

**RULES  
OF THE  
DISTRICT COURT  
FOR THE  
THIRD JUDICIAL DISTRICT  
STATE OF NEBRASKA**

March, 2011

## TABLE OF CONTENTS

Index of Amendments .....	3
Rule 3-1, Term of Court.....	5
Rule 3-2, Motions and Other Filings .....	5
Rule 3-3, Continuances.....	6
Rule 3-4, Default Judgments - Notice.....	6
Rule 3-5, Discovery .....	7
Rule 3-6, Summary Judgment Procedure .....	7
Rule 3-7, Court Files .....	7
Rule 3-8, Case Progression .....	8
Rule 3-9, Domestic Case Progression .....	8
Rule 3-10, Civil Case Progression .....	11
Rule 3-11, Child Support Referee .....	12
Rule 3-12, Trial Terms.....	13
Rule 3-13, Appointment of Counsel; Indigent Parties; Standards and Procedures .....	13
Rule 3-14, Payment of Court-Appointed Counsel and Guardians Ad Litem .....	16
Rule 3-15, Courtroom Media Coverage.....	16
Rule 3-16, File Retention.....	17
Rule 3-17, Detainer Cases .....	18
Appendix	
Form 1, <i>Exhibit A</i> .....	20
Form 2, <i>Joint Property Statement</i> .....	22
Form 3, <i>Parenting Time Schedule</i> .....	28
Form 4, <i>Parenting Responsibilities and Cooperation</i> .....	30
Form 5, <i>Trial Notice</i> .....	31
Form 6, <i>Comments on Rule 3-13</i> .....	32
Form 7, <i>Notice of Parenting Act Compliance</i> .....	34
Form 8, <i>Exhibit 1</i> .....	35
Attachments	
Attachment A, <i>Waiver of Right to Counsel</i> .....	36
Attachment B, <i>Certificate Regarding Right to Counsel and Notice of Assignment</i> ...	37
Attachment C, <i>Request for Court Appointed Lawyer, Statement of Financial Status         and Authorization for Release of Information</i> .....	38

## INDEX OF AMENDMENTS

Since November, 1999

### November 29, 2000 Amendments

§3-7 Amended

§3-9 Amended

§3-15 Added

Appendix p.1 Amended with renumbering on p.2

Appendix p. 4 Amended

Appendix p. 10 Amended

Appendix pp. 14 - 23 Added

### September 5, 2001 Amendment

Add Rule 3-2.F

### January 9, 2003 Amendment

Rule 3-2 Amended

Rule 3-6 Amended

Rule 3-7 Amended

Rule 3-11 Amended

Appendix p. 13 Trial Notice Amended

### June 2, 2004 Amendment

Add Rule 3-2.H

Rule 3-8 Typographical error corrected

Rule 3-9.B Extraneous language deleted

Rule 3-9.C Policy requiring parenting classes in certain situations made permanent

Rule 3-9.E Permitting exceptions to Property Statement requirement

Rule 3-9.G Added new section and the original 3-9.G is moved to 3-9.H

Rule 3-12 Moved to Rule 3-14 and Procedures for fee applications by Guardians ad litem are added.

Rule 3-13 Deleted

Rule 3-15 Moved to Rule 3-13 and temporary rules previously contained in the Appendix are made a part of the Rules. Language in this Rule has been amended to reflect that the temporary policy is now permanently adopted.

### November, 2006 Amendment

Rule 3-2.E Delete

Rule 3-2.F through Rule 3-2.H are renumbered to 3-2.E through 3-2.G

Rule 3-2.H Add

Rule 3-9.E(2)(b) Delete reference to *Wilson v. Wilson*

Rule 3-9 final paragraph Insert limitation on adding to witness list

Appendix

Exhibit A Insert Warning not to use account numbers

Joint Property Statement Insert Warning not to use account numbers and change references to Plaintiff and Defendant

Social Security/Gender filing Add

### January, 2008 Amendment

Rule 3-15	Added
Attachment D	Add birthdates for children

### June, 2010 Amendment

Rule 3-9	Amended
Rule 3-13	Amended
Rule 3-15	Amended
Rule 3-16	New rule re file retention
Rule 3-17	New rule re detainer cases
Appendix-Table of Forms	Amended
Appendix Forms	
Form 1	Form number added
Form 2	Form number added
Form 3-Parenting Time	Amended
Form 4	Form number added
Form 5	Form number added
Form 6	Form number added
Form 7	New form re Parenting Act compliance

### September, 2010 Amendments

Rule 3-2	Amended
Rule 3-15	Amended
Attachment D	Removed

### March, 2011 Amendments

Table of Contents	Added
Rule 3-9	Amended
Appendix	
Form 7	Amended
Form 8	Added

**RULES OF THE DISTRICT COURT OF  
THE THIRD JUDICIAL DISTRICT**

EFFECTIVE SEPTEMBER 29, 1995

(Including Amendments)

**SCOPE AND EFFECTIVE DATE**

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

Approved effective September 29, 1995.

**RULE 3-1**

**TERM OF COURT**

There shall be one term of court, commencing on January 1 and ending on December 31 of each calendar year. No order shall be required to either open or close any term of court.

Approved effective September 29, 1995; amended December 23, 1999.

**RULE 3-2**

**MOTIONS AND OTHER FILINGS**

A. Except as otherwise provided by law, pretrial and posttrial motions or similar filings in which a hearing is requested shall be in writing and filed with the Clerk of the District Court (the Clerk) not less than 5 days prior to hearing, except by permission of the court.

B. Counsel at the time of making said filing shall obtain a date for hearing thereon from the judge to whom the case is assigned or the judge's bailiff and file a notice of hearing with the filing. Unless approved by the judge, a hearing date must be obtained for each motion, even if motions in the same case are already scheduled.

C. Notice of said hearing shall be mailed or personally delivered to opposing counsel or party, if not represented by counsel, three full days prior to said hearing. The use of ordinary mail shall constitute sufficient compliance with this Rule, except as may be otherwise specifically required by statute or rule of the Supreme Court.

D. When the court is acting as an appellate court, a motion to dismiss for lack of jurisdiction may be filed at any time after an appeal has been docketed.

E. The inclusion of abusive or profane language in any petition or other pleading shall be considered by the court as "malicious" and result in the striking of such pleading, together with other sanctions which may include the denial or revocation of in forma pauperis status in the case and dismissal of the case.

F. If a party files a motion under Rule 12 of the Nebraska Rules of Pleading in Civil Actions intended to secure final disposition of the case without a trial, and the motion will require the admission of evidence beyond the pleadings, the moving party shall notify the opposing party of this intention and the parties shall follow the procedures applicable to motions for summary judgment set for in statute and these Rules.

G. The margin at the bottom of the first page of any pleading or other document filed with the Clerk of the District Court shall be at least 2 ¼ inches. This area is reserved for court use to permit affixing a filing stamp, bar code, exhibit identification markings and other official uses. No image, printing or marking of any nature may appear within the bottom margin except as made or authorized by the court or the court clerk.

H. Accompanying and separate and distinct from each decree of dissolution of marriage, order of paternity, or other child support order or order of modification of the same shall be an accompanying document in the format provided in Neb. Ct. R. § 6-1521(B) at Appendix 3, which shall contain necessary social security numbers, gender, and birthdates of each party and any minor child affected by the order. The separate filing of social security numbers shall be distributed to the Child Support division of the Nebraska Department of Health and Human Services, but shall not otherwise be made available without further court order. An image of the filing shall not be reproduced into Justice. Social security numbers should not be contained in any other pleading filed with the court. No pleading or other document filed with the court and no exhibit used at trial shall contain a complete account number for any financial accounts or debts of any party. The same shall be redacted to the extent necessary to protect the information from misuse. By agreement of the parties, or as directed by the court, such information shall be identified in such a manner as the parties, counsel, the court, and the jury may be able to distinguish information between similar accounts or debts, or as may be necessary to establish relevance to the matter being litigated.

Approved effective September 29, 1995; amended effective December 23, 1999; Rule 3-2(F) amended September 19, 2001; Rule 3-2(G) amended January 3, 2003; Rule 3-2(H) amended July 14, 2004; Rule 3-2(E) through (H) amended November 2006; Rule 3-2(H) amended September 9, 2010.

### **RULE 3-3**

#### **CONTINUANCES**

No continuances shall be allowed, except for good cause shown, upon motion or stipulation and affidavit, pursuant to Nebraska statutes, and any motion for a continuance shall request continuance to a date and time certain to be set by the court.

Approved effective September 29, 1995; amended December 23, 1999.

### **RULE 3-4**

#### **DEFAULT JUDGMENTS - NOTICE**

Notice of a hearing for judgment or decree on default shall be given as provided for in Rule 3-2.

Approved effective September 29, 1995.

## **RULE 3-5**

### **DISCOVERY**

To curtail undue delay in the administration of justice, the court shall refuse to consider any and all motions relating to discovery, unless moving counsel, as part of the motion, makes a written showing that after personal consultation with counsel for opposing party(ies) and reasonable efforts to resolve differences, counsel are unable to reach an accord. This showing shall recite, additionally, the date, time and place of such conference and the name of all participants. As used herein, "counsel" includes parties who are acting pro se.

Approved effective September 29, 1995.

## **RULE 3-6**

### **SUMMARY JUDGMENT PROCEDURE**

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

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

Approved effective September 29, 1995; Rule 3-6(A) amended January 3, 2003.

## **RULE 3-7**

### **COURT FILES**

A. No person, except the judges or the clerk, shall take from the courthouse or out of the office or possession of the clerk, any records, papers or files of the court pertaining to the causes therein, except by permission of the clerk, upon such conditions as the judges may impose. Any file so removed shall be returned to the clerk within 24 hours, unless otherwise ordered by a judge of the court.

B. Any request for court records made to the clerk by an incarcerated person shall be made through the records manager of the institution at which the inmate is housed. If the request is granted by the court, the incarcerated person shall be provided with copies made at the direction of the court. Original court records, including bills of exceptions shall not be provided to an incarcerated person.

C. Any damage, destruction, or alteration of an original court record, or any part thereof, by any pro se litigant requesting such record, whether he or she be incarcerated, may result in suspension of the privilege to check out original court records from the clerk.

D. No one, other than an official court reporter, may take the bill of exceptions apart for any purpose, without written authorization from the court.

Approved effective September 29, 1995; Rule 3-7(B) and (C) amended December 20, 2000; Rule 3-7(B) amended January 3, 2003; Rule 3-7(D) amended January 3, 2003.

### **RULE 3-8**

#### **CASE PROGRESSION**

A. As soon after filing of a case as is practicable, the court may enter an order of progression for the case. These orders may include:

- (1) A date when all depositions and discovery allowed by law shall be completed and foreclosing reopening, except upon order for good cause shown;
- (2) a date, time and place for pretrial conference; and
- (3) a date and time for trial.

B. In the months of May and November of each year, or when otherwise directed by the court or any one of the judges, the clerk shall prepare a list of all pending civil cases and a list of all equity cases in which no action has been taken for six months prior thereto. An order shall then be entered requiring that cause be shown, within 30 days from the entry of said show cause order, as to why said cases shall not be dismissed for want of prosecution. Notice of said order shall be sent by mail to the attorney of record, or parties, if no attorney of record. If good cause is not shown, such cases shall be dismissed.

Approved effective September 29, 1995; amended December 23, 1999.

### **RULE 3-9**

#### **DOMESTIC CASE PROGRESSION**

A. Application. This Rule 3-9 shall apply to all cases classified by the State Court Administrator as a domestic case, including, without limitation, divorce; paternity; grandparent visitation; any matter within the court's jurisdiction which involves child custody, parenting time, or support; or any matter governed by the Parenting Act.

B. Motion to Set for Trial. Except as set forth below, after the case is at issue or answer day has passed without response and an Exhibit A has been filed by the moving party, counsel or a party proceeding pro se may file a motion to set the case for trial. The motion shall be set for hearing upon at least 7 days' notice.

In cases involving children, a hearing on a motion to set the case for trial may not be set by the court until the moving party has filed a certificate showing completion of the parenting classes required by statute and has filed a Notice of Parenting Act Compliance, unless those requirements have been waived by the court.

C. Hearing on "Motion to Set for Trial." Each counsel or party proceeding pro se is to bring a completed Exhibit A (See Appendix Form 1) to the hearing. The matters to be covered at the

hearing will include:

- (1) Objections, if any, to the motion;
- (2) Designation of the issues;
- (3) Filing and exchange of an Exhibit A by the nonmoving party;
- (4) Length of time for trial;
- (5) Selecting a day and time for trial; and
- (6) Additional mediation.

D. Document exchange prior to trial: Fourteen days prior to trial

(1) If there is no parenting plan to which the parties have agreed, counsel and parties proceeding pro se are to exchange with each other the parenting plan each intends to propose to the court.

(2) If there is no agreement on child support, counsel and parties proceeding pro se are to exchange with each other the child support calculation each intends to propose to the court together with the financial documents which support the proposed calculation.

(3) If there is no agreement on the division of assets and debts, counsel and parties proceeding pro se are to confer and jointly prepare a balance sheet or a joint property statement (Appendix Form 2) which shows the assets and debts of the marriage and how each party proposes to divide those assets and debts. If the issues include the division of household goods and furniture, a separate balance sheet or joint property statement (using Appendix Form 2) shall also be submitted showing how each party proposes the household goods and furniture be divided.

The parties are under a continuing duty to update all information that is required to appear on the Exhibit A; however, no amendment may be made to a party's Exhibit A 5 or less days prior to trial without consent of the other party or leave of the court.

E. Child Support Guideline Calculations.

(1) In all matters in which a final order includes the setting of child support, a child support guideline calculation shall be completed *in full* (e.g., showing each party's gross income) by the parties and submitted to the court. A copy of said child support guideline calculation shall be attached to every proposed order submitted to the court.

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

F. Parenting Plan. Each parenting plan submitted to the court shall contain a Parenting Time Schedule and shall set out, with specificity, the Parenting Responsibilities and Cooperation terms agreed to by the parties.

(a) Parenting Time Schedule. Appendix Form 3 is a standard parenting time schedule which, in the absence of unusual circumstances, the court finds provides reasonable parenting time for the noncustodial parent in cases in which the parties are unable to agree otherwise.

(b) Parenting Responsibilities and Cooperation. Appendix Form 4 contains the minimum parenting responsibilities and cooperation language that must be incorporated into each parenting

plan. Additional responsibilities may be added as agreed to by the parties.

G. In the interests of preserving court time at final hearing or trial, the parties shall offer evidence in the format of Exhibit 1 (see Appendix Form 8). Nothing in this rule shall be construed to waive the requirement of live testimony, unless otherwise ordered by the court.

H. Decrees and Final Orders. All decrees or orders on domestic relations matters that are submitted to the court for signature must contain **AS THE LAST PARAGRAPH OF THE DECREE OR ORDER** the following paragraph:

To the extent there is any conflict between this Decree (Order) and any attachment or other document incorporated herein by reference, the language of this Decree (Order) shall supersede and control.

I. Modification Cases. Progression of modification cases shall proceed as set forth in this Rule 3-9. Trials, hearings and pretrial matters on contested child support issues in which a child support order already exists shall be conducted by the district court referee. This does not apply to motions, applications or petitions in which non-child support issues are also raised. All scheduling matters of cases referred to the referee shall be presented to the referee. Matters assigned to the referee upon which the parties have reached written agreement may be submitted directly to the district court judge to whom the case is assigned, accompanied by an appropriate order.

J. Mediation. The court deems mediation to be a useful method to resolve disputes and begin to establish the new relationship the parties will need for the future of their children. Therefore, unless waived by the court, on and after July 1, 2010, in all cases governed by the Parenting Act, except those in which there are allegations of intimate domestic partner abuse or unresolved parental conflict as defined in Neb. Rev. Stat. § 43-2922, parties who have not executed an agreed upon Parenting Plan within 4 months after service of process or the filing of a voluntary appearance shall participate in mediation as set forth in the Parenting Act.

For cases in which there are allegations of intimate domestic partner abuse or unresolved parental conflict as defined in Neb. Rev. Stat. § 43-2922, parties who have not executed an agreed-upon Parenting Plan within 4 months after service of process or the filing of a voluntary appearance shall participate in the specialized alternative dispute resolution process as set forth in the Parenting Act unless waived by the court. The parties shall also participate in the specialized alternative dispute resolution process when referred there by a mediator.

Mediation or the alternative dispute resolution process shall be conducted by a person who qualifies as a Parenting Act mediator or approved specialized mediator as set forth in the Parenting Act and proceed under the standards of practice set forth in the Parenting Act and/or adopted by the State Court Administrator.

If a party fails to appear for mediation or the specialized dispute resolution process or fails to meaningfully participate in mediation or the specialized dispute resolution process, the court may impose sanctions including without limitation, dismissing the case for want of prosecution, assessing attorney fees and expenses incurred for trial and trial preparation, limiting the presentation of evidence, and such other sanction as may appear fair and just under the circumstances.

K. Specialized Alternative Dispute Resolution Process. The specialized alternative dispute resolution process shall begin with each parent meeting individually with a qualified mediator

who shall educate each party about the process. The parties shall be allowed to have support persons attend sessions with them. The approved specialized mediator may establish such protocols for the process as he or she deems reasonable to protect the safety of any party, including a requirement that there be separate individual sessions for each party. Specialized alternative dispute resolution shall not proceed unless the parties are informed of the process, including any safety protocols that will be in effect and informed consent to proceed is obtained from both parties in writing.

L. Waiver and Opt-Out. The court may waive the requirement for mediation or permit the parties to opt-out of the specialized alternative dispute resolution process when

(1) there is good cause shown and the parents agree and such parental agreement is bona fide and not an attempt to avoid the purposes of the Parenting Act; or

(2) for good cause shown and when mediation or the specialized alternative dispute resolution process is not possible without undue delay or hardship to either parent.

Upon the filing of a motion for waiver or opt-out, the court shall hold an evidentiary hearing. The burden of proof shall be by clear and convincing evidence and rests with the party seeking the waiver or opt-out.

M. Disqualification. If a party believes there is good cause to disqualify or preclude another party from participating in the alternative dispute resolution process, that party may file a motion for disqualification or preclusion. After notice and a hearing on affidavits, the court, for good cause shown, may disqualify or preclude a party from participating.

N. Upon the completion or termination of mediation or specialized alternative dispute resolution, the parties shall file a notice of completion or termination with court (See Appendix Form 7).

Approved effective September 29, 1995; amended December 23, 1999; Rule 3-9(F) amended December 20, 2000; Rule 3-9(G) amended July 14, 2004; Rule 3-9(H) amended July 14, 2004; Rule 3-9(E) amended November 2006; Rule 3-9 amended June 23, 2010; Rule 3-9 amended March 23, 2011.

## **RULE 3-10**

### **CIVIL CASE PROGRESSION**

A. Application. This Rule 3-10 shall apply to all civil cases except those referred to in Rule 3-9.

B. Progression Order. After either (1) the case is at issue or (2) "answer day" has passed without response, the court may enter a case progression order on its own motion or at the request of a party. The progression order may include the mandatory exchange of information, discovery deadlines, provision for disclosure of expert witnesses, the date of the pretrial conference, the trial term at which the case will be tried or the trial date, together with such other provisions as the court may deem appropriate.

C. Filing of Trial Notice. When a case is at issue and there is no progression order entered, counsel may file with the clerk of the court a Trial Notice on the form contained in the Appendix to these rules. A copy of the Trial Notice shall be submitted to the judge to whom the case is assigned. The notice shall be simultaneously served on all opposing counsel of record.

D. Objection to Trial Notice. An objection to a Trial Notice shall be filed within 10 days of the

date of service of the Trial Notice. The objection shall set forth with specificity the reasons for the objection and a statement of the objector's opinion of when the case will be ready for trial.

Approved effective December 23, 1999.

## **RULE 3-11**

### **CHILD SUPPORT REFEREE**

A. Intent. The court finds that matters relating to the establishment, modification, enforcement and collection of child/spousal support and to paternity matters should be handled by the court in an expeditious manner, so that parties may obtain needed orders and other action as quickly as possible. It is determined that the appointment of a child support referee is necessary to aid the court in meeting the case progression standards established by Nebraska Supreme Court rule and federal law.

B. Appointment. Each referee shall be appointed by order of the judges of the court and shall be an attorney in good standing admitted to the practice of law in the State of Nebraska. The referee shall be sworn or affirmed, and the oath for judicial officers shall be administered by the presiding judge of the court. The referee may be removed at any time by the court.

C. Duties. The referee shall hear matters pertaining to (1) the establishment, modification, enforcement and collection of child/spousal support; (2) paternity; and (3) all other matters permitted by law and assigned by the court. The referee shall have the power to summon and enforce the attendance of parties and witnesses, administer all necessary oaths, supervise pretrial preparation pursuant to the rules of discovery, grant continuances and adjournments, recommend the appointment of counsel for indigent parties and carry out any other duties permitted by law and assigned by the district court. The functions performed by the referee under expedited processes shall, at a minimum, include: (1) taking testimony and establishing a record; (2) evaluating evidence and making recommendations to establish and enforce orders; (3) accepting voluntary acknowledgment of support liability and stipulated agreements setting the amount of support and accepting voluntary acknowledgments of paternity; and (4) recommending default orders, if absent parents fail to respond within the time specified by law.

D. Safeguards. Under the expedited processes established by this court rule:

(1) The due process rights of the parties shall be protected.

(2) The parties must be provided a copy of the recommendation of the referee and the ratified order.

(3) To be enforceable, the referee's recommendations must be entered as an order by a judge.

(4) If a case involves complex issues requiring judicial resolution, a temporary support obligation shall be recommended under these expedited processes and the unresolved issues shall be referred to the court.

E. Hearings. A hearing before a referee shall be conducted in the same manner as a hearing before the court. Testimony in such matters shall be preserved by tape recording or other prescribed measures and in accordance with prescribed standards. Transcripts of all hearings shall be available upon request and all costs of preparing the transcript shall be paid by the party for whom it is prepared, unless he or she has been determined to be indigent.

F. Findings and Recommendations. Upon the hearing of a matter, the referee shall prepare, in writing, his or her findings and recommendations to the parties or their attorneys and submit a report to the court containing findings of fact and recommendations and any and all exceptions.

G. Judicial Review. In all cases referred to a referee, the parties shall have the right to file an exception within 10 days of the date of the referee's Findings and Recommendations. The exception shall be accompanied by a praecipe requesting the preparation of the bill of exceptions of the proceedings before the referee. The hearing before the court on the exception shall be de novo on the record before the referee. The court may ratify or modify the recommendations of the referee and enter judgment based thereon. If no exception is filed, the court shall proceed to consider the referee's Findings and Recommendations and render a final order without further notice or hearing.

H. Case Progression. Actions to establish or enforce support obligations and/or paternity shall be completed in accordance with state and federal law.

Approved effective September 29, 1995; amended December 23, 1999; Rules 3-11(C) and (G) amended January 3, 2003.

## **RULE 3-12**

### **TRIAL TERMS**

Any civil or criminal case in which a jury is waived or which is to be tried to the court and which is expected to take 1 day or less to try may be assigned by the court to a Trial Term. A Trial Term is a period of time determined by each judge during which more than one case will be scheduled for trial. By order of the judge to whom the case is assigned, other requirements governing the progression of the case may be imposed. Cases assigned to a Trial Term for trial shall proceed to trial as follows:

(1) All counsel and persons having cases set for trial during a Trial Term shall be ready for trial whenever called during the next and all subsequent trial terms.

(2) The judge's bailiff will maintain a current list of cases set for trial during that judge's Trial Terms. Cases set for trial during a Trial Term will be called up for trial in the order in which they are listed thereon.

Approved effective December 23, 1999; renumbered from 3-14 to 3-12 and amended July 14, 2004 (original Rules 3-12 and 3-13 deleted July 14, 2004).

## **RULE 3-13**

### **APPOINTMENT OF COUNSEL; INDIGENT PARTIES; STANDARDS AND PROCEDURES**

A. Applicability. These rules shall apply in every criminal proceeding in which the laws of the United States or the laws of the State of Nebraska establish a right to be represented by counsel. All parties who have a right to be represented by an attorney, including juveniles, shall have their eligibility for appointment of an attorney at public expense determined in conformance with these rules.

B. Definition of Terms. The following definitions shall be applied in connection with these rules:

(1) “Anticipated Cost of Counsel” shall mean the cost of retaining private counsel for representation on the matter before the court, as estimated by the court with reference, when applicable, to actual fees and retainers quoted for representation in the case by attorneys who practice in the area.

(2) “Available Funds” shall mean a party’s “liquid assets” and “disposable net monthly income” calculated after provision is made for the party’s bail obligations. For the purpose of determining “available funds,” the following definitions shall apply:

(3) “Basic Living Costs” shall mean the average amount of money spent each month for reasonable payments, including loan payments, toward living costs such as shelter, food, utilities, health care, transportation, clothing, education and child support, alimony, or other support payments.

(4) “Disposable Net Monthly Income” shall mean the income remaining each month after deducting amounts paid for income taxes, Social Security taxes, contributory retirement, union dues, and basic living costs.

(5) “Income” shall mean salary, wages, interest, dividends, rental income, and other earnings and cash payments such as amounts received from pensions, annuities, Social Security, and public assistance programs, and child support, alimony, and other support payments.

(6) “Liquid Assets” shall mean all real and personal property that is cash or that can be reasonably converted into cash, including pensions, deferred compensation plans, and individual retirement plans, cash on hand, funds provided by friends and relation for the purpose of providing legal services, savings accounts, stocks, bonds, certificates of deposit, and equity in any real or personal property. Any motor vehicle necessary to maintain employment shall not be considered a liquid asset.

(7) “Indigent,” for purposes of this rule, shall mean:

(a) A party who is:

(i) Receiving one of the following types of public assistance: Aid to Families with Dependent Children (AFDC), Emergency Aid to Elderly, Disabled and Children (EAEDC), poverty related veteran’s benefits, food stamps, refugee resettlement benefits, Medicaid, Supplemental Security Income (SSI), or County General Assistance Funds; or

(ii) Receiving an annual gross income of 125% or less of the current federally established poverty level; or

(iii) Residing in a public mental health facility or is the subject of a proceeding in which admission or commitment to such a facility is sought, provided that where the County Board of Mental Health or the Judge has reason to believe the party is not indigent, a determination of indigency shall be made in accordance with these Rules; or

(iv) Serving a sentence in a correctional institution and has no available funds; or

(v) Held in custody in jail and has no available funds; or,

(b) A party who the court determines is unable to retain legal counsel without prejudicing the party’s ability to provide economic necessities for the party or the party’s family based on a comparison of the party’s available funds and anticipated cost of counsel.

(8) “Party” shall mean a defendant, including a juvenile, in a criminal proceeding, in which a person has a right to counsel.

C. Judicial Advisement of the Right to Counsel. Whenever a party initially appears before the court without an attorney in any criminal proceeding where the right to counsel attaches, the judge shall advise the party, or if the party is a juvenile or is under guardianship, the party and a parent or legal guardian, where appropriate, that (1) the party has a right to be represented by an attorney in the proceeding and (2) if the court determines that the party, or the party’s parent or guardian where appropriate, wants, but cannot afford, the services of an attorney, that an attorney will be provided at public expense.

D. Waiver of the Right to Counsel. If the court determines that a party has knowingly, intelligently, and voluntarily decided to waive the right to be represented by an attorney in the proceeding, the party shall be asked to sign a written waiver of that right, and the judge shall sign a certificate that states that the party effectively waived that right. If the party refuses to sign the waiver, the judge shall note that fact on the certificate. The waiver, if applicable, and the certificate shall be executed on forms consistent with Attachment A and Attachment B to the Comments associated with this Rule appearing in the Appendix Form 6 to these Rules and shall be filed with the papers in the case.

E. Affidavit of Indigency. A party who desires to proceed as an indigent with an attorney appointed by the court shall complete an affidavit under oath concerning his or her financial resources on a form consistent with Attachment C to the Comments associated with this Rule appearing in the Appendix Form 6 to these Rules. The affidavit shall require the party to list all financial resources relevant to a determination of indigence. The party shall be advised of the penalties for perjury.

F. Determination of Indigency. If the court finds that the party has not effectively waived his or her right to counsel, and the party has not arranged to obtain counsel, the court shall receive the affidavit of indigency and may question the party under oath. After reviewing the information contained in the affidavit and, if applicable, the party’s testimony, the court shall determine whether the party is indigent based on § B(7)(a), indigent based on § B(7)(b), or not indigent. The court first shall determine whether a party is indigent based on § B(7)(a). If the court finds that a party is not indigent under § B(7)(a), the court shall next determine whether the party is indigent under § B(7)(b). The court shall record its findings, including its comparison of the party’s anticipated cost of counsel and available funds when applicable, on a form consistent with Attachment B to the Comments associated with this Rule appearing in the Appendix Form 6 to this Rule, that is filed with the papers in the case.

G. Assignment of Counsel/Notice of Assignment. If the court finds that a party is indigent, the court shall appoint an attorney to provide representation for the party. The Clerk of the Court shall promptly complete and transmit a notice of assignment of counsel form consistent with Attachment B to the Comments associated with this Rule appearing in the Appendix Form 6 to this Rule and shall file a copy in the case file. That form shall include the name of the attorney assigned to represent the party or shall note that the office of the public defender was appointed.

H. Review of Indigency Determination. A party’s indigency status may be reviewed in a formal hearing at any stage of a court proceeding if additional information regarding financial circumstances becomes available to the court. A party has a right to reconsideration in a formal hearing of the findings and conclusions regarding the party’s indigency.

I. Solicitation for Payment of Cost of Counsel. While determined to be indigent, a party may not be ordered, required, or solicited to make any payment toward the cost of counsel.

J. Inadmissibility of Information Obtained From Party. No information provided by a party pursuant to this rule may be used in any criminal or civil proceeding against the party except, in a prosecution for perjury or contempt committed in providing such information or in an attempt to enforce an obligation to reimburse the state for the cost of counsel.

Approved July 14, 2004; amended June 23, 2010.

### **RULE 3-14**

#### **PAYMENT OF COURT-APPOINTED COUNSEL AND GUARDIANS AD LITEM**

Before the claim of any attorney appointed by the court is allowed, such attorney shall make a written motion for fees, positively verified, stating time and expenses in the case. Counsel shall also state in the motion that counsel has not received and has no contract for the payment of any compensation by such defendant or anyone on the defendant's behalf or, if counsel has received any fee or has a contract for the payment of same, counsel shall disclose the same fully so that the proper credit may be taken on counsel's motion.

Before the claim of any court-appointed guardian ad litem is allowed, such guardian ad litem shall make a written motion for fees, positively verified, stating time and expenses in the case. Counsel shall also state in the motion that counsel has not received and has no contract for the payment of any compensation by any party or anyone on a party's behalf or, if the guardian ad litem has received any fee or has a contract for the payment of same, the guardian ad litem shall disclose the same fully so that the proper credit may be taken on the motion. If a purpose of the motion is to secure an order requiring Lancaster County to compensate the guardian ad litem, notice of the hearing on the motion shall be given to the Lancaster County Attorney as it is given to any other party.

Approved July 14, 2004.

### **RULE 3-15**

#### **COURTROOM MEDIA COVERAGE**

The following rule covers broadcast of courtroom proceedings in courtrooms presided over solely by the Honorable Karen Flowers, the Honorable Steven Burns, and the Honorable Paul D. Merritt, Jr.

Courtroom proceedings in these three courtrooms may be broadcast, both audio and video, and may be televised, recorded, or photographed (hereafter collectively referred to as "broadcast") under the following conditions:

1. Cameras and sound equipment of quality and type approved by the Judge presiding in the case, will be fixed in place in the courtroom with field of view of the camera and field of range of microphones being approved by the Judge presiding over the proceedings. Other than the

cameras identified herein, no other camera will be permitted in the courtroom, including a still camera without authorization of the presiding judge. The images produced by the camera in the courtroom should be of such a nature that still images may be retrieved.

2. The audio broadcast shall include only the statements made in open court and shall not include communications between counsel, between counsel and their clients, or bench conferences between counsel and the court.

3. Images of, or statements from, jurors will not be broadcast.

4. Jury selection will not be broadcast.

5. Unless approved by the judge presiding over the proceedings, the following cases will not be broadcast: matters involving grand juries, juveniles (persons under 19 years old), domestic matters, child custody, parenting time, sexual abuse, sexual assault, and protection orders.

6. The testimony of certain witnesses may not be broadcast. Those witnesses are: persons under age 19, a person who claims to be a victim of sexual abuse or sexual assault who will be called upon to testify about the abuse or assault, or a confidential informant's testimony about the matter upon which the person informed. Any witness may make a request to prevent that person's testimony from being broadcast, by making application to the Judge presiding over the proceeding indicating the reason the witness does not want their testimony broadcast.

7. Upon application of any party or counsel, the court may determine to not broadcast courtroom proceedings or terminate the broadcast of courtroom proceedings.

8. Upon application at least 14 days in advance of a scheduled hearing that may be broadcast, the court may permit other types of broadcast or recording equipment in the courtroom.

The images and sound produced from the courtroom will be available to any broadcast media licensed by the Federal Communications Commission, domiciled in the State of Nebraska, and any print media published in the State of Nebraska on a pool basis.

The overriding principle shall be the guarantee of a fair trial to the litigants. Criteria may change from time to time based on factors which the court has not yet considered, experience with this project and the circumstances of individual cases.

Approved effective January 29, 2008; amended October 21, 2008; amended June 23, 2010; amended September 9, 2010.

## **RULE 3-16**

### **FILE RETENTION**

Court files, exhibits, court reporter notes and/or tapes/disks, and any and all other documents and records under the control of the Clerk of the District Court, even for storage purposes, relating to a criminal case are *not to be destroyed* so long as a defendant is under the custody of the Nebraska Department of Correctional Services (i.e., in custody or on parole) or subject to lifetime community supervision by the Office of Parole Administration. If a question arises about whether a file or documents relating to a particular criminal case older than 20 years should be destroyed, the judge to whom the case is assigned or, if not specifically assigned to a sitting judge, then the sentencing judge's successor, should be asked about the status of the case. (If

there is not a successor judge, the case should be randomly reassigned and presented to the judge to whom it is assigned.)

Approved June 23, 2010.

### **RULE 3-17**

#### **DETAINER CASES**

It is the intent of the judges that a detainer case be set for the next available jury term of the assigned judge at the time of arraignment. Therefore, if a person makes a request for disposition of untried charges under either the Agreement on Detainers, Neb. Rev. Stat. § 29-759, or the provisions addressing disposition of untried charges, Neb. Rev. Stat. § 29-3801 et seq., the county attorney shall promptly notify the judge to whom the case is assigned. If the request was made while the case was pending in county court the judge shall be notified when the case is bound over to district court.

Approved June 23, 2010.

## **Appendix to the Rules of the Third Judicial District**

Form #. Name of Form.

1. Exhibit A.
2. Joint Property Statement.
3. Parenting Time Schedule.
4. Parenting Responsibilities and Cooperation.
5. Trial Notice.
6. Comments on Rule 3-13 re: Appointment of Counsel and Indigent Parties.
7. Notice of Parenting Act Compliance.
8. Exhibit 1.

**Appendix Form 1**

-----  
**Exhibit A**

1. **Issues that will be tried are:**
2. **Expected length of Trial is \_\_\_\_\_ days.**
3. **Witnesses this party *MAY* call to testify**
  - A. Name
  - B. Address and Telephone Number
  - C. General Topic of Testimony
4. **Exhibits this party *MAY* offer**
  - A. General Description
  - B. Date
  - C. Author and Recipient
5. **Real Estate (For each parcel of real estate owned)**
  - A. Legal description
  - B. Mortgage or lien (Name and amount)
  - C. Fair market value
6. **Vehicles, including recreational vehicles or boats (For each vehicle)**
  - A. Year and make
  - B. Mortgage or lien
  - C. Fair market value
7. **Cash, Checking and Savings Accounts (For each account)**
  - A. Name of financial institution
  - B. How title held [**Warning:** Do not provide a complete account number]
  - C. Amount at time of filing of petition
  - D. Amount at time of trial
8. **Stocks and Bonds (For each stock or bond held)**
  - A. Name and address
  - B. Description of the security [**Warning:** Do not provide complete account numbers or other identifying information]
  - C. Value at time of filing of petition
  - D. Value at time of trial
9. **Life Insurance (For each policy owned or held)**
  - A. Name of company
  - B. Policy number [**Warning:** Do not provide complete account numbers or other identifying information]
  - C. Cash surrender value, as close to date of trial as possible
  - D. Loan against policy (Date and amount)
  - E. Owner
  - F. Beneficiary

- 10. Furniture and Personal Effects: List only items that are in dispute or of unusual nature of value (Description and value)**
- 11. Other assets and property (Description and value)**
- 12. Indebtedness (For each creditor)**
  - A. Name of creditor [**Warning:** Do not provide complete account numbers or other identifying information]
  - B. Present amount of indebtedness
  - C. By whom incurred/when incurred/original amount
  - D. Purpose
  - E. Amount of installment
- 13. Statement of gross income for each party for the three years preceding trial.**
- 14. If support is an issue, list living expenses for you and any minor children living with you.**
- 15. Pension/Retirement Plans**
  - A. Name [**Warning:** Do not provide complete account numbers or other identifying information]
  - B. Participant
  - C. Value at time of filing of petition
  - D. Value at time of trial
- 16. Property brought into marriage, or received by gift or inheritance during marriage. (Description and value)**

The undersigned acknowledges that:

1. Without request therefor, he or she is under a continuing duty to update all information that is required to appear on this Exhibit A.
2. Within five (5) days of the first day of trial, there may be no changes to information appearing in Exhibit A without the consent of the opposing party or leave of court.
3. He or she will not be permitted to call witnesses, present exhibits or otherwise produce any evidence unless the witness, exhibit, property and issue timely appear in this Exhibit A.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff/Defendant

\_\_\_\_\_  
Plaintiff's/Defendant's Counsel

Amended June 23, 2010.

**JOINT PROPERTY STATEMENT**

\_\_\_\_\_ v. \_\_\_\_\_ Case No. CI \_\_\_\_ - \_\_\_\_\_

**SUMMARY****A. Agreed Distribution of Assets:**

Item	Husband's Value	Wife's Value
A.1. Property the Parties agree is to belong to the <b>Wife</b> :		
A.2. Property the Parties agree is to belong to the <b>Husband</b> :		

**B. Property for which Distribution is Disputed:**

Item	Husband's Value	Wife's Value
B.1. <b>Wife's</b> proposal to distribute to <b>Husband</b>		
B.2. <b>Wife's</b> proposal to distribute to <b>Wife</b>		
B.3. <b>Husband's</b> proposal to distribute to <b>Husband</b>		
B.4. <b>Husband's</b> proposal to distribute to <b>Wife</b>		

**C. Debts**

Item	Debt To be paid by Husband	Husband's Monthly Payment	Debt To be paid by Wife	Wife's Monthly Payment
C.1 Agreed Allocation of Debts				
C.2 Debts for which there is dispute on allocation				
C.3 <b>Wife's</b> proposal on Disputed Debts				
C.4 <b>Husband's</b> proposal on Disputed Debts				

**Summary of Proposals:**

	<b>Husband's Proposal</b>		<b>Wife's Proposal</b>	
	Husband	Wife	Husband	Wife
Distribution of Assets				
Debts to be Paid				
Net Property Distribution				

**In Completing the Remainder of this Form do not Provide  
Complete Account Numbers or other Identifying Information**

**A.1. Property the Parties agree is to belong to the Wife:**

Item Description. (Specific property is not required to be listed.)	Husband's Value	Wife's Value
TOTAL (List on Page 1, Line A.1)		

**A.2. Property the Parties agree is to belong to the Husband:**

Item Description. (Specific property is not required to be listed.)	Husband's Value	Wife's Value
TOTAL (List on Page 1, Line A.2)		

**B. Property for which Distribution is Disputed:**

Property Description	Nature of Dispute	Husband's Value	Wife's Value

**B.1 Wife's Proposal of Disputed Property to go to Husband:**

Item	Husband's Value	Wife's Value
TOTAL (List on Page 1, Line B.1)		

**B.2 Wife's Proposal of Disputed Property to go to Wife:**

Item Description	Husband's Value	Wife's Value
TOTAL (List on Page 1, Line B.2)		

**B.3 Husband's Proposal of Disputed Property to go to Husband:**

Item	Husband's Value	Wife's Value
TOTAL (List on Page 1, Line B.3)		

**B.4 Husband's Proposal of Disputed Property to go to Wife:**

Item Description	Husband's Value	Wife's Value
TOTAL (List on Page 1, Line B.4)		

**C.1. Allocation of Debts for which there is Agreement:**

Description of Debt. (Specific debt is not required to be listed.)	To be Paid by Husband	Husband's Monthly Payment	To be Paid by Wife	Wife's Monthly Payment
TOTAL (List on Page 1, Line C.1)				

**C.2. Debts for which there is Dispute as to how much each party pays:**

Debt Description	Nature of Dispute	Agreed Balance	Monthly Payment	If disputed, Husband's Balance	If disputed, Wife's Balance
TOTAL (List on Page 1, Line C.2)					

**C.3. Wife's Proposal on Disputed Debts:**

Debt Description	To be paid by Husband	Husband's Monthly Payment	To be paid by Wife	Wife's Monthly Payment
TOTAL (List on Page 1, Line C.3)				

**C.4. Husband's Proposal on Disputed Debts:**

Debt Description	To be paid by Husband	Husband's Monthly Payment	To be paid by Wife	Wife's Monthly Payment
TOTAL (List on Page 1, Line C.4)				

The undersigned acknowledge that:

1. The foregoing is a true and accurate statement of the agreements and disputes of the parties as they relate to the property belonging to the parties and the debts to which the parties are obligated.
2. The foregoing statement sets forth honest values of the property and debts in dispute.
3. Within five (5) days of the first day of trial, there may be no changes to information appearing in this Joint Property Statement without the consent of the opposing party or leave of court.
4. Witnesses, exhibits or other evidence will not be permitted unless the property issue timely appears in this Joint Property Statement.

5. They have met and discussed the possibility of resolving their disputes over the allocation of property and debt and have been unable to do so in spite of good faith efforts to reach compromise.

Dated by Plaintiff: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Plaintiff's Counsel

Dated by Defendant: \_\_\_\_\_

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Defendant's Counsel

Amended June 23, 2010.

Appendix Form 3

**Parenting Time Schedule**

The (“custodial parent”) shall have legal and physical custody of the minor child(ren) and the (“noncustodial parent”) shall have the right to exercise reasonable parenting time. Except for good cause shown, the default 10 day/4 day parenting schedule will not constitute a basis for use of a joint physical custody calculation in determining child support.

The noncustodial parent should be allowed reasonable parenting time with the parties' child(ren) that, at a minimum, includes the following:

A. **10 day/4 day parenting:** Commencing \_\_\_\_\_, 20\_\_, every other week beginning on Thursday at 4:30 p.m. (or the conclusion of school or school activities, whichever is later) until the following Monday at 8:00 a.m. (or the commencement of the school day, whichever is earlier).

**B. In odd-numbered years:**

1. **Easter(Spring Break):** This holiday shall include that period of time during which the children are excused from school before the Easter holiday, including Easter Sunday, and shall commence at 6:00 p.m. on the day the children are released from school and conclude at 7:00 p.m. on the day before the children return to school.

2. **Thanksgiving:** This holiday shall be defined as that period of time during which the children are excused from school for the Thanksgiving holiday, including Thanksgiving day, and shall commence at 6:00 p.m. on the day the children are released from school and conclude at 7:00 p.m. on the day before the children return to school.

3. **New Year's Day:** This holiday period shall commence at noon on December 27 and conclude at 7:00 p.m. on the day before school is to begin.

4. **The children's birthdays,** from 5:00 p.m. to 8:00 p.m.

5. **July 4th:** This holiday shall commence at 9:00 a.m. on the 4th of July and end at 9:00 a.m. on the 5th of July.

**C. In even-numbered years:**

1. **Memorial Day Weekend:** This holiday shall include only that weekend when Memorial Day is nationally recognized and shall commence at 6:00 p.m. on Friday and conclude at 7:00 p.m. on Monday, Memorial Day.

2. **Labor Day Weekend:** This holiday shall include only that weekend on which Labor Day is nationally recognized and shall commence at 6:00 p.m. on Friday and conclude at 7:00 p.m. on Monday, Labor Day.

3. **Christmas (Winter Break):** This holiday period shall be defined as that time during which the children are excused from school for the Christmas holiday and shall commence at 6:00 p.m. on the day the children are released from school and conclude at noon on December 27.

D. **Father's/Mother's Day:** Every year the father shall have the children on Father's Day and the mother shall have the children on Mother's Day. This holiday shall commence at 9:00 a.m. and conclude at 7:00 p.m. on the Sunday on which such holiday is nationally observed. The noncustodial parent is not to be given any substitution for this date.

E. **Parents' birthdays:** Every year the father shall have the children on his birthday and the mother shall have the children on her birthday. This parenting time shall commence at 9:00 a.m. and conclude at 8:00 p.m. on the birthday. The noncustodial parent is not to be given any substitution for this date.

F. **Summer:** Summer is that period beginning at 9:00 a.m. on the 7th day following the last day of school before the summer break and ending at 5:00 p.m. on the 7th day preceding the first day of school in the fall. During the summer, the 10/4 parenting schedule shall be suspended and the noncustodial parent shall have the following periods of parenting time: (a) from 9:00 a.m. on the 21st day following the last day of school for 2 weeks and (b) from 9:00 a.m. on the 21st day prior to the first day of school in the fall for 2 weeks. Each 2-week period shall be uninterrupted. The noncustodial parent shall keep the custodial parent advised where the summer visitation will take place and provide the custodial parent reasonable telephone contact.

G. **Telephone:** The noncustodial parent shall have telephone parenting time with the children Tuesday or Thursday weekly, between 6:00 p.m. and 8:00 p.m. for a minimum of 30 minutes nightly.

H. **Coordination:** The noncustodial parent shall pick up the children from the custodial parent at the commencement of each parenting time period and return the children to the custodial parent at the conclusion of each parenting time period described herein. The holiday parenting time schedule shall supersede the regular weekend parenting time schedule. Whenever a holiday parenting time period by the noncustodial parent has superseded a regular weekend parenting time period by such parent, the children shall remain with the custodial parent during the first weekend following such holiday parenting time period and the noncustodial parent's regular weekend parenting time schedule shall resume on the second weekend following such holiday schedule and continue thereafter in accordance herewith. Whenever a holiday parenting time period by the custodial parent supersedes a regular weekend parenting time by the noncustodial parent, the first weekend following such holiday parenting time period shall be the noncustodial parent's every other weekend parenting time.

Amended June 23, 2010.

## Appendix Form 4

### **Parenting Responsibilities and Cooperation**

The custodial parent shall have primacy in the choices regarding the children's education, religious upbringing and medical needs. Recognizing, however, the importance that mutual participation and cooperation play in nurturing the children in a stable, loving environment, the custodial parent shall, in an effort to foster this environment, notify the noncustodial parent, at a meaningful time, in advance of any decision regarding enrollment in school, the commencement of participation in religious activities and the commencement of health care involving the children, in order to learn the noncustodial parent's wishes in these matters. The parents shall freely discuss these three areas with one another, in an effort to reach a consensus on these issues. In the event of an impasse, however, the custodial parent shall have the final voice in these matters.

The children's best interests require the utmost cooperation between the parents. To this end, neither parent shall disparage or in any way denigrate the other parent, in any activity or communication involving the children. Neither parent will inquire of the other's personal affairs through the children. Each parent shall cooperate with the other, to the fullest extent necessary, in order to foster and promote a safe, secure and loving environment for the children.

The parents shall keep each other informed of the children's medical, religious, social and educational progress by providing access to school, governmental, law enforcement, medical and health-related records and access to all teachers, government officials and doctors, and each shall execute any releases, waivers or other documents that might be necessary to enable the other to enjoy these rights.

The parents shall inform each other of the children's social and extra-curricular activities, so that each may participate, where possible and appropriate. Each parent has the right to attend parent/teacher conferences, receive school mailings, attend association meetings, receive report cards of the children, meet with school counselors and attend school functions or sessions involving the children.

The parents shall promptly inform and consult with each other, in the event of any medical problem involving the children. If there is an illness or injury involving the children, the parent first learning of the condition shall immediately notify the other. Either parent may authorize medical treatment, in an emergency.

The parents shall cooperate with each other, so that each may receive, at her/his request and expense, copies of all medical and dental records, school and government records, reports of physicians and dentists and any other records that may relate to the children and each shall execute any releases, waivers or other documents that may be necessary to enable the other to enjoy these rights.

Approved June 23, 2010.

Appendix Form 5

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

_____	)	Case No. _____
_____	)	
vs.	)	TRIAL NOTICE
_____	)	
_____	)	

The undersigned attorney of record represents to the Court:

- That the issues are joined, pleadings having been filed as follows:  
Complaint \_\_\_\_\_; Answer \_\_\_\_\_; Reply \_\_\_\_\_.  
Date Date Date
- The case is ready for trial, all discovery proceedings and other necessary preparation having been completed.
- That the general nature of the case is: \_\_\_\_\_ and the estimated time of trial is \_\_\_\_ days.
- That in the opinion of the undersigned a pre-trial conference  is necessary;  is not necessary.
- That the individual attorneys who are expected to try the case are:

_____	For the Plaintiff.	
(Name)	(Address)	(Telephone No.)
_____	For the Plaintiff.	
(Name)	(Address)	(Telephone No.)
_____	For the Defendant.	
(Name)	(Address)	(Telephone No.)
_____	For the Defendant.	
(Name)	(Address)	(Telephone No.)
- That the case will be placed on the appropriate Trial Docket in the absence of valid objections filed within 10 days of receipt of this notice by opposing Counsel.

\_\_\_\_\_  
Attorney for the \_\_\_\_\_

CERTIFICATE OF SERVICE

I served the foregoing Trial Notice on the judge to whom the case is assigned and all other counsel of record by mailing , by delivering , a copy thereof to said counsel on the \_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Attorney for the \_\_\_\_\_

*Original to be filed with the Court Clerk with a copy delivered to the Judge to whom case assigned and all opposing counsel.*

Approved June 23, 2010.

## Appendix Form 6

### COMMENTS on Rule 3-13

The intent of this rule is to create uniform standards and procedures for the determination of when a party is "indigent" and thus entitled to be represented by court-appointed counsel in criminal cases where the right to counsel applies.

Section A. This section emphasizes that the rule is intended to cover the determination of indigency in all criminal cases where a party has a right to be represented by an attorney. That approach will enhance uniform indigency determinations regardless of the form of the action.

Section B. Formerly, the only definition of indigency was the statutory standard that indigency "shall mean the inability to retain legal counsel without prejudicing one's financial ability to provide economic necessities to one's self or one's family." Neb. Rev. Stat. § 29-3901(3) (Reissue 2008). In addition to the statutory standard, which is retained in § B(7)(b), § B(7)(a) adds several specific objective standards by which a party can be found to be "indigent." Those standards are meant to reduce the need for the court to conduct a more detailed analysis of the financial circumstances of the party in cases where the party clearly cannot afford to hire counsel. If the party is not indigent under § B(7)(a), the court should consider possible indigency under § B(7)(b). The definitions of "anticipated cost of counsel," "available funds," and "liquid assets" are consistent with considerations currently taken into account by Nebraska courts meant to guide the court's determination of indigency when the party does not meet the objective standard, replacing the categories formerly used. E.g., *State v. Masilko*, 226 Neb. 45, 403 N.W.2d 322 (1987) (trial court must consider seriousness of offense, defendant's income, availability to defendant of other resources, including real and personal property, bank accounts, Social Security, and unemployment or other benefits, normal living expenses, outstanding debts, and number and age of dependents).

"Available funds" under § B include only resources presently assessable to the party even if third parties owe duties of support to the party. Thus a juvenile's "available funds" are determined on the basis of the juvenile's financial assets, not those of his or her parent or guardian.

Section C. This section reflects the notice provisions in Neb. Rev. Stat. §§ 29-3902, 29-3903, and 43-272 (Reissue 2008), and extends to the use of the process to all cases where a right to counsel exists. Subsection (2) recognizes a right to counsel at public expense for juvenile parties or their parents or guardians who cannot afford to pay for counsel. The section should not be read to suggest that counsel will not be appointed if juvenile parties desire counsel and are themselves indigent and their parents or guardians are able to pay for counsel but refuse to do so. In such cases, the decision to appoint counsel is made on the basis of the juvenile's financial resources, not those of the parent or guardian. See §§ E and F, *infra*. Reimbursement actions against financially able parents or guardians can be maintained to recover the costs of counsel appointed to represent the juvenile.

Section D. This section addresses whether a defendant has waived his right to counsel. The section requires a written waiver by the party and certification of the process by the judge.

Section E. This section requires those seeking indigency status to prepare an affidavit of indigency. The affidavit details information concerning the party's finances. The completed affidavit may be filed with the

papers in the case. The determination of indigency is to be made entirely from the party's finances with regard of those potential third-party obligors.

Section F. This section modifies former Nebraska practice concerning the court's formal determination of a party's indigency status. As an initial matter, this section stresses that the court is now required to find that a party is indigent if the party fits within any of the categories defined in § B(7)(a). Additionally, the language directing the court, when necessary, to base its indigency inquiry on a comparison of the party's "available funds" and "anticipated cost of counsel" modifies the formerly applicable structure of the court's inquiry into the party's financial circumstances. E.g., *State v. Masilko*, 226 Neb. 45, 409 N.W.2d 322 (1987). One further requirement is that the court is required to fill out a form stating the basis of its indigency determination, including findings concerning its comparison of the party's "available funds" and "anticipated cost of counsel" when the indigency determination is made under § B(7)(b). That requirement is designed to ensure complete and accurate recording of the basis of the court's decision.

The decision whether or not to appoint counsel is for the court without input from the prosecution or defense counsel.

Section G. This section is meant to ensure an accessible and uniform records of appointed counsel.

Section H. This section formalizes review of a party's indigency status.

Section I. This section articulates the consequences of indigency status.

Section J. This section is intended to protect the party's right against self-incrimination and to ensure that the information contained in the affidavit is as accurate and complete as possible.

Approved June 23, 2010.

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

_____	)	Case No. CI _____
Plaintiff,	)	
	)	
vs.	)	NOTICE OF PARENTING ACT
	)	COMPLIANCE
_____	)	
Defendant.	)	

The Undersigned represents that there has been compliance with the Parenting Act and states:

1. Legal service has been completed on the opposing party by (check one)
  - a. \_\_\_\_\_ Filing a Voluntary Appearance, or;
  - b. \_\_\_\_\_ Personal Service, or;
  - c. \_\_\_\_\_ Publication.
  
2. I have completed a parenting class, filed a certificate of completion with the Clerk of the District Court, and (check one)
  - a. \_\_\_\_\_ so has the opposing party, or;
  - b. \_\_\_\_\_ the opposing party refused to participate.
  
3. I have (check one)
  - a. \_\_\_\_\_ a completed Parenting Plan (by agreement or through mediation) and it is signed by the opposing party, or;
  - b. \_\_\_\_\_ attempted mediation that was conducted by \_\_\_\_\_, but the opposing party would not attend or there were other valid reasons that mediation was not completed. As a result, I completed a Parenting Plan even though it is not signed by the opposing party. Note: if the parties have not agreed to a Parenting Plan, mediation is required before proceeding.
  
4. I have a completed child support calculation.
  
5. The matter is ready to be set for trial and I will call the Bailiff for a hearing date.
  
6. A copy of this notice has been mailed to the opposing party.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

Appendix Form 8

EXHIBIT 1

**(NOTE: If child support is involved, the appropriate worksheet(s) from the Nebraska Child Support Guidelines must be completed and attached hereto and attached to the proposed decree.)**

Case Number: \_\_\_\_\_

Name of Wife: \_\_\_\_\_

Wife's Current Address: \_\_\_\_\_

Wife's Telephone No.: \_\_\_\_\_

Wife's Employer: \_\_\_\_\_

Wife's Employer's Address: \_\_\_\_\_

Name of Husband: \_\_\_\_\_

Husband's Current Address: \_\_\_\_\_

Husband's Telephone No.: \_\_\_\_\_

Husband's Employer: \_\_\_\_\_

Husband's Employer's Address: \_\_\_\_\_

Where Married: \_\_\_\_\_ Date of Marriage: \_\_\_\_\_

Name(s) of Child(ren) of Marriage \_\_\_\_\_ Year of Birth: \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

Is the wife pregnant at this time? \_\_\_\_\_

Length of wife's residency in Nebraska at time of filing of complaint: \_\_\_\_\_

County of residency of wife when complaint filed: \_\_\_\_\_

Length of husband's residency in Nebraska at time of filing of complaint: \_\_\_\_\_

County of residency of husband when complaint filed: \_\_\_\_\_

Is any other divorce or separate maintenance action pending in any court? \_\_\_\_\_

Is either party a member of the military service of the U.S.A. or any of its allies? \_\_\_\_\_

Is either party receiving services under Title IV-D of the Social Security Act, as amended (this includes monitoring payments by the County Attorney's Office)? \_\_\_\_\_

Attachment A

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

vs.

\_\_\_\_\_

Defendant.

) CR # \_\_\_\_\_

)

)

)

) WAIVER OF RIGHT TO COUNSEL

)

)

)

)

**NOTICE: BY SIGNING THIS FORM YOU ARE GIVING UP A VERY IMPORTANT CONSTITUTIONAL RIGHT. PLEASE READ CAREFULLY.**

1. I understand that I have a right to have a lawyer represent me in this case. I understand this is a very important right.

2. I understand that if I cannot afford to hire a lawyer to represent me in this case, the judge will appoint a lawyer to represent me at no cost to me as long as I am indigent.

3. I hereby waive (give up) my right to be represented by a lawyer in this case.

4. No one has made any promises to me or threats against me to get me to give up my right to a lawyer.

This is my decision and it is made voluntarily.

5. The judge has told me about my right to be represented by a lawyer, including my right to a court-appointed lawyer if I cannot afford to hire a lawyer.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant

Attachment B

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

vs.

\_\_\_\_\_

Defendant.

) CR # \_\_\_\_\_

)

)

)

) CERTIFICATE REGARDING

) RIGHT TO COUNSEL AND

) NOTICE OF ASSIGNMENT

)

)

- The Court hereby finds that the above-named defendant knowingly, intelligently, and voluntarily waived the right to counsel.
- The defendant refused to sign the Waiver of Right to Counsel.
- The Court hereby finds the defendant indigent under Court Rule 3-13 § 2(3)(a) and hereby appoints the Lancaster County Public Defender’s Office to represent the defendant.
- The Court hereby finds the defendant indigent under Court Rule 3-13 § 2(3)(b). The anticipated cost of counsel for this offense is \$\_\_\_\_\_ and the defendant’s available funds are \$\_\_\_\_\_. The Court hereby appoints the Lancaster County Public Defender’s Office to represent the defendant.
- The Court hereby finds that the defendant is not indigent.

Dated this \_\_\_\_ day of \_\_\_\_\_,

BY THE COURT:

\_\_\_\_\_  
JUDGE

Attachment C

REQUEST FOR COURT APPOINTED LAWYER,  
STATEMENT OF FINANCIAL STATUS  
AND AUTHORIZATION FOR RELEASE OF INFORMATION

Court: \_\_\_\_\_ Case No. \_\_\_\_\_

I hereby request that the Court appoint a lawyer to represent me because I cannot afford to hire a private attorney. I hereby authorize the court or its representative to have access to any of my financial information including employment status, income records, bank account records, and records of any debts in order to verify the information provided herein.

I.

A. Full Name: _____
B. Current Address: _____
C. Phone: _____
D. Date of Birth: _____
E. Social Security No. _____

II.

I currently receive the following forms of public assistance.	
A. Aid to Families With Dependent Children (AFDC)	Yes ___ No ___
B. Emergency Aid to Elderly, Disabled & Children	Yes ___ No ___
C. Poverty Related Veteran's Benefits	Yes ___ No ___
D. Food Stamps	Yes ___ No ___
E. Medicaid	Yes ___ No ___
F. Supplemental Security Income	Yes ___ No ___
G. Refugee Resettlement Benefits	Yes ___ No ___
H. County General Assistance	Yes ___ No ___

If You Have Answered Yes to Any of the Above, Stop Here and Sign the Back of this Form. If You Answered No to All Questions, Go on to Section III.

III.

I work at _____ . I earn \$ _____ per _____ hr/wk/mo/yr
Number of Family Members
A. <u>  1  </u> Self
B. ___ Write "1" if married and spouse lives with you.
C. ___ Write the number of your children that live with you.
D. ___ Total (add A, B & C)
___ If Line "D" is 1 and your annual income is \$9,863 or less, check here.
___ If Line "D" is 2 and your annual income is \$13,263 or less, check here.
___ If Line "D" is 3 and your annual income is \$16,663 or less, check here.
___ If Line "D" is 4 or more and your annual income is \$20,063 or less, check here.

If you have checked any of the above, stop here and sign the back of this form. Otherwise go on to Sections IV., V., & VI.

IV.

<b>My monthly income is as follows:</b>	
<b>A. Monthly Take Home Pay From My Job</b>	\$ _____
<b>B. Interest and Dividends</b>	\$ _____
<b>C. Rental Income</b>	\$ _____
<b>D. Unemployment Comp. &amp; Workers' Comp.</b>	\$ _____
<b>E. Pensions, Annuities, Social Security</b>	\$ _____
<b>F. Other Cash Payments</b>	\$ _____
<b>G. Total of A Through F (Total Income)</b>	\$ _____

V.

<b>My share of monthly basic living costs is as follows:</b>	
<b>A. Rent, House Payment, or Other Shelter Costs</b> . . . . .	\$ _____
<b>B. Utilities</b> . . . . .	\$ _____
<b>C. Food</b> . . . . .	\$ _____
<b>D. Clothing</b> . . . . .	\$ _____
<b>E. Health Care</b> . . . . .	\$ _____
<b>F. Transportation</b> . . . . .	\$ _____
<b>G. Education</b> . . . . .	\$ _____
<b>H. Child Support, Alimony, and Other Support</b> . . . . .	\$ _____
<b>I. Total of A Through H (Total Expenses)</b> . . . . .	\$ _____

VI.

<b>The value of my liquid assets is as follows:</b>	
<b>A. Cash, Savings, Bank Accounts</b> . . . . .	\$ _____
<b>B. Stocks, Bonds, Certificates of Deposit</b> . . . . .	\$ _____
<b>C. Real Estate (Assessed Value Less Mortgage Balance)</b> . . . . .	\$ _____
<b>D. Other Personal Property Reasonably Convertible to Cash</b> . . . . .	\$ _____
<b>E. Pensions, Deferred Compensation, IRAs</b> . . . . .	\$ _____
<b>F. Total Liquid Assets (Add Lines A,B,C, D)</b> . . . . .	\$ _____

STATE OF NEBRASKA )  
 )ss.  
 COUNTY OF \_\_\_\_\_ )

I swear or affirm, under penalty of perjury, that the information listed above is true and accurate.

\_\_\_\_\_  
 Your signature

Signed and sworn to before me on \_\_\_\_\_.

\_\_\_\_\_  
 Judge/Notary Public

<b>Summary:</b>	
<b>Total Income (from Line IV. G.)</b> .....	\$ _____
<b>Minus Total Expense (From Line V. J.)</b> .....	\$ _____
<b>= Disposable Net Monthly Income</b> .....	\$ _____
<b>Plus Liquid Assets (From Line VI. F.)</b> .....	\$ _____
<b>= Total</b> .....	\$ _____
<b>Minus Bail Obligations</b> .....	\$ _____
<b>Equals Available Funds</b> .....	\$ _____

(Attachment D removed September 9, 2010.)