

**RULES OF THE DISTRICT COURT OF
THE FIFTH JUDICIAL DISTRICT
Effective July 18, 2001**

SCOPE AND EFFECTIVE DATE

These rules of the district court of the Fifth Judicial District shall become effective upon approval by the Supreme Court and shall supplement the Uniform District Court Rules of Practice and Procedure adopted by the Supreme Court.

**RULE 5-1
TERM OF COURT**

The regular term of the court commences on January 1 of each calendar year and concludes on December 31 of the same calendar year. No order opening or closing such term shall be required.

**RULE 5-2
CONTINUANCES**

In addition to the requirements of Neb. Rev. Stat. § 25-1148, motions for continuance shall state whether any opposing party objects. A party filing a motion for a continuance shall arrange as soon as practicable a new date with all opposing parties and the court.

**RULE 5-3
JOURNAL ENTRIES, STIPULATIONS & AGREEMENTS**

A. Journal Entries. It shall be the duty of the party assigned by the court promptly to prepare a formal journal entry, order, judgment, or decree. Counsel assigned to prepare the proposed formal journal entry, order, judgment, or decree shall submit the original to the judge and shall mail a copy to all opposing parties or their attorneys within 7 days after announcement of the decision or ruling.

B. Stipulations & 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.

**RULE 5-4
DISSOLUTION ACTIONS**

A. (1) Property Statements. Where the action involves a division of property, both parties shall file a single property statement setting forth assets, liabilities, and any other information concerning property germane to the case at bar. The plaintiff shall have 30 days from filing the action to prepare and file the property statement and furnish a copy to the opposing party. The defendant shall then complete the property statement filed by the plaintiff by adding to it any

additional property and the defendant's estimates of the value of all property listed by the plaintiff. The defendant shall file the completed property statement and serve a copy on the plaintiff within 30 days after the plaintiff files the initial statement. Property statement forms may be obtained from the clerk or prepared by counsel or pro se parties, and may be presented in computer generated spreadsheet format, as long as counsels' and parties' forms provide at least the same information as the form available from the clerk (a model property statement form is appended to these rules).

(2) Extensions & Pretrial Filing Deadline. Either party may obtain an extension of the time for filing or completing the property statement on written motion for good cause shown. Except by agreement of the parties or by order of the court, amendments to the property statement shall not be permitted unless filed at least 10 days prior to trial.

B. Temporary Relief Affidavits. No affidavit regarding temporary relief applications, other than ex parte relief allowed by statute, shall be considered by the court, unless a copy has been served on the opposing party not less than 24 hours prior to the temporary hearing.

C. Ex Parte Custody Orders. No ex parte order shall be entered in a domestic relations case without one or more supporting affidavits from a party or his or her witnesses. Except for good cause shown, no ex parte temporary order shall be entered in a pending case if the opposing party is represented by counsel or a guardian ad litem/attorney for minor(s) has been appointed. If an ex parte order is issued, it shall be served upon the opposing party or counsel forthwith, and a temporary hearing shall be held forthwith.

D. Guardian ad Litem Fees. Whenever an issue concerning custody of a minor child exists, the court may appoint a guardian ad litem/attorney for the minor child. In such event, the court also may order an initial guardian ad litem fee deposit to be paid into the clerk's office within 20 days after the date of the order appointing the guardian ad litem and setting the initial fee deposit. The initial fee, if any, shall be allocated between the parties in the discretion of the court, subject to modification and assessment of additional fees after the final hearing or trial. Parties claiming indigence may apply to the court for a waiver of the fee assessment, initial or final. An application for waiver of the guardian ad litem fee assessment shall be accompanied by a completed affidavit of indigence on the same forms prescribed by the Supreme Court for applications for appointment of counsel or for leave to proceed in forma pauperis.

E. Automatic Hearing Dates. The clerk shall set *uncontested* trial dates in all dissolution actions for the first motion/service day occurring more than 60 days after service of process or voluntary appearance.

F. Leaving the State. Every order for child custody, temporary or permanent, shall contain language substantially as follows:

A party exercising custody of a minor child is ordered not to move the child outside the State of Nebraska. Anyone intending such a move must first:

- (1) Make written application to the court, and
- (2) Give notice of the application and hearing to the other party as required by law.

G. Parenting Classes. Parties to domestic relations matters involving children are required to attend an approved parent education program within 60 days from receipt of service of process. A

list of approved classes can be obtained from the Administrative Office of the Courts. This requirement applies to all cases in which parenting issues are involved or are raised, including dissolution of marriage, determination of paternity, motions to compel existing orders, applications to modify decrees of dissolution, and applications to modify decrees of paternity. Both parents are required to attend the parent education program. If the court deems it advisable, the parties may be required to complete a second level parenting class.

H. Parenting Plan/Mediation. (1) Prior to July 1, 2010, the parties to all cases involving parenting issues as described in paragraph G shall submit a parenting plan to be approved by the court. The parenting plan shall be developed by the parties or their counsel, an approved mediation center, or a private mediator. When a parenting plan has not been developed and submitted to the court, the court shall either create the parenting plan in accordance with the Parenting Act or refer the case to an approved mediator. Until July 1, 2010, either party may terminate mediation at any point in the process.

(2) On or after July 1, 2010, all parties in such cases who have not submitted a parenting plan to the court within the time specified by the court shall be required to meet and participate in mediation services with an approved mediator 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. A list of approved mediation service providers can be obtained from the Administrative Office of the Courts. No trial date will be scheduled until attendance at the required parent education seminar has been completed and mediation to resolve custody and/or visitation issues 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. On or after July 1, 2010, a party may not terminate mediation until after an individual, initial screening session and one mediation or specialized alternative dispute resolution session are held.

I. Mediation in Cases Involving Abuse/Neglect/Unresolved Conflict. When, in any case involving parenting issues as described in paragraph G, there are allegations of domestic intimate partner abuse or unresolved parental conflict between the parties in any proceeding, or when screening by a mediator or mediation center identifies 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, then mediation shall not be required; however, the parents shall be required to meet with a mediator who is a trained facilitator in specialized alternative dispute resolution. The list of such trained and approved mediators can be obtained from the Administrative Office of the Courts.

The specialized alternative dispute resolution process shall begin with each parent meeting individually with a qualified facilitator to provide an opportunity for the facilitator to educate each party about the process; obtain informed consent from each party in order to proceed; establish safety protocols; allow support persons to attend sessions; and consider opt-out-for-cause. Any party may terminate after an initial, individual screening session and one specialized alternative dispute resolution session are held. The primary consideration in each specialized alternative dispute resolution session shall be the safety of each party and each child. The facilitator of the process has a duty to determine whether to proceed in individual sessions or caucus sessions in order to address safety and freedom to negotiate. Joint sessions shall not be used unless, after a safety assessment by the facilitator, all parties agree to a joint session to be conducted at the courthouse, with appropriate safety measures in place.

J. Child Support Guidelines Calculations. (1) In all matters in which a final order includes the setting of child support, a child support guidelines calculation shall be completed by the parties and submitted to the court. A copy of said child support guidelines calculation shall be attached to every proposed order submitted to the court.

(2) If a deviation is proposed to be granted, the proposed order shall contain specific findings of fact which support the conclusion that a deviation is warranted, a completed worksheet 5 as specified in Neb. Ct. R. § 4-203, or both.

Rule 5-4 amended effective March 10, 2010.

RULE 5-5 SCHEDULING & REQUIRED TIME ESTIMATES

All motions requiring hearings and all motions to set trial dates or certificates of readiness for trial shall include a reasonable estimate of time necessary for the requested proceeding. Hearings and trials shall not be scheduled until time estimates are provided.

RULE 5-6 CORRESPONDENCE WITH THE COURT

A. All correspondence with the court regarding pending litigation shall refer to the subject case by case title, number, and county. A copy of all such correspondence shall be sent to all opposing parties or attorneys. If the correspondence requires the court's transmittal of papers, preaddressed, stamped envelopes shall be provided with the correspondence to the court.

B. The clerk shall maintain all correspondence with and from the court regarding pending litigation in the subject case files, if requested to do so by the judge serving the clerk's county.

RULE 5-7 PLEADINGS

All motions and pleadings, other than the petition, answer, and reply, shall indicate in the title of the pleading the nature of the relief requested.

RULE 5-8 APPEALS

In all appeals from the county court, the parties' briefs, if any, shall be delivered to the court and opposing counsel or parties appealing pro se not later than the last court day before oral argument. Oral arguments shall be limited to 10 minutes per party, unless special leave of court is granted. The clerk shall automatically set all oral arguments in all appeals from county court for hearing on the first motion/service day after the clerk receives the bill of exceptions from county court.

**RULE 5-9
MOTIONS**

A. Motions Defined. For purposes of this rule, all pretrial and posttrial motions and similar filings which require a hearing or action by a judge, such as special appearances, demurrers, applications for temporary relief, criminal arraignments and bond reviews, sentencings, hearings on appeal, and orders to show cause, are motions.

B. Hearing. All motions shall be heard on the motion/service day following the expiration of 10 days after filing. With the consent of the court, motions may be specially noticed for hearing on other days. Hearing on a motion may proceed ex parte if the adverse party fails to appear and contest the same. Either party may submit a memorandum brief and shall thereupon serve a copy thereof upon the adverse party.

C. Motion/Service Days. Motion/Service days for each county shall be held as reflected by the annual published schedule prepared for each county by the judge or the judges assigned to that county.

D. Continuances. Hearings on motions may be continued by the court upon motion for continuance duly made with a showing of good cause therefor.

E. Content of Calendar. The clerk of the district court of each county shall maintain a motion/service day calendar, which shall show the date the motion was filed, the case number, the case name (abbreviated), a short description of the motion, the last names of the attorneys in the case (if the party is not represented by an attorney, the clerk shall place the words "Pro Se" in the blank applicable to that party), and the date and time assigned for hearing. The calendars produced by use of the JUSTICE system satisfy this rule.

**RULE 5-10
TELEPHONE CONFERENCE HEARINGS**

A. Request for Telephone Conference Hearing.

(1) No matter will be heard by telephone conference call unless all parties consent to such telephonically held hearing. A party who arranges for a telephone conference will be considered to have certified that such party has obtained the prior consent of all parties who are required or desire to participate in the hearing.

(2) Telephone conferences requested by the moving party shall be arranged prior to the filing of the motion, and the notice of hearing shall clearly state that the hearing will be held by telephone conference call. Telephone conferences requested by a party other than the moving party shall be arranged at least 3 days prior to the hearing, and notice shall be filed by the party requesting the hearing, together with proof of service thereof on all opposing parties.

B. Not Available When Nonwaivable Verbatim Record Involved. Although in all instances a written journal entry of the decision of the court shall be made, no verbatim record will be made of any telephonically held hearing. Accordingly, no such hearing may be scheduled for any proceeding requiring a nonwaivable verbatim record under the provisions of Neb. Rev. Stat.

§ 24-734 (3) & Neb. Ct. R. of Prac. 5A(1), nor for any matter requiring the offer of exhibits in any form.

C. Waiver of Other Record. Any party consenting to a telephonic hearing shall be deemed to have waived the verbatim record required only upon request under the provisions of Neb. Ct. R. of Prac. 5A(2). Conducting the hearing shall constitute a waiver of such optional verbatim record.

D. Initiation of Telephone Conference Call.

(1) The party requesting the telephone conference call shall be responsible for initiating the call and shall provide for all expenses of the call.

(2) When a matter has been assigned for telephonic hearing on a regular motion/service day, the matter will not necessarily be heard at a specific time, unless the judge specifically sets a time certain. On such days, the assignment of a hearing time is approximate and is intermingled with other matters scheduled for hearings by personal appearance. The clerk will telephone to notify the party initiating the conference call to proceed immediately thereafter. The matter will be heard at a time reasonably convenient to the court and to those parties who appear personally on motion/service days.

(3) The party initiating the call shall utilize appropriate equipment and systems to ensure that all persons participating have adequate sound quality and volume. If the court determines that the sound quality or volume is insufficient, the court may require the party initiating the call to utilize other means to complete the hearing by telephone.

**RULE 5-11
COURT FILES & MATERIALS CHECK OUT**

Unless otherwise directed by the court, court files may not be checked out.

Rule 5-11 amended effective March 10, 2010.

**RULE 5-12
EXHIBITS**

Affidavits, depositions, and other proposed exhibits in support of motions shall not be filed with the clerk unless otherwise ordered by the court. Nothing in this rule shall prohibit any properly filed pleading from being offered and received into evidence.

Rule 5-12 approved effective March 10, 2010.

**RULE 5-13
SUMMARY JUDGMENTS**

Both the moving party and opposing party shall submit a brief in support of or opposition to a motion for summary judgment. The brief of the moving party shall contain a separate statement of each material fact supporting the contention that there is no genuine issue to be tried and as to each shall identify the specific document, discovery response, or deposition testimony (by page

and line) which is claimed to establish the fact. Briefs shall be filed at the time of hearing unless leave is granted to file thereafter.

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 document, discovery response, or deposition testimony (by page and line) which is claimed to establish the fact.

Rule 5-13 approved effective March 10, 2010.

RULE 5-14 INTERPRETERS

It is the duty of counsel to notify the clerk that a court interpreter is necessary. Such notice will be given as soon as possible and in no event less than 10 days prior to hearing. This rule is in addition to the requirements of the rules relating to court interpreters adopted by the Supreme Court.

Rule 5-14 approved effective March 10, 2010.

RULE 5-15 MODIFICATION OF RULES

Any of these local rules may be suspended in a particular instance in order to avoid a manifest injustice.

Rule 5-12 renumbered to Rule 5-15 effective March 10, 2010.