

CHAPTER 6

TRIAL COURTS

ARTICLE 11

NEBRASKA COURT RULES OF PLEADING IN CIVIL CASES

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(Revisor's note: The former Nebraska Rules of Pleading in Civil Cases have been renumbered in the revised Nebraska Court Rules as Chapter 6, Article 11, Nebraska Court Rules of Pleading in Civil Cases. Thus, former rule 12 is now Neb. Ct. R. Pldg. § 6-1112, etc., with the last two numbers of the newly renumbered sections corresponding to the former rule number. Subsections and references within this rule to rules by number and subsection may remain unchanged. Thus, a reference in this rule to rule 12(a)(1) should be interpreted and found at § 6-1112(a)(1), etc.)

§ 6-1101. Scope and purpose of rules.

These Rules govern pleading in civil actions filed on or after January 1, 2003. They apply to the extent not inconsistent with statutes governing such matters.

These Rules shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

These Rules govern pleading in a forcible entry and detainer action only to the extent they are consistent with a court's jurisdiction over such actions and are not in conflict with law governing such actions.

Comment. The Rules are authorized by §§ 25-801.01 and 42-353. Jurisdiction to hear a forcible entry and detainer action is discussed in *Cummins Mgmt. v. Gilroy*, 266 Neb. 635, 667 N.W.2d 538 (2003).

Rule 1 amended May 19, 2004. Renumbered and codified as § 6-1101, effective July 18, 2008.

§ 6-1102. One form of action [Reserved].

Comment. The only form of action is a civil action. Section 25-101.

§ 6-1103. Commencement of action [Reserved].

Comment. Section 25-501 provides that a civil action is commenced by filing a complaint in the office of the clerk of a proper court. The date an action is commenced for purposes of the statutes of limitations is defined by § 25-217.

§ 6-1104. Summons [Reserved].

Comment. Service of process is governed by Chapter 25, Article 5.

§ 6-1105. Serving and filing pleadings and other papers.

(a) Service: When Required. Except as otherwise provided in these rules or by statute, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard *ex parte*, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of a summons.

In an action begun by seizure of property, in which no person need be or is named as a defendant, any service required to be made prior to the filing of any answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

Comment. The second sentence of the first paragraph addresses only whether one party must serve papers on a party for whom no appearance has been entered. Section 25-1308 provides the procedure when a party is in default for failure to answer or for other reasons.

§ 6-1105(a) *Comment* amended August 27, 2008.

(b) Same: How made.

(1) Whenever in any action or proceeding, any order, motion, notice, or other document, except a summons, is required by statute or rule of the Supreme Court to be served upon or given to any party represented by an attorney whose appearance has been noted on the record, such service or notice shall be made upon or given to such attorney, unless service upon the party or some other person is ordered by the court.

(2) Service upon an attorney or upon a party not represented by an attorney shall be made by:

(A) delivering the paper to the person to be served;

(B) mailing it to the person to be served by first-class mail at the address designated pursuant to

§ 6-1111(a)(1), or if none is so designated, to the last-known address of the person;

(C) leaving it at the person's office with the person's clerk or other person in charge thereof; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;

(D) transmitting it by facsimile to the person, if the person has designated a fax number pursuant to § 6-1111(a)(2);

(E) sending it to the person by electronic means if the person being served has designated an email address pursuant to § 6-1111(a)(2) or has registered to use the E-Filing System under § 6-403; or

(F) delivering it by electronic or other means consented to in writing by the party being served.

(3) Proof of service may be made by certificate of the attorney causing the service to be made or by certificate of the party not represented by an attorney. A certificate of service shall state the manner in which service was made on each person served.

(4) Service by mail is complete upon mailing. Service by facsimile or electronic means is complete upon transmission, but it is not effective if the person attempting to make service learns that the attempted service did not reach the person to be served.

(5) Any requirement that a document or notice in a civil action be written or in writing is satisfied if the document or notice is served by electronic means pursuant to § 6-1105(b)(2).

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing: Certificate of Service. All papers after the complaint required to be served upon a party (except Discovery Material), together with a certificate of service, must be filed in the office of the clerk of the court within a reasonable time after service. Neb. Ct. R. of Disc. § 6-326(g) governs filing of all Discovery Material.

(e) Filing with the Court Defined. [Reserved]

Rule 5(b) amended June 25, 2008, effective date July 18, 2008. Renumbered and codified as § 6-1105(b), effective July 18, 2008; § 6-1105(b)(2)(E) amended August 31, 2011.

§ 6-1106. Time.

(a) Computation. [Reserved]

Comment. Computation of time and legal holidays are governed by § 25-2221.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in

its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect. The court may not extend the time for taking any action specified in any statute, except to the extent and under the conditions stated in the statutes.

(c) [Reserved]

(d) For Motions--Affidavits. [Reserved]

Comment. Motion practice is governed by Chapter 25, Article 9(d).

(e) Additional Time After Service by Mail, Electronic, or Certain Other Methods. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served under § 6-1105(b)(2)(B), (D), (E), or (F), three days shall be added to the prescribed period.

Rule 6(e) amended June 25, 2008, effective July 18, 2008. Renumbered and codified as § 6-1106(e), effective July 18, 2008.

§ 6-1107. Pleadings allowed; form of motions.

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such, if the answer contains a counterclaim; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned as a third-party defendant; and a third-party answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

Comment. The initial pleading will be a petition when that designation is provided by statute. See § 25-801.01(2)(b).

A partial list of the proceedings in which the initial pleading is a "petition" includes a petition in error (see § 25-1903), probate procedure (see § 30-2209), protection from domestic abuse (see § 42-924), adoption (see § 43-102), actions under the juvenile code (see § 43-245 et seq.), workers' compensation actions (see § 48-173), Commission of Industrial Relations actions (see § 48-811), mental health commitments (see § 83-1001 et seq.), and judicial review of administrative action (see § 84-917). The initial pleading in an action for postconviction relief by a prisoner is a "verified motion" (see § 29-3001).

A separate rule defines the extent to which an action for grandparent visitation is governed by these rules (see § 43-1803 and the Rules adopted by the Supreme Court pursuant thereto).

(b) Motions and Other Papers. [Reserved]

Comment. Motion practice is governed by Chapter 25, Article 9(d).

(c) Demurrers, Pleas, Etc., Abolished. [Reserved]

Comment. See § 25-801.01(2)(c).

Rule 7(a) amended May 19, 2004. Renumbered and codified as § 6-1107, effective July 18, 2008.

§ 6-1108. General rules of pleading.

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a caption, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded. If the recovery of money be demanded, the amount of special damages shall be stated but the amount of general damages shall not be stated; and if interest thereon be claimed, the time from which interest is to be computed shall also be stated.

(b) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, a party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. The pleader may make denials as specific denials of designated averments or paragraphs, may generally deny all the averments except such designated averments or paragraphs as are expressly admitted, or may controvert all the averments of the preceding pleading by general denial.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to value or the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleadings to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds. All statements shall be subject to the standards set forth in § 25-824.

(3) Construction of Pleadings. [Reserved]

Comment. See § 25-801.01(2)(d).

§ 6-1109. Pleading special matters.

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Undue Influence, Condition of the Mind. In all averments of fraud, mistake, or undue influence, the circumstances constituting fraud, mistake, or undue influence shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

(h) If, after consultation, the client consents in writing, an attorney may enter a "Limited Appearance" on behalf of an otherwise unrepresented party involved in a court proceeding, and such appearance shall clearly define the scope of the lawyer's limited representation. A copy shall be provided to the client and opposing counsel or opposing party if unrepresented.

(i) Upon completion of the limited representation, the lawyer shall within 10 days file a "Certificate of Completion of Limited Appearance" with the court. Copies shall be provided to the client and opposing counsel or opposing party if unrepresented. After such filing, the lawyer shall not have any continuing obligation to represent the client. The filing of such certificate shall be deemed to be the lawyer's withdrawal of appearance which shall not require court approval.

Comment. Neb. Ct. R. Pldg. §§ 6-1109(h) and (i) should be viewed in conjunction with Neb. Ct. R. of Prof. Cond. § 3-501.2 which specifically authorizes Limited Scope Representation in Nebraska. Neb. Ct. R. Pldg. §§ 6-1109(h) and (i) formalize the method by which lawyers enter a case for a limited purpose and how such representation is formally ended.

§ 6-1109(h) and (i) adopted September 3, 2008; *Comment* amended September 3, 2008.

§ 6-1110. Form of pleadings.

(a) Caption: Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in § 6-1107(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

§ 6-1111. Signing of pleadings.

(a)(1) Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Each paper signed by an attorney shall state the attorney's bar identification number. Except when otherwise specifically provided by statute, pleadings need not be verified or accompanied by an affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(2) The signature block on any paper may designate a fax number to which papers addressed to the signer may be sent by facsimile. The signature block on any paper may designate an e-mail address to which papers addressed to the signer may be sent electronically.

(3) An electronically filed document which requires an attorney's signature shall be signed in the following manner: "/s/(attorney name)."

(b) When a lawyer is not an attorney of record, such lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate thereon that said filings are "Prepared By" along with the name, business address, and bar number of the lawyer preparing the same, and that preparing such filings shall not be deemed an appearance by the lawyer in the case.

(c)-(d) [Reserved]

Comment. Litigation that is frivolous or in bad faith is subject to sanctions under §§ 25-824 to 25-824.03.

Rule 11(a)(1-3) amended June 25, 2008, effective July 18, 2008. Renumbered and codified as § 6-1111(a)(1-3), effective July 18, 2008; § 6-1111(b) adopted September 3, 2008.

§ 6-1112. Defenses and objections — when and how presented; by pleading or motion; motion for judgment on the pleadings.

(a) When Presented.

(1) A defendant shall serve an answer within 30 days after being served with the summons and complaint or completion of service by publication.

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 30 days after being served. A plaintiff shall serve a reply to a counterclaim in the answer within 30 days after being served with the answer, or, if a reply is ordered by the court, within 15 days after service of the order, unless the order otherwise directs.

(3) [Reserved]

(4) Unless a different time is fixed by court order, the service of a motion permitted under this rule alters these periods of time as follows:

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 20 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 20 days after the service of the more definite statement.

Comment. Subpart 4 defines the time in which a defendant must file an answer after the court denies a motion such as one raising the defense in subpart (b)(6), or after the plaintiff files an amended complaint in response to the grant of a motion for a more definite statement. The rules do not define the time in which a plaintiff must act if the court sustains a motion filed under subpart (b). If the defect can be corrected, such as by serving the summons and complaint again to remedy a defect in the attempt to serve process or by serving an amended complaint to remedy the failure to state a claim, the court must define the time in which plaintiff can act. If the defect cannot be corrected or the plaintiff does not correct the defect within the permitted time the court can render a judgment dismissing the action.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(1) lack of jurisdiction over the subject matter;

(2) lack of jurisdiction over the person;

(3) [reserved]

(4) insufficiency of process;

(5) insufficiency of service of process;

(6) that the pleading fails to state a claim upon which relief can be granted;

(7) failure to join a necessary party.

A motion making any of these defense shall be made before pleading if further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.

If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief.

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in §§ 25-1330 to 25-1336, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by statute.

Comment. Improper venue is not a ground for dismissal; the issue can be raised by a timely motion for transfer under § 25-403.01.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in §§ 25-1330 to 25-1336 and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by statute.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(2) and (4)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days or within such time as the court may fix, the court may strike the pleading or make such order as it deems just.

(f) Motion to Strike. Upon motion by a party before responding to a pleading, or if no responsive pleading is permitted by these rules, upon motion made by a party within 30 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Comment. This Rule authorizes a motion to strike a specific portion of a pleading. Section 25-913 authorizes a motion to strike an entire pleading.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

Comment. Subpart (g) promotes expeditious procedure by permitting the simultaneous presentation of defenses and objections by a single motion. Some defenses will be waived under subpart (h)(1) if they are

omitted from a motion that is filed. Other defenses can be asserted in subsequent procedural steps under subpart (h)(2) if they are omitted from a motion that is filed. The opening clause of subpart (b) provides that any motion is optional and that all the defenses listed can be asserted in the responsive pleading.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived

(A) if omitted from a motion in the circumstances described in subdivision (g), or

(B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by § 6-1115(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a necessary party, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under § 6-1107(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Comment. Under part (g) a motion to transfer an action to a court with proper venue pursuant to § 25-403.01 may be joined with a motion under this rule. As an alternative, it may be made timely and separately because improper venue is not listed as a defense that will be waived under the circumstances described in part (h)(1).

§ 6-1113. Counterclaim and cross-claim.

(a) Counterclaims. A pleading may state as a counterclaim any claim which at the time of serving the pleading, the pleader has against an opposing party.

(b) Failure to Include Counterclaim; Effect in Subsequent Action. A party who does not assert a counterclaim that arises out of the transaction or occurrence that is the subject matter of an opposing party's claim cannot recover costs against that party in any subsequent action thereon.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the State and Political Subdivisions. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State of Nebraska, an officer or agency of the State, or a political subdivision of the State.

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after filing a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

Comment. Joinder of additional cross-claims is also governed by § 25-701.

(h) Joinder of Additional Parties. [Reserved]

Comment. Joinder of additional parties to a counterclaim or cross-claim is governed by § 25-705(4).

(i) Separate Trials; Separate Judgments. [Reserved]

§ 6-1114. Third-party practice [reserved].

Comment. Third-Party Practice is governed by § 25-331.

§ 6-1115. Amended and supplemental pleadings.

(a) Amendments. A party may amend the party's pleading once as a matter of course before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, the party may amend it within 30 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party, and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. [Reserved]

Comment. Relation back of amendments is governed by § 25-201.02.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or

occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or a defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

§ 6-1116. Pretrial conferences; scheduling; management [Reserved].

Comment. See Neb. Ct. R. § 6-1522, Pretrial procedure: formulating issues.

Adopted December 11, 2002; effective January 1, 2003. Renumbered and codified as Neb. Ct. R. Pldg. §§ 6-1101 – 6-1116, effective July 18, 2008.