

CHAPTER 2

APPEALS

ARTICLE 1

NEBRASKA COURT RULES OF APPELLATE PRACTICE

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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.

§ 2-101. Docketing the case.

(A) Perfecting the Appeal. Every appeal shall be deemed perfected when the notice of appeal as provided in § 2-101(B)(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 § 2-107(A) 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 § 2-104(A);

(3) Request for bill of exceptions; see § 2-105(B);

(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 § 2-101(B), 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 § 2-109(D)(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 § 2-103(B).

(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 § 2-110.

(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 § 2-106. Additional time for compliance with the statute may be requested by motion and a showing of good cause.

Rule 1(A), (B)(1), (B)(4), (B)(5)(c) – (B)(5)(g), (C), (E), (F)(2), (G)(1)(b) and (G)(2) amended May 28, 1992; Rule 1(F)(1) amended March 31, 1993; Rule 1(A) amended May 29, 1997; Rule 1(A), (B), (B)(4), and (G)(1)(a) and (b) amended October 14, 1999; Rule 1(F)(2) amended October 16, 2003; Rule 1(B)(1) amended September 13, 2006. Renumbered and codified as § 2-101, effective July 18 2008.

§ 2-102. Court of Appeals.

(A) Nebraska Supreme Court Rules to Apply. Unless otherwise specified, the Nebraska Court Rules of Appellate Practice 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.Ct. R. Pldg. §§ 6-1105(b) and 6-1106(e).

(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 § 2-109(A)(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 § 2-109(A)(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, § 2-109 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 § 2-109. Each assignment of error shall be separately numbered and paragraphed as required by § 2-109(D)(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 § 2-109(B)(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 § 2-114.

(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 § 2-109, 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 § 2-109 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.

Rule 2, (A), and (C) – (H) amended May 28, 1992; Rule 2(E)(4) amended June 16, 1993; Rule 2(G)(1) amended June 15, 1994; Rule 2(E)(4) amended April 30, 1997; Rule 2(E)(5) and (6) adopted April 30, 1997; Rule 2(F)(4) amended May 29, 1997; Rule 2(G) adopted and Rule 2(H) amended March 24, 1999; Rule 2(F)(1) amended December 15, 1999; Rule 2(F)(3) amended November 15, 2001; Rule 2(H) amended January 24, 2002; Rule 2(F)(1) amended June 15, 2005; Rule 2(F)(1) amended January 19, 2006; Rule 2(F)(2) amended March 22, 2006. Renumbered and codified as § 2-102, effective July 18, 2008. § 2-102(B)(1) amended August 27, 2008.

§ 2-103. 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 3(B) amended February 22, 2001. Renumbered and codified as § 2-103, effective July 18, 2008.

§ 2-104. 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 § 2-104(A). 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 § 2-104 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.

Rule 4(A)(1)(a) – (c) amended May 28, 1992; Rule (A)(1)(d) adopted October 14, 1999. Renumbered and codified as § 2-104, effective July 18, 2008.

§ 2-105. 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) 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 Neb. Ct. R. § 1-218, 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. If appellant fails to timely make the required deposit of the estimated cost of preparation, the court reporter shall forthwith file a notice of such failure with the clerk of the district court, who shall transmit a file-stamped copy thereof to the Clerk of the Supreme Court. Thereafter, unless leave of the appellate court for an extension of time is granted for good cause shown, the appeal shall proceed as if no bill of exceptions had been requested.

(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 § 2-105(B)(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 NSC.BOE@nebraska.gov 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 § 2-105(B)(3)(b)(i) 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 § 2-105(B)(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 § 2-106, 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 § 2-105(B)(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 § 2-105(B)(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 § 2-105(B)(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 § 2-105(B)(1)(e) and Neb. Ct. R. § 1-218.

(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.

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

§ 2-106. Motions generally.

(A) **Motions Not Covered.** Motions for summary disposition and motions for rehearing are covered in §§ 2-107 and 2-113 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. Ct. R. Pldg. §§ 6-1105(b) and 6-1106(e).

(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 § 2-111(B)(2)) except upon a showing of exceptional cause.

(2) For cases which are not advanced, the procedures contained in § 2-106(C) 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.

§ 2-107. 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 Neb. Ct. R. App. P. § 2-107(A)(1)."

(2) When the court determines it lacks jurisdiction the appeal will be dismissed in the following manner: "APPEAL DISMISSED. See Neb. Ct. R. App. P. § 2-107(A)(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. Ct. R. Pldg. §§ 6-1105(b) and 6-1106(e). An original and three copies of any motion, objections, or supporting briefs shall be filed.

(8) The time for filing briefs under § 2-109 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 § 2-107(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. Ct. R. Pldg. §§ 6-1105(b) and 6-1106(e). An original and seven copies of any motion, objections, or supporting briefs shall be filed.

(f) The time for filing briefs under § 2-109 is not extended by the filing of a motion for summary disposition on the grounds of mootness.

Rule 7(B)(1) amended August 25, 1993; Rule 7(C) adopted January 23, 1997; Rule 7(B)(7) amended May 29, 1997; Rule 7(A)(3) adopted September 19, 2001; Rule 7(C) amended to (7)(D) September 19, 2001; Rule 7(C) adopted September 19, 2001. Renumbered and codified as § 2-107, effective July 18, 2008. §§ 2-107(B)(7) and 2-107(D)(2)(e) amended August 27, 2008.

§ 2-108. 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 § 2-106(B).

(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.

§ 2-109. Briefs.

(A) Time for Filing. The briefs listed below must be filed within the times stated in these rules. Briefs in support of motions are described in §§ 2-106, 2-107, and 2-113. Requests for additional time to file briefs must be made in accordance with the provisions of § 2-106. **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. Ct. R. Pldg. § 6-1106(e).)

(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 § 2-106.) 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 § 2-113 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 § 2-111.

(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. BRIEFS FILED WITH THE CLERK OF THE SUPREME COURT AND COURT OF APPEALS SHALL NOT BE CONFIDENTIAL. A brief shall not contain a reproduction, quotation, or extensive paraphrase of material which is declared by any statute or other rule of the Supreme Court to be confidential. Instead, parties or counsel may include a citation in the brief, as set forth in § 2-109(C)(1) to (3), to the portion of the record which is confidential.

(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 § 2-109(C);

(h) The appellant's brief must contain, under appropriate headings, a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief and which must not merely repeat the argument headings. The appellee's brief may contain such summary; and

(i) 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 § 2-109(C), 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 § 2-113.

(E) Cases Involving Constitutional Questions. A party presenting a case involving the federal or state constitutionality of a statute must file and serve notice thereof with the Supreme Court Clerk by a separate written notice or by notice in a Petition to Bypass 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 § 2-102(F). 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 9(B)(1), (B)(2)(e), and (B)(5) amended March 25, 1992; Rule 9(B)(2)e amended April 22, 1992; Rule 9(A)(5) amended April 29, 1992; Rule 9(A)(2) amended May 28, 1992; Rule 9(F) amended July 1, 1992; Rule 9(F) amended November 25, 1992; Rule 9(B)(7) amended June 15, 1994; Rule 9(A)(5) and (B)(7) amended October 17, 1995; Rule 9(B) amended September 25, 1996; Rule 9(B)(1) amended November 20, 1996; Rule 9(A) and (B)(6) amended May 29, 1997; Rule 9(A)(4) amended March 17, 1999; Rule 9(D)(1) and (2) amended October 27, 1999, effective December 6, 1999; Rule 9(F) amended December 15, 1999; Rule 9(B)(3) amended June 6, 2001; Rule 9(F) amended November 15, 2001; Rule 9(B)(2)(b) amended March 22, 2006; Rule 9(E) amended June 4, 2008, effective June 18, 2008. Renumbered and codified as § 2-109, effective July 18, 2008. § 2-109(A)(2) amended August 27, 2008; § 2-109(D)(1)(h)-(i) amended September 10, 2008, effective January 1, 2009; § 2-109(D) amended November 19, 2008.

§ 2-110. 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 10(A) amended May 28, 1992. Renumbered and codified as § 2-110, effective July 18, 2008.

§ 2-111. 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 may be submitted at any time 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 § 2-106 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 § 2-106 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 § 2-106, 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 § 2-111(E)(5) 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 § 2-111(E), 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 § 2-111(G)(2) is then required.

(2) If the Supreme Court Clerk is unable to confirm the existence of a bankruptcy proceeding, as provided in § 2-111(G)(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 § 2-106.

(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 11(E) and (F) amended May 28, 1992; Rule 11(F) amended March 31, 1999; Rule 11(B)(2)(i) amended May 17, 2000; Rule 11(B)(2) and (3), (E)(1), (5), and (5)(a) amended March 16, 2005; Rule 11(E)(5)(c) adopted March 16, 2005; Rule 11(B)(2)(j) amended November 22, 2006. Renumbered and codified as § 2-111, effective July 18, 2008; § 2-111(B)(1) amended November 19, 2008.

§ 2-112. 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.

§ 2-113. 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 § 2-102(F). 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 § 2-106, 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 § 2-109(B). 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 § 2-109(B)(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 § 2-113(F).

(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 13(G) amended October 17, 1995; Rule 13(A) amended May 29, 1997; Rule 13(A) amended September 23, 1998; Rule 13(A) amended December 15, 1999; Rule 13(B) amended March 22, 2006. Renumbered and codified as § 2-113, effective July 18, 2008.

§ 2-114. 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 § 2-106. 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 § 2-106 if a party disagrees with the taxation of costs in a case.

Rule 14(A)(1), 14B(1)(a), and (B)(4) amended May 28, 1992. Renumbered and codified as § 2-114, effective July 18, 2008.

§ 2-115. 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 § 2-101(G) 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 15(B)(2) amended May 28, 1992. Renumbered and codified as § 2-115, effective July 18, 2008.

§ 2-116. 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)(1) 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.

(2) Neb. Rev. Stat. § 27-1301 Child Pornography Exhibits. In all cases where exhibits constituting visual depiction of sexually explicit conduct involving a child, as defined by § 27-1301, may be material on appeal, such evidence shall be handled on appeal and controlled by the provisions of Neb. Ct. R. § 6-1801.

(C) Return of Records to District Court. The bill of exceptions, presentence report, and § 27-1301 child pornography evidence 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 16(E) amended May 28, 1992; Rule 16(A) amended September 27, 2000; Rule 16(A) and (B) amended May 21, 2003. Renumbered and codified as § 2-116, effective July 18, 2008; § 2-116(B)(1)-(2) and (C) amended January 27, 2010.

§ 2-117. 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, (A)(5), (A)(6), (B)(3), (C), (C)(1), (D), (E)(3)(d), and (E)(4) amended April 15, 1992; Rule 17(B)(3) amended May 28, 1992; Rule 17(E)(1)(c) and (E)(3)(c) amended November 23, 1999. Renumbered and codified as § 2-117, effective July 18, 2008.

§ 2-118. 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 § 2-117, 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. Renumbered and codified as § 2-118, effective July 18, 2008.

§ 2-119. 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. Renumbered and codified as § 2-118, effective July 18, 2008.

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 Neb. Ct. R. App. P. § 2-106(F)(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 Neb. Ct. R. App. P. § 2-106(F)(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. _____

OR

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 civil case.

Type of case:

- Law (general)
- Dissolution
- Juvenile
- Paternity
- Adjudication
- Termination
- Criminal

Origin of case:

- County Court
- District Court
- Other _____

Notice of appeal directed to:

- Court of Appeals
- OR
- Supreme Court

Statutory authority:

- Constitutionality of statute
- Other (specify statute) _____

Notice of appeal filed on _____.

Statutory docket fee paid on _____; **or**
poverty affidavit filed on _____.

Cost bond in the amount of \$_____ posted on _____.

Cash in lieu of cost bond in the amount of \$_____ posted on _____; **or**
supersedeas bond in the amount of \$_____ posted on _____.

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; amended October 29, 2008; amended February 11, 2009.

SAMPLE CERTIFICATE - CRIMINAL CASES

IN THE DISTRICT COURT OF _____ COUNTY, NEBRASKA

STATE OF NEBRASKA,

Trial Court No. _____

Tyrone A. Ledbetter, No. 28154

(Address)

(Telephone)

Plaintiff,

v.

ALFRED T. FARQUAR,

Frank X. O'Brien, No. 18766

(Address)

(Telephone)

Defendant.

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

Type of plea:

- not guilty (trial held) OR guilty or nolo contendere
- to jury
- to judge

Type of case:

Origin of case:

- felony County Court (appeal to District Court)
- misdemeanor District Court
- postconviction Other _____
- plea in bar
- other

Notice of appeal directed to:

- Court of Appeals OR Supreme Court

Statutory authority:

- Death sentence
- Life imprisonment
- Constitutionality of statute
- Other (specify statute) _____

Notice of appeal filed on _____.

Statutory docket fee paid on _____; **or**

poverty affidavit filed on _____.

Cost bond in the amount of \$ _____ posted on _____.

Cash in lieu of cost bond in the amount of \$ _____ posted on _____; **or**

supersedeas bond in the amount of \$ _____ posted on _____.

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