

District 3

Rules of the County Court of the Third Judicial District

(November 15, 2000; amendments approved November 26, 2014)

Appointment of Counsel in Criminal Cases

A. Authority. Pursuant to Neb. Ct. R. §§ 6-1525 and 6-1467, the judges of the District and County Courts of Lancaster County (the Courts) adopt this rule to appoint counsel for any person who is financially unable to obtain representation in felony and misdemeanor cases pursuant to Neb. Rev. Stat. §§ 29-3901 to 29-3908 and §§ 29-3001 to 29-3004 (Reissue 2008 and Cum. Supp. 2012).

B. Statement of Policy. This rule shall be administered so that those eligible for services pursuant to Neb. Rev. Stat. §§ 29-3901 to 29-3908 and §§ 29-3001 to 29-3004 (Reissue 2008 and Cum. Supp. 2012) will not be deprived of representation because they are financially unable to pay for representation. The further objective of this rule is to particularize the process for court appointments in Lancaster County, Nebraska.

C. Appointment of Private Attorneys. The Lancaster County Public Defender's Office shall have first priority to be appointed for any indigent defendant in all criminal cases within the county. In those cases where the Lancaster County Public Defender's Office has a conflict and the case is one where the Nebraska Commission on Public Advocacy may be appointed, the Nebraska Commission on Public Advocacy will have priority for appointment. This rule establishes the process for the appointment of private attorneys to represent indigent defendants when the Public Defender and Nebraska Commission on Public Advocacy are not available. The rules for the composition, administration, and management of the panel of private attorneys pursuant to Neb. Ct. R. §§ 6-1525 and 6-1467 are set forth below.

D. Duties of Appointed Counsel. Attorneys appointed shall conform to the highest standards of professional conduct. Neb. Ct. R. of Prof. Cond. § 3-501.1 requires a lawyer to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, preparation, and judgment reasonably necessary for the representation. If an attorney cannot properly represent a defendant on his/her charge(s), the attorney has a duty to decline appointment or withdraw from the case.

E. Composition of Panel. The panel of eligible attorneys shall consist of a list of all licensed attorneys who have requested and are willing to accept appointments in criminal cases in the district. The list shall include the name, Nebraska bar number, office address, telephone number, and email address of each attorney. The Lancaster County Court Appointment Coordinator shall maintain the list, and the information concerning the members of the panel (name, bar number, address, telephone, and email only) shall be open for public inspection upon request.

Attorneys who serve on the panel must be members in good standing of the Nebraska State Bar Association, are expected to demonstrate experience and knowledge of the Nebraska Rules of Criminal Procedure and the Nebraska Rules of Evidence, and must display skill in representation and trial advocacy. Members of the panel shall serve indefinitely and continuously at the pleasure of the Courts.

F. Procedure for Appointments. The Lancaster County Court and District Court use computer software which automatically selects attorneys for case appointment in an efficient and unbiased manner. Appointments from the panel will be made on a rotational basis, subject to the court's discretion to make exception due to the nature and complexity of cases.

To facilitate the procedure and to ensure quality representation of indigent defendants in all types of cases, the panel of court appointed attorneys will be divided into the following categories of appointment:

? Homicide-(Murder 1 or 2) & Felony 1 Cases

? Misdemeanor Cases

? Felony 2 and 2A Cases

? Traffic-DUI Cases

? Felony 3, 3A, and 4 Cases

G. Request for Appointment. To be considered for appointment to the panel, a private attorney shall complete the form entitled "Appointment Request Form" (Appendix A) and shall file it with the Lancaster County Court Appointment Coordinator. The County and/or District Court judges will review the request and place the attorney on the list in the appropriate category/categories. In the event a decision is made that the attorney is placed in a category or categories different than those requested, he or she will be notified in writing. If an attorney disputes their category placement, he/she may submit their reason for such dispute. The dispute will then be considered by the County and/or District Court judges and a decision, made by a majority of the County and/or District Court judges will be provided to the attorney, in writing. Any private attorney on the panel may request to be removed from the panel at any time by sending a letter to the Lancaster County Court Appointment Coordinator, 575 South 10th Street, Lincoln, NE 68508, or by sending an email to nsc.lancaster.cc@nebraska.gov.

H. Maintenance of Panel. An attorney may be removed or suspended as appropriate, from one or more appointment categories by a majority decision of the County and/or District Court judges (depending upon the category). If an attorney is removed or suspended, he/she will be notified in writing. If an attorney disputes removal or suspension, he/she may respond by submitting a reason for the dispute and a current resume to the Court at the address or email in Paragraph G above. Reinstatement will then be considered by the County and District Court judges.

I. Effective Date. This rule shall become effective January 1, 2015.

Approved November 26, 2014, effective January 1, 2015; (F) amended September 23, 2015.

Appendix A

Appendix A - Lancaster County Court Third Judicial District Appointment Request Form

Rules for Expanded Media Coverage in Nebraska Trial Courts: Third Judicial District County Court

(Approved December 19, 2012; amendments approved October 15, 2014.)

Rule 1. Definitions.

"*Expanded media coverage*" includes broadcasting, televising, electronic recording, or photographing of judicial proceedings for the purpose of gathering and disseminating news to the public.

"*Good cause*" for purposes of exclusion under this chapter means that coverage will have a substantial effect upon the objector which would be qualitatively different from the effect on members of the public in general and that such effect will be qualitatively different from coverage by other types of media.

"*Judge*" means the judge presiding in a trial court proceeding.

"*Judicial proceedings*" or "*proceedings*" shall include all public trials, hearings, or other proceedings in a trial court, for which expanded media is requested, except those specifically excluded by this rule.

"*Media coordinator*" shall mean the Public Information Officer of the Nebraska Supreme Court.

"*Media representative*" shall mean Nebraska radio or television stations licensed by the Federal Communications Commission. In the event photographs are requested by a Nebraska newspaper, photographers must be employed by a recognized Nebraska news outlet.

Rule 2. General.

Broadcasting, televising, recording, and photographing will be permitted in the courtroom and adjacent areas during sessions of the court, including recesses between sessions, under the following conditions:

(A) Permission first shall have been granted expressly by the judge, who may prescribe such conditions of coverage as provided for in this rule.

(B) Expanded media coverage of a proceeding shall be permitted, unless the judge concludes, for reasons stated on the record, that under the circumstances of the particular proceeding such coverage would materially interfere with the rights of the parties to a fair trial.

(C) Expanded media coverage of a witness also may be refused by the judge upon objection and showing of good cause by the witness. In prosecutions for sexual abuse, or for charges in which sexual abuse is an included offense or an essential element of the charge, there shall be no expanded media coverage of the testimony of a victim/witness unless such witness consents. Further, an objection to coverage by a victim/witness in any other forcible felony prosecution, and by police informants, undercover agents, and relocated witnesses, shall enjoy a rebuttable presumption of validity. The presumption is rebutted by a showing that expanded media coverage will not have a substantial effect upon the particular individual objecting to such coverage which would be qualitatively different from the effect on members of the public in general and that such effect will not be qualitatively different from coverage by

other types of media.

(D) Expanded media coverage is prohibited of any court proceeding which, under Nebraska law, is required to be held in private. In any event, no coverage shall be permitted in any juvenile, dissolution, adoption, child custody, or trade secret cases unless consent on the record is obtained from all parties (including a parent or guardian of a minor child).

(E) Expanded media coverage of jury selection is prohibited. Expanded media coverage of the return of the jury's verdict shall be permitted with permission of the judge. In all other circumstances, however, expanded media coverage of jurors is prohibited except to the extent it is unavoidable in the coverage of other trial participants or courtroom proceedings.

The policy of the rules is to prevent unnecessary or prolonged photographic or video coverage of individual jurors.

(F) There shall be no audio pickup or broadcast of conferences in a court proceeding between attorneys and their clients, between co-counsel or between counsel and the presiding judge held at the bench or in chambers.

(G) The quantity and types of equipment permitted in the courtroom shall be subject to the discretion of the judge within the guidelines as set out in these rules.

(H) Notwithstanding the provisions of any procedural or technical rules, the presiding judge, upon application of the media coordinator, may permit the use of equipment or techniques at variance therewith, provided the application for variance is included in the advance notice of coverage. All media representatives will direct communication through the media coordinator. Ruling upon such a variance application shall be in the sole discretion of the presiding judge. Such variances may be allowed by the presiding judge without advance application or notice if all counsel and parties consent to it.

(I) The judge may, as to any or all media participants, limit or terminate photographic or electronic media coverage at any time during the proceedings in the event the judge finds that rules have been violated or that substantial rights of individual participants or rights to a fair trial will be prejudiced by such manner of coverage if it is allowed to continue.

(J) The rights of photographic and electronic coverage provided for herein may be exercised only by persons or organizations which are part of the Nebraska news media.

(K) A judge may authorize expanded media coverage of ceremonial proceedings at variance with the procedural and technical rules as the judge sees fit.

Rule 3. Procedural.

(A) *Media Coordinator.* The Public Information Officer of the Nebraska Supreme Court shall serve as the Media Coordinator. The judge and all interested members of the media shall work, whenever possible, with and through the media coordinator regarding all arrangements for expanded media coverage.

(B) *Advance notice of coverage.*

1. All requests by representatives of the news media to use photographic equipment or television cameras in the courtroom shall be made to the media coordinator. The media coordinator, in turn, shall inform counsel for all parties and the presiding judge at least 14 days in advance of the time the proceeding is scheduled to begin, but these times may be extended or reduced by court order. When the proceeding is not scheduled at least 14 days in advance, however, the media coordinator shall give notice of the request as soon as practicable after the proceeding is scheduled.

2. Notice shall be in writing and filed with the Judicial Administrator of the county court. A copy of the notice shall be sent to the last known address of all counsel of record, parties appearing without counsel, and the judge expected to preside at the proceeding for which expanded media coverage is being requested.

(C) *Objections.* A party to a proceeding objecting to expanded media coverage shall file a written objection, stating the grounds therefore, at least three days before commencement of the proceeding. All witnesses shall be advised by counsel proposing to introduce their testimony of their right to object to expanded media coverage, and all objections by witnesses shall be filed prior to commencement of the proceeding. All objections shall be heard and determined by the judge prior to the commencement of the proceedings. The judge may rule on the basis of the written objection alone. In addition, the objecting party or witness, and all other parties, may be afforded an opportunity to present additional evidence by affidavit or by such other means as the judge directs. The judge in absolute discretion may permit presentation of such evidence by the media coordinator in the same manner.

Time for filing of objections may be extended or reduced in the discretion of the judge, who also, in appropriate circumstances, may extend the right of objection to persons not specifically provided for in this rule.

Rule 4. Technical.

(A) *Equipment specifications.* Equipment to be used by the media in courtrooms during judicial proceedings must be unobtrusive and must not produce distracting sound. In addition, such equipment must satisfy the following criteria, where applicable:

1. *Still cameras.* Still cameras and lenses must be unobtrusive, without distracting light or sound.

2. *Television cameras and related equipment.* Television cameras are to be electronic and, together with any related equipment to be located in the courtroom, must be unobtrusive in both size and appearance, without distracting sound or light. Television cameras are to be designed or modified so that participants in the judicial proceedings being covered are unable to determine when recording is occurring.

3. *Audio equipment.* Microphones, wiring, and audio recording equipment shall be unobtrusive and shall be of adequate technical quality to prevent interference with the judicial proceeding being covered. Any changes in existing audio systems must be approved by the presiding judge. No modifications of existing systems shall be made at public expense.

Microphones for use of counsel and judges shall be equipped with off/on switches.

4. *Advance approval.* It shall be the duty of media personnel to demonstrate to the presiding judge reasonably in advance of the proceeding that the equipment sought to be utilized meets the criteria set forth in this rule. Failure to obtain advance judicial approval for equipment may preclude its use in the proceeding. All media equipment and personnel shall be in place at least fifteen minutes prior to the scheduled time of commencement of the proceeding.

(B) *Lighting.* Other than light sources already existing in the courtroom, no flashbulbs or other artificial light device of any kind shall be employed in the courtroom. With the concurrence of the presiding judge however, modifications may be made in light sources existing in the courtroom (e.g., higher wattage light bulbs), provided such modifications are installed and maintained without public expense.

(C) *Equipment and pooling.* The following limitations on the amount of equipment and number of photographic and broadcast media personnel in the courtroom shall apply:

1. *Still photography.* Not more than one still photographer, using not more than two camera bodies and two lenses, shall be permitted in the courtroom during a judicial proceeding at any one time.

2. *Television.* Not more than one television camera, operated by not more than one camera person, shall be permitted in the courtroom during a judicial proceeding. Where possible, recording and broadcasting equipment which is not a component part of a television camera shall be located outside of the courtroom.

3. *Audio.* Not more than one audio system shall be set up in the courtroom for broadcast coverage of a judicial proceeding. Audio pickup for broadcast coverage shall be accomplished from any existing audio system present in the courtroom, if such pickup would be technically suitable for broadcast. Where possible, electronic audio recording equipment and any operating personnel shall be located outside of the courtroom. Exceptions may be made by the presiding judge to accommodate the pre-existing audio broadcast role for this Judicial District.

4. *Pooling.* Where the above limitations on equipment and personnel make it necessary, the media shall be required to pool equipment and personnel. Pooling arrangements shall be the sole responsibility of the media coordinator and representative, and the presiding judge shall not be called upon to mediate any dispute as to the appropriate media representatives authorized to cover a particular judicial proceeding.

(D) *Location of equipment and personnel.* Equipment and operating personnel shall be located in, and coverage of the proceedings shall take place from, an area or areas within the courtroom designated by the presiding judge. The area or areas designated shall provide reasonable access to the proceeding to be covered.

(E) *Movement during proceedings.* Television cameras and audio equipment may be installed in or removed from the courtroom only when the court is not in session. In addition, such equipment shall at all times be operated from a fixed position. Still photographers and broadcast media personnel shall not move about the courtroom while proceedings are in session, nor shall they engage in any movement which attracts undue attention. Still photographers shall not assume body positions inappropriate for spectators.

(F) *Decorum*. All still photographers and broadcast media personnel shall be properly attired and shall maintain proper courtroom decorum at all times while covering a judicial proceeding.
