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SUPREME  
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J V S T I C E



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# CIVIL JUSTICE REFORM WORKING GROUP

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RECOMMENDATIONS TO THE ACCESS  
TO JUSTICE COMMISSION, 2024



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# MEMBERSHIP

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This report could not have been completed without the assistance of the individuals listed below. Members of the Civil Justice Reform Working Group identified with an asterisk are individuals who served on the Working Group, participated in meetings, and provided a valuable perspective to the final recommendations found in the report, but stepped down from the Working Group prior to its completion.

<b>Name</b>	<b>Organization</b>
Justice Jonathan Papik, Chair	Nebraska Supreme Court Justice
Judge Ryan Carson	District Court Judge, 9th Judicial District
*Judge James. E. Doyle, IV	District Court Judge, Retired, 11th Judicial District
Tim Engler	Attorney, Rembolt Ludtke LLP
*Renee Eveland	Attorney, Cline Williams Wright Johnson & Oldfather LLP
Judge Thomas K. Harmon	County Court Judge, 4th Judicial District
*Troy Hawk	Former Clerk of the District Court, Lancaster County
Mike Hilgers	Attorney General, Nebraska Attorney General's Office
Jennifer Huxoll	Assistant Attorney General, Nebraska Attorney General's Office
Judge Darla S. Ideus	District Court Judge, 3rd Judicial District
Amie Martinez	Attorney, Anderson Creager & Wittstruck, PC LLO
Emily Motto	Attorney, Baylor Evnen Wolfe & Tannehill, LLP
*Ron Murtaugh	Former Judicial Administrator for County Court, 4th Judicial District
Kevin Ruser	Professor of Law, University of Nebraska College of Law
Andrew D. Sibbernson	Attorney, Sibbernson Law Firm, PC
Corey Steel	State Court Administrator, Administrative Office of the Courts and Probation
Judge Derek R. Vaughn	District Court Judge, 4th Judicial District
*Jim Welsh	Attorney, Welsh & Welsh, PC LLO
Judge Horacio J. Wheelock	District Court Judge, 4th Judicial District
Brock Wurl	Attorney, Paloucek Herman & Wurl Law Offices



# INTRODUCTION & BACKGROUND

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In 2013, the Conference of Chief Justices (CCJ) formed a committee to study and make recommendations regarding the civil litigation systems at the state level. That committee published a 2016 report entitled *A Call to Action: Achieving Civil Justice for All* (2016 CCJ Report). That report generally concluded that courts must take steps that allow civil cases to be adjudicated more quickly and at less cost to litigants. The committee made several recommendations for courts to consider in improving their civil justice systems.

After the publication of the Report, the Nebraska Supreme Court convened a Civil Justice Reform Working Group (the Working Group) as a part of its Access to Justice Commission. The Court invited a group of judges, court staff, and attorneys with a wide range of perspectives to participate in the Working Group. The Working Group was charged with considering the recommendations of the 2016 CCJ Report and making similar recommendations for Nebraska's civil justice system.

The Working Group held many meetings during which members studied and discussed issues surrounding the time and expense involved in adjudicating civil cases in Nebraska state courts. The Working Group sought to reach consensus as to recommendations for Nebraska's civil justice system. The recommendations that follow are the product of the Working Group's discussions.

Most of the recommendations suggest steps for judges to consider in managing civil cases. These are labeled as "Case Management Recommendations" below. A final recommendation under the heading "Policy Recommendation" suggests consideration of legislation. Although not all members of the working group were supportive of the Case Management recommendations, a majority of the Working Group and all of the judges on the Working Group are supportive. All members of the Working Group contributed valuable perspective to the recommendations.

The recommendations pertain to civil cases with the exception of domestic relations cases (dissolution, paternity, child support, modification). The Working Group recognizes that domestic relations cases may have specific features that uniquely benefit from allowing parties greater autonomy in the progression of the case. The Working Group also recognizes that in all cases, trial judges should use their discretion in determining whether a particular case or type of case would benefit from the active case management steps recommended herein and in determining whether continuances or extensions of time are necessary to accommodate the needs of attorneys, parties, experts, and others involved in civil litigation matters.

# RECOMMENDATIONS

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**Overall Recommendation: Courts should continue to actively manage civil cases from the time of filing to disposition.**

Although the Working Group recognizes that there is always room for improvement, it is generally of the view that civil litigation in Nebraska state courts works efficiently and effectively. The system does not have an excessive backlog of cases, and it is the impression of the Working Group that courts across the state generally take an active role in managing cases from the time of filing to disposition.

That said, the Working Group also recognizes that there are a number of challenges to the goal of an efficient civil docket. To note just a few, cases are often complex; there are an increasing number of self-represented litigants; and due to constitutional and statutory requirements, there are times where other types of cases must take priority. Due to these challenges and others, the Working Group believes that specific efforts must be made to ensure that civil cases are resolved efficiently. The Working Group believes the specific recommendations that follow would be helpful in achieving that goal.

# CASE MANAGEMENT RECOMMENDATIONS

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THE TRIAL JUDGE SHOULD RECEIVE NOTICE WHEN THE LAST RESPONSIVE PLEADING IS FILED TO ENABLE THE COURT TO ACTIVELY ASSIST IN CASE PROGRESSION.

Either by assistance of staff in a clerk's office or an automated mechanism, the trial judge should receive notice when the final responsive pleading has been filed. This notice will prompt the judge to begin actively establishing the progression of the case.

Although this notice could be provided by court staff, the Working Group believes it is worth exploring whether technology could be used to provide automated notice. One option for providing automated notice would be for the judge to receive by email a weekly report generated by JUSTICE listing all cases in which a final responsive pleading has been filed. Alternatively, a dashboard could be created on the Judge Portal within JUSTICE listing all of the cases in which a final responsive pleading has been filed.



UPON RECEIVING NOTICE OF THE FINAL RESPONSIVE PLEADING, THE TRIAL JUDGE SHOULD HOLD AN INITIAL PLANNING CONFERENCE TO DISCUSS PROGRESSION OF THE CASE. FOLLOWING THE CONFERENCE, THE TRIAL JUDGE SHOULD ISSUE A PROGRESSION ORDER.

Once the trial judge receives notice that the last responsive pleading has been filed, the trial judge should begin actively assisting in the progression of the case. Most cases will benefit from the judge working with counsel to develop a Progression Order (see Appendices A and B). A Progression Order provides a framework and schedule for resolution of the case, and it provides valuable information enabling parties to set realistic expectations. It both allows and requires counsel, with the assistance of the court, to engage in discussion with one another promoting civility and cooperation.

Because a Progression Order will be most useful if it is a product of discussion between counsel and the trial court, it is recommended that the Progression Order be developed at an Initial Planning Conference. After the last responsive pleading is filed, the court should enter an order scheduling an Initial Planning Conference to be attended by counsel.

The order scheduling the Initial Planning Conference should include an outline of topics to be discussed including, but not necessarily limited to disputed issues, anticipated discovery, anticipated pretrial motions, the possibility of mediation, anticipated length of trial and dates for trial, as well as any other issues identified by counsel. The order should also direct counsel to first meet and confer with one another outside the presence of the court to discuss the progression of the case.

# CASE MANAGEMENT RECOMMENDATIONS

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At the Initial Planning Conference, the trial judge should hear from counsel what each believes needs to be accomplished in order for the case to be resolved. The trial judge should use his or her best efforts to ascertain how the court can be of assistance to the parties in bringing the case to resolution and develop a Progression Order that sets specific deadlines for the completion of the case.

When possible, the Progression Order should include deadlines for expert and fact discovery and pretrial motions. In most cases expert deadlines should be staggered to require plaintiff to identify its fact witnesses, expert witnesses and disclosure of expert opinions, then defendant to identify the same. A date for completion of mediation should be established to occur after such disclosures (or sooner if agreed to by the parties).



## THE TRIAL JUDGE SHOULD, WHEN POSSIBLE, SET A DATE CERTAIN FOR TRIAL.

In most cases, the trial judge should set trial for a date certain. Scheduling a specific trial date will likely facilitate a more expedited resolution of the case. In some cases, it may be feasible to set a trial date at the Initial Planning Conference. In other cases, however, it may be difficult to determine a realistic trial date before discovery has commenced. In those cases, the Working Group recommends that the trial court schedule a status hearing to be held after the completion of some discovery at which a date certain for trial can be scheduled. The Working Group believes this practice would have the benefit of setting an established trial date while minimizing the need for requests for continuances.



## THE TRIAL JUDGE SHOULD MAKE USE OF MANDATORY INITIAL DISCLOSURES IN APPROPRIATE CASES.

Requiring early disclosure of certain types of information may facilitate an expeditious and efficient resolution of a case. As part of its Initial Planning Conference, the trial judge should discuss with the parties what mandatory initial disclosures, if any, would facilitate prompt resolution of the case. Though Nebraska's discovery rules do not contain a provision analogous to the initial mandatory disclosure rule of Fed. R. Civ. P. 26(a)(1), it would be productive in many cases to require parties to disclose types of specific information as described in Fed. R. Civ. P. 26(a)(1) because much of the information will likely be sought and obtained through discovery (see Appendix B, paragraph 5, for an example of an initial disclosure order).



# CASE MANAGEMENT RECOMMENDATIONS

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THE TRIAL JUDGE SHOULD USE STATUS CONFERENCES AS A TOOL TO ASSIST IN MOVING THE CASE TOWARD RESOLUTION.

In addition to the foregoing, a trial judge should use status conferences throughout the life of a case to engage in discussion with counsel to identify how the case can most efficiently be brought to resolution and how the trial judge can help facilitate that resolution. A status conference may be especially helpful in those civil cases that have been on the trial judge's docket the longest.



TRIAL COURTS SHOULD USE AVAILABLE TOOLS TO MAKE DISCOVERY SMOOTHER AND MORE EFFICIENT.

The discovery process, generally discovery disputes in particular, are often cited as causes of the increased time and expense associated with civil litigation today. While our current electronic age often complicates the discovery process and some conflicts may be unavoidable, trial courts do have tools at their disposal to make the civil discovery process more efficient.

Before disputes arise, trial courts should make proactive efforts to facilitate an efficient discovery process. Requiring the parties to suggest a proposed discovery plan forces communication and encourages compromise. If necessary, the parties may also obtain guidance from the trial court early in the case to potentially minimize time-consuming and expensive disputes at later stages. For example, in complex cases where significant electronic discovery is likely to be sought, trial courts should consider directing the parties to meet and confer in an effort to develop an electronic discovery plan as part of the Progression Order. Such a plan might include how electronically stored information (ESI) will be preserved, searched for, and in what form it will be produced, and how and whether privilege logs will be exchanged.

When discovery disputes arise, trial courts should require the parties to take steps to resolve the dispute before entertaining motions to compel or motions for protective orders. In recent years, it has become common to require parties, either by rule or court order, to meet and confer with each other prior to filing a discovery dispute. Meet and confer requirements force the parties to determine if they can eliminate or narrow disagreements before invoking judicial involvement. While meet and confer requirements have value, trial courts should ensure the meet and confer session is meaningful. They should require counsel responsible for discovery on both sides of the case to either meet together physically or converse by phone and meaningfully discuss all areas that are the subject of a possible motion to compel or motion for protective order with the goal to reach agreement. It should be noted that while exchanging written communication is helpful and can provide specific information, a meaningful meet and confer session must include actual discussion. If parties can bring a dispute to the trial judge only after a meaningful meet and confer session has occurred, discovery disputes are likely to be minimized and streamlined.

# CASE MANAGEMENT RECOMMENDATIONS

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## TRIAL COURTS SHOULD LIMIT EXCESSIVE DISCOVERY.

In 2015, the Federal Rules of Civil Procedure were amended. One of those amendments was to Fed. R. Civ. P. 26(b)(1), which defines the permissible scope of discovery in federal court. The amendment added the concept of “proportionality” to the scope of discovery. The relevant subsection is printed below with the proportionality language in italics:

### (b) Discovery Scope and Limits.

*(1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.*

The purpose of the “proportionality” amendment was to limit costly and time-consuming discovery by focusing on whether discovery could satisfy a form of cost-benefit analysis. Although members of the Working Group have differing opinions on whether Nebraska’s discovery rules should be amended to expressly incorporate “proportionality,” the members are in agreement that trial courts should guard against excessive discovery by using existing means such as Neb. Ct. R. Disc. § 6-326(c).

# POLICY RECOMMENDATION

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## EXPANSION OF THE COUNTY COURT EXPEDITED CIVIL ACTIONS ACT SHOULD BE CONSIDERED.

In 2020, the County Court Expedited Civil Actions Act (the act) was enacted into law. See Neb. Rev. Stat. § 25-2741 et seq. The act allows plaintiffs to elect to proceed under statutes and court rules specific to the act. For example, the act limits the discovery that may be conducted, the expert witnesses that may be called, and the time allotted for trial. See Neb. Rev. Stat. § 25-2744. Cases proceeding under the act are also subject to certain relaxed evidentiary requirements. See Neb. Rev. Stat. § 25-2747. Parties proceeding under the act are prohibited from recovering a judgment in excess of the county court jurisdictional limit. See Neb. Rev. Stat. § 25-2743. The current county court jurisdictional limit is \$57,000. See Uniform County Court Rules of Practice and Procedure, § 6-1462.

The Working Group generally believes that the idea behind the act is positive. The Legislature appeared to recognize that there is a category of cases where there is a risk that the party's potential recovery will be eclipsed by the costs of the usual civil litigation process. The act attempts to limit some of those costs incurred by the plaintiff while also limiting the potential exposure for the defendant.

The anecdotal evidence gathered by the Working Group suggests that not many parties have elected to proceed under the act. The Working Group is aware of a number of cases in which plaintiffs elected to proceed under the act and then were able to obtain a settlement, but the Working Group is not aware of many cases in which a plaintiff elected to proceed under the act and the case was resolved through trial.

While it may take time before parties consistently utilize the act, the Working Group also believes that it is worth considering whether the parameters created by the act should be expanded to the district courts where a higher recovery limit could be included. The Working Group believes that plaintiffs may have some reluctance about limiting their potential recovery to \$57,000.

The Working Group believes that more plaintiffs might elect to proceed under the act if the potential recovery was increased to \$100,000. Many liability insurance policies have a \$100,000 limit, and thus the Working Group believes that more plaintiffs might elect to proceed under the act if they know that their recovery will not exceed the jurisdictional limit. In addition, the Working Group believes there may be a certain psychological significance to a "six-figure case." At the same time, the defense bar may be amenable to an expansion of the expedited procedures where there is certainty that the recovery cannot exceed \$100,000. An increased recovery limit would also allow for the act to be expanded to the district courts.

The Working Group recognizes that any expansion of the act would require legislative change. The Working Group also recognizes that if the potential recovery for plaintiffs is increased, there may be reason to reconsider some of the court rules implementing the act to account for a greater potential recovery.

Appendix A

IN THE DISTRICT COURT OF [COUNTY] COUNTY, NEBRASKA

	)	CASE NO. CI
	)	
Plaintiff,	)	
vs.	)	PRETRIAL ORDER -
	)	JURY TRIAL
	)	
	)	
Defendant.	)	

On \_\_\_\_\_, this matter came on to be heard before the Court for (telephonic) pretrial conference (in chambers). \_\_\_\_\_, Attorney at Law, appeared on behalf of the Plaintiff. \_\_\_\_\_, Attorney at Law, appeared on behalf of the Defendant. The parties discussed case progression.

The Court hereby enters the following Pretrial Orders, which are binding upon all parties and there will be no deviation therefrom unless by motion filed, hearing held, and good cause shown:

1. TRIAL DATE: The parties estimate the trial will last \_\_\_\_\_ day(s). Trial scheduled for \_\_\_\_\_, **commencing at 9:00 a.m.** Final pretrial conference is scheduled \_\_\_\_\_.
2. EXHIBITS:
  - a. Final exhibits and exhibit lists shall be exchanged between the parties at least **fifteen (15)** days prior to trial, or no later than \_\_\_\_\_. The parties must exchange physical copies of exhibits, unless otherwise



disclosed in discovery and the identity of the document on the exhibit list is evident.

- b. The parties shall file a Joint Exhibit List with the Court no later than **five (5)** days prior to trial, or no later than \_\_\_\_\_. Unless otherwise agreed, Plaintiff shall be responsible for coordinating this filing. No additional exhibits will be permitted at the time of trial except upon stipulation of the parties or by order of this Court on good cause shown.
- c. The Joint Exhibit List will be in the form attached hereto as *Appendix 1*. The parties must designate for the Court in the Joint Exhibit List any stipulations or objections.
- d. The parties shall compile copies of all exhibits and shall email all exhibits to the court reporter, [Name], at [Email Address] in pdf format with a copy of the joint exhibit list at least one week prior to trial. Counsel shall insure that the name of each pdf file corresponds to the exhibit numbers as designated on their exhibit list. Any and all necessary redactions must be made prior to emailing copies of exhibits. Once marked, the exhibits will not be modified.
- e. Unless otherwise ordered, exhibits used at trial shall be displayed electronically. The parties shall be responsible for providing their own device to observe and transmit images of each exhibit onto the court's presentation system. The parties are responsible for making advanced efforts with the court

staff and IT to avoid any delays at trial due to electronic or other related issues.

- f. The parties are expected to comply with all rules of discovery, including the timely disclosure of documents. Failure to comply may result in the exclusion of documents not properly or timely disclosed.

3. WITNESSES:

- a. Final witness lists shall be exchanged between the parties no later than **fifteen (15)** days prior to trial, or no later than \_\_\_\_\_.
- b. The parties shall file their witness lists with the Court no later than **five (5)** days prior to trial, or no later than \_\_\_\_\_. No additional witnesses will be permitted to testify except upon stipulation of the parties or by order of this Court on good cause shown.
- c. The parties are expected to comply with all rules of discovery, including the timely disclosure of witness information. Failure to comply may result in the exclusion of witnesses not properly or timely disclosed.

4. EXPERT WITNESSES:

- a. Plaintiff shall disclose any expert witness no later than **forty-five (45)** days from the date of this Order, or no later than \_\_\_\_\_. Defendant shall then disclose any expert witness no later than **forty-five (45)** days after plaintiff's disclosure. Plaintiff shall then disclose any rebuttal

experts no later than **fifteen (15)** days after defendant's disclosure.

- b. Pursuant to Nebraska Discovery Rules, § 6-326(b)(4), such disclosures must identify the expert, state the subject matter on which the expert is expected to testify, and state the substance of facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.
- c. The parties advise that the following persons shall testify as expert witnesses in this case:

5. DISCOVERY DEADLINE:

- a. All discovery shall be completed in full (including any responses to written discovery), no later than **thirty (30)** days prior to trial, or \_\_\_\_\_.
- b. Pursuant to the discovery rules, § 6-326(e), the parties shall have an ongoing duty to supplement discovery responses and shall do so no later than the deadline to complete discovery.
- c. Status of Discovery/Discovery Issues:

6. ISSUES TO BE TRIED AND STIPUATIONS:

7. MEDIATION: Any mediation agreed to by the parties shall be conducted on or before **thirty (30)** days prior to trial, or no later than

\_\_\_\_\_. The parties shall immediately notify the Court of any settlement.

8. JURY INSTRUCTIONS: Proposed jury instructions and verdict forms shall be filed with the Court no later than **fifteen (15)** days prior to trial, or by \_\_\_\_\_. The parties may do so jointly.

9. SUMMARY JUDGMENT MOTIONS: The parties shall comply with the Summary Judgment Procedure set forth in §6-1526 of the Nebraska Uniform District Court Rules of Practice and Procedure.

The moving party shall simultaneously file with its motion a: (1) supporting brief; (2) Evidence Index in support; and (3) Annotated Statement of Undisputed Facts; and (4) notice of hearing, with said hearing occurring no later than **forty-five (45)** days prior to trial. Any such motion and supporting materials must be filed no later than **ninety (90)** days prior to trial. The opposing party must file its: (1) opposition brief; (2) Evidence Index in Opposition; and (3) Annotated Statement of Disputed Facts, no later **thirty (30)** days after receiving the motion and supporting materials. The moving party may file a reply brief, if any, no later than **seven (7)** days after receiving the opposition materials.

10. DEPOSITIONS TO BE USED AT TRIAL: The Court expects that all objections to the testimony of witnesses to be offered by depositions have been made at the deposition. All such objections are overruled unless not later than **fifteen (15)** days prior to trial, a party advises that they stand on any objection made as identified by page number and line and requests a ruling by the Court to be given in advance of trial. Parties shall identify specifically the objection and the page and line numbers of the particular



testimony or question at issue in the objection, with electronic copies of the relevant testimony provided.

The requirements set forth in Neb. Ct. R. Disc. §6-332 will be strictly enforced. All generic "form" objections are hereby overruled unless counsel simultaneously noted at the deposition the specific error and provided the examiner with an opportunity to correct the form of the question.

Counsel for both parties shall proceed in good faith and exercise restraint with their respective deposition designations, requesting a ruling only when necessary and as warranted under the rules of discovery and evidence.

11. MOTIONS IN LIMINE: All motions *in limine* shall be filed no later than **fifteen (15)** days prior to trial or no later than \_\_\_\_\_. Unless otherwise ordered by the Court, motions *in limine* will be addressed at the final pretrial conference.

12. EQUIPMENT NEEDED AT TRIAL: The parties have advised that the following may be needed for use at trial:

\_\_\_\_\_ Elmo  
\_\_\_\_\_ Video/CD Player/Television screens  
\_\_\_\_\_ Other \_\_\_\_\_

13. OTHER MATTERS:

BY THE COURT:

\_\_\_\_\_  
, District Judge

IN THE DISTRICT COURT OF [COUNTY] COUNTY, NEBRASKA

	)	CASE NO.
Plaintiff(s),	)	
	)	JOINT
	)	LIST OF EXHIBITS
v.	)	
	)	
Defendant(s).	)	

Trial Date(s):

EXHIBIT NO.			DESCRIPTION	OF F	OB J	RC VD	NOT RCVD	DAT E
PL F	DF	3 PTY						

**OBJECTIONS**

**R: Relevancy**  
**H: Hearsay**  
**A: Authenticity**  
**O: Other (specify)**

*Appendix 1*

**IN THE DISTRICT COURT OF [County] COUNTY, NEBRASKA**

**[PLAINTIFF],**

**Plaintiff,**

**VS.**

**[DEFENDANT],**

**Defendant.**

CI [Case No. CI]

## PROGRESSION ORDER - JURY TRIAL

This matter comes before the Court for the purpose of scheduling the progression of this case.

**IT IS THEREFORE ORDERED:**

1. **Trial.** Trial shall take place in District Courtroom # [Number], [Address], at the jury term beginning [Jury Term].
2. **Final Pretrial Conference.** A Pretrial Conference shall be conducted on [Pretrial Date], at [Pretrial time] o'clock [a.m. or p.m.], or as soon thereafter as counsel may be heard. Counsel who appear at the pretrial conference will be lead trial counsel. **[Number of days] days before the Pretrial Conference,** the parties shall furnish to the judge's bailiff a Joint Pretrial Conference Order signed by all counsel prepared for the Court's signature. The Order shall indicate any items upon which the parties are unable to reach agreement, and otherwise the contents shall be a joint statement of agreement on the following points:
  - a. Statement of Factual Issues.
  - b. Description of Legal Issues.
  1. Consolidated Witness List, including name, address and phone number of all witnesses who may be called by any party. A person not listed will not be permitted to testify absent surprise at trial.
  - d. Consolidated Exhibit List of all exhibits that may be offered by either party, including a statement of objections reserved on each exhibit. Any objection not reserved is waived. An exhibit not listed will not be permitted to be used absent surprise at trial.
  - e. Stipulations of the parties.
  - f. Statement of the case to be used in Jury Instructions.

The pretrial conference order shall be prepared in the form of an order for signature by the judge. The pretrial conference order supersedes all prior pleadings in the case. Any *Schafersman v. Agland Coop* issue not specified in accordance with paragraph 8 of this order is waived and not available at trial. The trial date and time will be set at the pretrial conference.

3. **If No Pretrial Conference is Needed.** If the parties determine that a pretrial conference is not needed in this case, the parties should so advise the court at the time of submission of the Joint Pretrial Conference Order. If the Joint Pretrial Conference Order is complete and the court approves, an order will be entered by the court scheduling the case for trial without a pretrial conference. The Joint Pretrial Conference Order supersedes all prior pleadings in this case.

4. **Trial Exhibits.** The Joint Pretrial Conference Order shall be accompanied by trial exhibits. The parties are to submit joint trial exhibits, to the extent possible. All objections to the offer of each exhibit shall be identified in the Exhibit List. Any objection not listed shall be deemed waived. Any exhibits that parties agree will be received in evidence at trial shall be available at the pretrial conference. All exhibits to be used at trial shall be pre-marked by the reporter prior to trial.

5. **Mandatory Disclosures.** Without request therefor, within 30 days of the date of this order, a party shall provide to opposing parties:

A. The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;

B. A copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings; and

C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Nebraska Discovery Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.

A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures. Each party is under a continuing duty to update all disclosures. Should it be determined that there has been a failure to comply with this paragraph, upon proper motion therefor, the party and his or her counsel so failing may be subject to sanctions imposed by the court.

6. **Rule 12 Defenses.** Any Rule 12 defense that is contained in the answer must be set for hearing by any party within 60 days of the date of this order. **The failure to set a hearing within the time set forth in this paragraph will be deemed a waiver of the defense.** The defendant shall submit a brief fourteen (14) days prior to the hearing date. The plaintiff or other responding party shall submit a brief three (3) days prior to the hearing date. Any reply brief is due on the date of the hearing.

7. **Limits on Discovery.** All discovery shall be completed in this case at least 30 days prior to [Pretrial Date]. Motions to enforce discovery requests may be filed no later than 45 days



prior to [Pretrial Date].

8. **Expert Witnesses.** At least 90 days prior to [Pretrial Date], any party who intends to call an expert as a witness in the case shall disclose the expert to all opposing parties. Any expert who is to be called to respond to the testimony of an expert witness of an opposing party must be disclosed to all opposing parties at least 60 days prior to [Pretrial Date]. The disclosures required in this paragraph shall identify the proposed expert, including, without limitation, the name, address, phone number, curriculum vitae and a listing of all publications authored by the expert which contain any discussion of concepts the expert will use in expressing his or her opinions in this case. The disclosure shall further contain a complete statement of the opinion to be rendered and the basis therefor. Expert testimony will not be permitted at trial unless it is contained in the disclosure.

A party who desires to pose a *Schafersman v. Agland Coop*, 262 Neb. 215 (2001), objection opposing an expert's testimony must specify what about the methodology employed by the expert or what about the qualifications of the expert causes the expert's opinion to be unreliable and comply with this paragraph. A general objection is not sufficient to raise a *Schafersman* objection. The objection must be sufficiently specific that the party opposing the objection cannot claim surprise. The objection will be heard at the pretrial conference unless otherwise ordered by the court. *Schafersman* issues will be considered using the following procedure:

1. *Schafersman* objections must be filed and delivered to opposing counsel at least 30 days prior to the pretrial conference. The objections shall be accompanied by a supporting brief and all supporting affidavits, depositions and exhibits.
2. A responsive brief and all responsive affidavits, depositions and exhibits opposing *Schafersman* objections shall be filed and delivered to opposing counsel by 15 days prior to the pretrial conference.
3. A rebuttal brief and all rebuttal affidavits, depositions and exhibits to rebut the opposition to *Schafersman* objections shall be filed and delivered to opposing counsel at least one week prior to the pretrial conference.

*Schafersman* objections will be presented solely on documents unless leave is granted by the court for live testimony. Leave must be requested at the time of the filing of the objections. Any *Schafersman* objection not raised in compliance with the procedure in this paragraph is deemed waived.

9. **Designation of Depositions.** At least thirty (30) days prior to [Pretrial Date], the parties shall designate portions of depositions that the party intends to use at trial, together with a statement of the reason the witness is not available for trial. Impeachment passages are not required to be identified.

10. **Motions in Limine.** All motions in limine will be decided at the pre-trial conference. Motions in limine must be filed in accordance with the rules of the Third Judicial

District.

11. **Dispositive Motions.** Any motion which might dispose of the case must be **heard by the court** at least sixty (60) days prior to [Pretrial Date]. The moving party shall submit a brief fourteen (14) days prior to the hearing date. The responding party shall submit a brief three (3) days prior to the hearing date. Any reply brief is due on the date of the hearing.

12. **Mediation.** A motion to continue the trial to allow for mediation will **not** be granted if filed after the pre-trial conference or if the case has been pending on the court's docket for longer than eighteen (18) months.

13. **Trial Briefs and Proposed Jury Instructions.** In cases to be tried to a jury, all parties shall submit a Brief on any issue that might cause a delay during the trial of the case and Proposed Jury Instructions to the Court **in electronic format** (in either Word or WordPerfect format) no later than five (5) days prior to the first day of the trial term at which the case will be tried.

14. **Disposition by Agreement.** If the parties reach agreement for the final disposition of this case, counsel should notify the Judge's bailiff for scheduling a hearing for earlier final disposition.

15. **Motions to Alter Dates.** All joint requests to accelerate scheduling will be freely given. Counsel are encouraged to cooperate in the exchange of information and the scheduling of earlier final disposition of all cases. All other motions to alter scheduling must be accompanied by an affidavit **of the party** stating the reasons for the request and the party's request therefor. Extensions of any scheduling time line, will be granted only upon the showing of good cause therefor.

16. **Waiver of Jury.** If the parties agree that a jury may be waived in this case, as soon as practicable thereafter, the court should be advised in writing and the case will be transferred to non-jury scheduling.

17. **General.** Counsel shall deliver a copy of this order to their client within seven days of the date hereof. The Parties shall have ten days from the date of this Order to advise the Court of any special circumstances, unique to this case which support adjustments to this schedule.

Dated: March 28, 2025.

BY THE COURT

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District Judge

cc: [Plt Atty]  
[Def Atty]







WISDOM

TRUTH