoption of children subject to jurisdiction of the court must be accompanied by a photocopy or duplicate original of all relinquishments and consents to adoption as required by law. Attorneys should note that in case of abandonment or other situations where one or both of the natural parents are unable to consent, substitute consents are required.

(2) Any delinquent support payments remain a judgment against the party ordered to pay such support, unless a receipt or satisfaction is filed by the party to whom the support is due.

(3) Upon completion of the adoption proceedings, an appropriate motion shall be filed together with a proposed order terminating all future support as of the date of the adoption decree. The motion and proposed order shall be accompanied by a copy of the adoptive decree.

Adopted effective January 29, 2000.

RULE 2-8

SUMMARY JUDGMENT PROCEDURE

A. The moving party shall set forth in the brief in support of the motion for summary judgment the basis for the motion, including the Rule of Procedure or statute under which the motion is filed, and a separate statement of each material fact as to which the moving party contends there is no genuine issue to be tried and as to each shall identify the specific document or portion thereof or discovery response or deposition testimony (by page and line) which it is claimed established the fact.

B. The party opposing a motion for summary judgment shall set forth in its opposing brief a separate statement of each material fact as to which it is contended there exists a genuine issue to be tried and as to each shall identify the specific documents or discovery response or deposition testimony (by page and line) which it is claimed establishes the issue.

Adopted effective June 8, 2005.

RULE 2-9

TRIAL ASSIGNMENTS

A. Criminal Cases: Criminal cases shall be set for trial at the discretion of the judge presiding over the case, at the time of or following the arraignment of the defendant.

B. Civil Cases and Domestic Cases: All civil (law or equity) and domestic cases shall be set for trial by the assigned trial judge in accordance with the following procedures:

(1) In all civil and domestic cases, a Certificate of Readiness for Trial shall be filed (on a form provided by the Clerk of the District Court, a copy of which is attached to these Rules) with the Clerk of the District Court upon the completion of all discovery proceedings, and a copy delivered to the judge assigned to said case;

(2) Failure to object to the Certificate of Readiness within (ten) 10 days from the date of filing shall constitute an acceptance by all parties that the matter is ready for trial and can be tried in the amount of time as designated by the party filing the Certificate of Readiness;

(3) If an Objection is filed to the Certificate of Readiness filed by an opposing party, the party filing the Objection to said Certificate of Readiness shall set the matter for hearing on a regularly scheduled motion day (pursuant to Rule 2-2 of these Rules) and give notice of said hearing to all parties;

(4) Trial assignment priority shall be within the discretion of the judge assigned to the case, but said judge shall prioritize as much as possible trial assignments by the dates of the filing of Certificates of Readiness.

C. Other Settings: Notwithstanding subsection B of this rule, the judge assigned to such case may on his or her own motion assign a trial date to said case or, in the alternative, hold periodic docket calls for the purpose of assigning trial dates to pending cases. In the event that a case is set for docket call for the purpose of setting a trial date, counsel or unrepresented parties shall be required to personally appear for such docket call.

Rule 2-9(A) amended effective October 16, 2007.

RULE 2-10

DOMESTIC RELATIONS - MEDIATION

A. All parties who have not submitted a parenting plan to the court within 90 days of filing an action involving child custody shall be required to meet and participate in mediation services or the specialized alternative dispute resolution process to complete a parenting plan or visitation schedule, including child custody, visitation, grandparent visitation, and any other issues relating to the children that may be susceptible to mediation or the specialized alternative dispute resolution process. No trial date will be scheduled until attendance at the required mediation to resolve custody and/or visitation issues has been attempted or the specialized alternative dispute resolution process has been attempted, provided, however, that failure or refusal to participate by a party shall not delay entry of a final judgment by more than 6 months. It is further provided that, notwithstanding the language in this paragraph, domestic-violence issues may, upon consideration by the trial court, disqualify the parties from mediation.

For good cause shown and (1) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (2) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence.

B. A party may not terminate mediation until after an individual initial screening session and one mediation or specialized alternative dispute resolution session are held unless said mediation is waived as provided herein.

C. All parties not having agreed to a parenting plan within 90 days of filing an action involving child custody, and not having agreed to a specific mediator, shall contact the bailiff of the assigned Judge, and shall be assigned the next mediator from a rotating list of approved mediators. However, parties or counsel are required to notify the Judge assigned to the case, by notifying his or her bailiff, of any request for delay in assignment of a mediator if the parties or counsel are attempting to negotiate a Parenting Plan agreement.

D. At any time in the proceedings, the court may refer a case to mediation or the specialized alternative dispute resolution process in order to attempt resolution of any relevant matter. The court may state a date for the case to return to court, and the court shall not grant an extension of such date except for good cause shown unless said mediation is waived as provided herein.

E. The District Court Clerk of each county shall maintain a list of mediators approved by the Mediation Committee of the District Court. These mediators must meet State of Nebraska (or equivalent) standards for training in order to qualify. The following requirements apply to all participating mediators:

(1) Each participating mediator shall comply with Nebraska Law on mediation, including the Nebraska Parenting Act. Additionally, any mediator qualifying as a specialized mediator, who conducts specialized alternative dispute resolution, shall meet all requirements set forth by Neb. Rev. Stat. § 43-2938(3), or any amendment thereto. All mediators and/or specialized mediator must be willing to agree to the court requirements for participation, and each mediator will be asked to sign a statement indicating acknowledgment and acceptance of the requirements.

(2) Court-approved mediators will determine their own fees and will provide a copy of their fee schedule to the Mediation Committee of the District Court. In order to be on the list of court-approved mediators, a mediator must agree to use a sliding-scale fee of \$25 to \$75 per person per hour, determined on the basis of what each party is able to pay. Court-approved mediators must also agree to take pro bono cases on an "as needed" basis. The Court will determine the need for such pro bono services, so that the burden of these cases is equitably distributed among the participating mediators.

F. Prior to commencing an initial mediation session, the mediator shall provide an initial individual screening session with each party to assess the presence of child abuse or neglect, unresolved parental conflict, domestic intimate-partner abuse, other forms of intimidation or coercion, or a party's inability to negotiate freely and make informed decisions. If any of these conditions exists, the mediator shall proceed with the specialized alternative dispute resolution process that addresses safety measures for the parties, if the mediator is on the approved specialized list of an approved mediation center or approved list of the State of Nebraska, or shall refer the parties to a mediator who is so qualified.

G. In conjunction with setting a case for an uncontested final hearing, the parties shall file a pleading, and provide a copy to the assigned Judge, indicating all issues have been resolved and a parenting plan, which has been reduced to writing, has been agreed to by the parties. *If the parties have not agreed to any of the following: parenting plan, child support calculations, or a property settlement agreement, they should file a certificate of readiness with the Court and indicate within the certificate of readiness whether the parties have complied with the mediation requirements of this rule.*

H. The Mediation Committee of the District Court may make such other operating rules as may be needed to facilitate the beginning and continuation of this mediation program.

I. The Mediation Committee of the District Court will be a standing committee of the district court and will be composed of the four district court judges and such other persons as the committee deems necessary.

Rule 2-10 approved June 3, 2010.

Adopted effective June 8, 2005.