On November 13, 2024, the Nebraska Supreme Court adopted the following rule amendments to Neb. Ct. R. Pldg. § 6-1101 et seq. and Neb. Ct. R. § 2-205, with a delayed effective day of January 1, 2025:

CHAPTER 6: TRIAL COURTS

. . . .

Article 11: Nebraska Court Rules of Pleading in Civil Cases.

Revisor's note.

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

§ 6-1101. Scope and purpose ~~of rules~~.

(a) Scope. These Rules govern pleading in civil actions filed on or after January 1, 2003. They apply to the extent that they are not inconsistent with any applicable statutes ~~governing such matters~~.

(b) Purpose. These Rules ~~shall~~ should be construed, ~~and~~ administered, and employed by the court and the parties to secure the just, speedy, and ~~inexpensive~~ determination of every action without undue cost.

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

~~Where reference is made in these rules to "filing," "service," or "notice," it is presumed to mean electronic filing, service, or notice by registered users as defined in § 2-201(I) unless the context requires otherwise.~~

(c) Amendments. The Nebraska Court Rules Pleading in Civil Cases apply to cases filed on or after January 1, 2025, and to cases pending on that date. But the trial court may order that the previous version of the Pleading Rules apply, either in whole or in part, to a case pending on January 1, 2025, if the court determines, in the exercise of its discretion, that application of the amended rule or rules to the case would be impracticable, unreasonable, or unjust.

COMMENTS TO § 6-1101

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

[1] The rule addresses the scope of the Nebraska Court Rules of Pleading in Civil Cases and how the rules should be construed. Subpart (a) provides that the pleading rules apply to the extent that they are not inconsistent with any applicable statutes. The purpose of the provision is to make it clear that if the statutes governing a particular action contain requirements that are different than or in addition to the requirements imposed by the pleading rules, the statutes supersede the rules and must be followed.

[2] For example, the statutes governing partition specify that the complaint must contain a description of the property as well as the interests and estates of the owners. The answer must contain, among other things, a statement of the amount and nature of each defendant's interests in the property. See Neb. Rev. Stat. §§ 25-2170 and 25-2174. Those statutes supersede the pleading rules and must be followed.

[3] Forcible entry and detainer actions provide another example. The statutes governing forcible entry and detainer actions specify the contents of the complaint and do not require an answer to the claim for possession. See Neb. Rev. Stat. §§ 25-21,222 and 25-21,223 (2016). Again, those statutes supersede the pleading rules and must be followed.

[4] The original version of § 6-1101 contained a specific provision on forcible entry and detainer actions. The provision stated that the rules apply only to the extent that they are not in conflict with the statutes that govern forcible entry and detainer actions. The provision was deleted in 2024 because it was unnecessary in light of the general provision in subpart (a).

[5] Subpart (b) is modeled on Rule 1(b) of the Federal Rules of Civil Procedure and includes the precatory language that was added to Federal Rule 1(b) in 2015 regarding how parties should construe and employ the rules. The purpose of the language is:

> to emphasize that just as the court should construe and administer these rules to secure the just, speedy, and inexpensive determination of every action, so the parties share the responsibility to employ the rules in the same way. Most lawyers and parties cooperate to achieve these ends. But discussions of ways to improve the administration of civil justice regularly include pleas to discourage over-use, misuse, and abuse of procedural tools that increase cost and result in delay. Effective advocacy is consistent with — and indeed depends upon — cooperative and proportional use of procedure.
>
> This amendment does not create a new or independent source of sanctions. Neither does it abridge the scope of any other of these rules.

Fed. R. Civ. P. 1, Advisory Committee Notes to the 2015 Amendment.

[6] The 2024 Amendments changed the "inexpensive determination of every action" to the "determination of every action without undue cost." The change was made because litigation can be expensive even when the rules are properly employed. The goal is not to avoid cost in and of itself. The goal is instead to avoid undue cost.

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

COMMENT TO § 6-1102

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

Rule 2 of the Federal Rules of Civil Procedure specifies that there is only one form of action: a civil action. In Nebraska, the specification is made by statute. See Neb. Rev. Stat. § 25-101 (abolishing the distinction between actions at law and suits in equity and replacing them with the civil action). Section 6-1102 was included in the Nebraska Court Rules of Pleading in Civil Cases without any text so that the numbering of the rules corresponds to the numbering of the Federal Rules of Civil Procedure.

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

COMMENT TO § 6-1103

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

Rule 3 of the Federal Rules of Civil Procedure specifies when an action is deemed commenced for purposes of the federal rules. In Nebraska, commencement of an action is governed by statute. See Neb. Rev. Stat. § 25-217(1) (specifying when an action is commenced); Neb. Rev. Stat. § 25-501(specifying how an action is commenced). Section 6-1103 was included in the Nebraska Court Rules of Pleading in Civil Cases without any text so that the numbering of the rules corresponds to the numbering of the Federal Rules of Civil Procedure.

§ 6-1104. Summons [Reserved].

COMMENT TO § 6-1104

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

Rule 4 of the Federal Rules of Civil Procedure governs service of process. In Nebraska, service of process is governed by statute. The service statutes are in Chapter 25, Article 5, of the Nebraska Revised Statutes. Section 6-1104 was included in the Nebraska Court Rules of Pleading in Civil Cases without any text so that the numbering of the rules corresponds to the numbering of the Federal Rules of Civil Procedure.

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

(a) Service: When Required.

(1) In general. ~~Except as otherwise provided in~~ Unless ~~these rules or by~~ the applicable statutes or these rules provide~~s~~ otherwise, each of the following documents must ~~shall~~ be served on every party ~~each of the parties~~:

(A) ~~every~~ a pleading filed after ~~subsequent to~~ the original complaint ~~or petition~~ unless the court orders otherwise ~~ordered by the court due to~~ under § 6-1105(c) because there are numerous defendants;

(B) an order stating that service is required;

(C) ~~every~~ a discovery document ~~relating to discovery~~ required to be served on a party, unless the court orders otherwise ~~ordered by the court~~;

(D) ~~every~~ a written motion, ~~other than~~ except one ~~which~~ that may be heard ex parte; and

(E) ~~every~~ a written notice, appearance, demand, offer of judgment, designation of record on appeal, and any similar document ~~documents~~.

(2) If a Party Fails to Appear. No service is required on ~~parties~~ a party who ~~are~~ is in default for failing to appear, unless:

(A) the document is a motion for the entry of a default judgment against the party or a notice of hearing on such a motion; or

(B) ~~the pleadings assert new or additional claims for relief. Such new pleadings shall be served as~~ the document is a pleading that asserts a new claim for relief against the party, in which event the pleading must be served in the manner provided for service of a summons.

~~(3) If an action is for seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of any answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.~~

(b) Service: How Made.

(1) Serving Parties Represented by an Attorney. If a party is represented by an attorney, service ~~shall~~ must be made on the attorney unless the court orders service on the party.

(2) Serving Documents Filed Electronically. Section 2-205(A) governs when a document must be served on a person electronically through the court-authorized service provider.

(3) Serving Documents Not Filed Electronically. ~~Except as provided in subsection (3), service of any required document shall be made~~ If a document is not required to be served on a person electronically through the court-authorized service provider, the document may be served by:

(A) ~~delivering~~ handing it to the person ~~to be served~~;

~~(B) mailing it to the person to be served by first-class mail to the address provided in § 6-1111(a)(3) or the last-known address of the person in which event service is complete upon mailing;~~

(B) ~~(C)~~ leaving it:

(i) at the person's office with ~~the person's~~ a clerk or other person in charge~~;~~ or if no one is in charge, in a conspicuous place in the office; or

(ii) if the ~~office is closed or if the~~ person has no office or the office is closed, leaving it at the person's ~~dwelling place or~~ usual place of ~~abode~~ residence with ~~some person~~ someone of suitable age and discretion who resides there;

~~(B)~~ (C) mailing it to the address stated pursuant to § 6-1111(a)(3) or the person's last-known address, in which event service is complete upon mailing;

(D) sending it to the person by email if the person ~~being served~~ has ~~designated~~ stated an email address pursuant to § 6-1111(a)(3)~~, or sending it via the court-authorized service provider to a registered user. In either~~ in which event~~,~~ service is complete upon ~~filing or~~ sending the document, but is not effective if the ~~filer or~~ sender learns that it did not reach the person; ~~to be served; or~~

(E) sending it to the person by a designated delivery service as defined in Neb. Rev. Stat. § 25-505.01(1)(d), in which event service is complete on the delivery date shown on the signed delivery receipt; or

(F) delivering it by any other means that the person consented to in writing or that the court authorized, ~~by the party being served~~ or if authorized by statute, leaving it with the court clerk ~~if authorized by statute~~.

~~(3) Attorneys and registered users. If a filing is made electronically via the court-authorized service provider, service shall be made electronically on all Nebraska attorneys and other registered users via the court-authorized service provider.~~

(c) ~~Service;~~ Serving Numerous Defendants.

(1) In General. If an action involves an unusually large number of defendants, the court may, on motion or on its own, order:

(A) ~~(1)~~ ~~service of the~~ pleadings filed by defendants ~~of the defendants~~ and replies to those pleadings need not be ~~made as between~~ served on the other defendants;

(B) ~~(2)~~ any cross-claim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them ~~shall~~ will be treated as denied or avoided by all other parties; and

(C) ~~(3)~~ filing ~~of such~~ a pleading and ~~service~~ serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) ~~(4)~~ Notifying Parties. A copy of the court's ~~such~~ order ~~shall~~ must be served ~~upon~~ on the parties ~~in such manner and form~~ as the court directs.

(d) ~~Filing: Proof of Service; Certificate of Service.~~ Who Must or May File Electronically; When Documents Not Filed Electronically Must be Filed; Filing Discovery Documents; Certificates of Service.

(1) Electronic Filing. A person represented by an attorney must file documents electronically through the court-authorized service provider unless non-electronic filing is allowed by another court rule. A non-attorney may file documents electronically through the court-authorized service provider only if allowed by § 2-203(C). ~~Proof of service shall be made by certificate of the attorney causing the service to be made or by certificate of the party not represented by an attorney. A certificate of service shall state the manner in which service was made on each person served. When a document is electronically filed via the court-authorized service provider, the provisions of § 2-205 shall control.~~

(2) Time for Filing Other Documents; Exception for Discovery Documents. All documents after the complaint that are not filed electronically through the court-authorized service provider but that are required to be served ~~upon~~ on a party ~~(except discovery material), together with a certificate of service, shall~~ must be filed ~~in the court~~ within a reasonable time after service. ~~Neb. Ct. R. Disc. § 6-326(G) governs the filing of all discovery material.~~ But discovery documents, including disclosures, deposition notices, depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, requests for admissions, certificates of service for such discovery documents, deposition and discovery subpoenas, and returns of service for such subpoenas must not be filed unless they are relevant to a motion or the court orders them to be filed.

(3) Certificates of Service.

(A) Documents Served Electronically. Section 2-205 governs certificates of service for documents that are served electronically through the court-authorized service provider.

(B) Documents Served by Other Means. With the exception of discovery documents, if a document that must be served on a party is not served electronically through the court-authorized service provider, the attorney or party causing the document to be served must file a certificate of service no later than a reasonable time after service. The certificate of service must state when and how service was made on the party.

~~(e) Filing with the Court Defined.~~

~~(1) A person represented by an attorney must file electronically unless non-electronic filing is allowed by other court rule.~~

~~(2) A non-attorney may only file electronically if allowed by court rule.~~

COMMENTS TO § 6-1105

[1] The rule was amended in 2021 to incorporate the Electronic Filing, Service, and Notice System Rules. The rule was amended again in 2024. Some of the amendments made organizational and stylistic changes to make the rule easier to read. Other amendments made substantive changes, which are discussed below.

[2] The original version of subpart (a) provided that, except for pleadings that asserted new or additional claims for relief, documents did not need to be served on a party that was in default for failing to appear. The Supreme Court stated that the rule established that "a party in default for failure to appear is not entitled to notice when the plaintiff moves for default judgment." *Cruz-Morales v. Swift Beef Co.*, 275 Neb. 407, 414 (2008). Nevertheless, almost half of the district courts had local rules that could be read as requiring notice. The Supreme Court subsequently indicated that those local rules superseded the provisions of subpart (a). See *Fitzgerald v. Fitzgerald*, 286 Neb. 96 (2013).

[3] Having local rules that conflict with a statewide rule can cause confusion. To eliminate the potential for confusion, subpart (a) was amended in 2024 to require that motions for a default judgment and notices of hearing for such motions must be served on defaulting parties. The requirement of giving notice to a defaulting party is consistent with the general policy of deciding cases on the merits because it may encourage the defaulting party to seek leave to file a responsive pleading and defend the case on the merits.

[4] Subpart (a) originally contained a service provision for actions begun by seizing property. The provision was deleted in 2024 because it did not serve any purpose. The provision was based on Rule 5(a)(3) of the Federal Rules of Civil Procedure, a rule that is primarily aimed at admiralty actions in rem. Those actions cannot be filed in state court, however. Although civil forfeiture actions can be filed in state court, the Nebraska forfeiture statutes specify who must be served and how.

[5] Subpart (b)(3) specifies the methods for serving documents that are not filed electronically. One of those methods is service by mail. The provision originally authorized service by first-class mail. The 2024 Amendments deleted "first-class" because the Postal Service now offers a wider range of services, including Priority Mail. The deletion of "first-class" also means that a party now has the option of serving a document by certified mail if it so chooses.

[6] The 2024 Amendments also added two additional methods of service. The first additional method is in subpart 5(b)(3)(E), which provides that a party may serve a document by using a designated delivery service such as Federal Express or UPS. The subpart builds on the statutory provisions that allow the use of a designated delivery service to serve a summons. See Neb. Rev. Stat. § 25-505.01(1)(d).

[7] The second additional method is in subpart (b)(3)(F), which provides that a party may serve a document "by any manner . . . that the court authorized . . . ." The method is designed for unusual situations. For example, if the party's cell phone number is known but the party's email address and whereabouts are not, the court might authorize service by text messaging.

[8] Prior to 2024, the Court Rules of Pleading in Civil Cases and the Court Rules of Discovery in Civil Cases both contained provisions on filing and serving documents. The 2024 Amendments consolidated those provisions in § 6-1105.

[9] Section 6-1105(d)(2) provides that discovery documents must not be filed unless they are relevant to a motion or the court orders them to be filed. Although most discovery documents will not fall within the filing exceptions, some will. For example, discovery requests and responses may be filed when they are relevant to a motion to compel or a motion for a protective order. Discovery documents that are relevant to a motion for summary judgment, however, should not be filed. Parties should follow the procedures set out in § 6-1526 and offer the documents as evidence at the hearing.

§ 6-1106. Time.

(a) Governing Rules and Statutes ~~Computation~~. ~~[Reserved]~~ Neb. Rev. Stat. § 25-2221 governs the computation of time periods. Section 2-206 governs when documents received by the court-authorized service provider are deemed filed and served.

(b) ~~Enlargement~~ Extending Time.

(1) In General. When ~~by~~ under these rules an act may or must ~~by a notice given thereunder or by order of court an act is required or allowed to~~ be done ~~at or~~ within a specified time, the court may, for good cause, ~~shown may at any~~ extend the time: ~~in its discretion~~

(A) ~~(1)~~ with or without motion or notice ~~order the period enlarged~~ if the court acts, or if a request ~~therefor~~ is made, before the original time or its extension expires; ~~expiration of the period originally prescribed or as extended by a previous order,~~ or

(B) ~~(2) upon~~ on motion made after the time has expired if the party failed to act because ~~expiration of the specified period permit the act to be done where the failure to act was the result~~ of excusable neglect.

(2) Exceptions. If the time to act is specified by statute, the ~~The~~ court ~~may~~ must not extend the time ~~for taking any action specified in any statute,~~ except to the extent and under the conditions stated by statute ~~in the statutes~~.

~~(c) [Reserved]~~

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

(c) ~~(e)~~ Additional Time After Service by Mail. ~~Whenever~~ When a party ~~has the right or is required to do some~~ may or must act ~~or take some proceedings~~ within a ~~prescribed period~~ specified time after being served and service is made ~~the service of a notice or other document upon the party and the notice or document is served~~ under § 6-1105(b)(3)(C) ~~§ 6-1105(b)(2)(B)~~, ~~three~~ 3 days ~~shall be~~ are added after the ~~to the prescribed~~ period would otherwise expire.

COMMENTS TO § 6-1106

~~Computation of time and legal holidays are governed by § 25-2221 and Neb. Ct. R. § 2-206. Time of filing and time of service.~~

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

[1] Subpart (b) governs extensions of time. The court may extend the time for a party to act if the time is not set by statute. The original version of subpart (b) provided that the court could extend the time for "cause shown" under certain circumstances. The 2024 Amendments changed that to "good cause." The change was stylistic.

[2] The original version of the rule provided that 3 days were added to the applicable time period when a document was served by mail. It was unclear whether the 3 days were added to the time period itself or at the end of the time period as computed by § 25-2221. In 2024, the provision – which now appears in subpart (c) – was reworded to clarify that the 3 days are added after the period would otherwise expire.

[3] For example, answers to interrogatories are normally due 30 days after service. See Neb. Ct. R. Disc. § 6-333(b)(2). If the 30th day is a Saturday, the period would expire on Monday because § 25-2221 specifies that if the last day of the period falls on a weekend or holiday, the period expires at the end of the next day on which the courts are open. Adding 3 days after the period would otherwise expire (Monday) extends the period to Thursday.

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

(a) Pleadings. Only the following pleadings are allowed:

(1) ~~There shall be~~ a complaint

(2) ~~and~~ an answer to a complaint;

(3) a counterclaim or cross-claim, which must be stated in an answer rather than in a separate pleading;

(4) an answer ~~a reply~~ to a counterclaim ~~denominated as such, if the answer contains a counterclaim~~ designated as a counterclaim;

(5) an answer to a cross-claim~~, if the answer contains a cross-claim~~;

(6) a third-party complaint~~, if a person who was not an original party is summoned as a third-party defendant~~;

(7) an ~~and a third-party~~ answer~~, if~~ to a third-party complaint ~~is served.~~; and

(8) ~~No other pleading shall be allowed, except that~~ if the court ~~may order~~ orders one, a reply to an answer ~~or a third-party answer~~.

(b) Motions ~~and Other Papers~~. ~~[Reserved]~~

(1) Contents. A motion made in writing must have a caption with the court's name, the title of the action, the file number if one has been assigned, and the title of the motion. After naming the first party on each side, the title of the action may refer generally to other parties.

(2) Form. Motions filed with the court must be in the standard form specified in § 2-103(A).

(3) Effect of Statutes. A motion for an order authorized by statute must comply with the requirements of the authorizing statute. If a notice of motion is required, the notice must comply with the requirements of Neb. Rev. Stat. § 25-910.

COMMENTS TO § 6-1107

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

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

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

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

~~See § 25-801.01(2)(c).~~

[1] Subpart (a) lists the pleadings that are permissible in a civil action. The initial pleading is a complaint. The statute that authorized the promulgation of the pleading rules states that the "plaintiff's initial pleading shall be a petition when that designation is provided elsewhere by statutes. In all other civil actions the plaintiff's initial pleading shall be a complaint." Neb. Rev. Stat. § 25-801.01. At the time that the statute was enacted, family law actions (e.g., dissolution, support, and paternity actions) were the primary actions in which the initial pleading was statutorily designated as a petition. In 2004, however, the statutes governing those types of actions were amended to substitute "complaint" for "petition." See 2004 Neb. Laws 804-22 (L.B. 1207).

[2] There are nevertheless civil proceedings in which the initial pleading is not a complaint. For example, the initial pleading in an action for postconviction relief is a verified motion (Neb. Rev. Stat. § 29-3001). There are also numerous proceedings in which the initial pleading is a petition. Those proceedings include petition in error proceedings (Neb. Rev. Stat. § 25-1903), probate proceedings (Neb. Rev. Stat. § 30-2209), protection order proceedings (Neb. Rev. Stat. § 42-924), adoption proceedings (Neb. Rev. Stat. § 43-102), juvenile court proceedings (Neb. Rev. Stat. § 43-261), workers' compensation proceedings (Neb. Rev. Stat. § 48-173), Commission of Industrial Relations proceedings (Neb. Rev. Stat. § 48-811), mental health commitment proceedings (Neb. Rev. Stat. § 71-921), and administrative review proceedings (Neb. Rev. Stat. § 84-917).

[3] Prior to 2024, the list of permissible pleadings in subpart (a) included the responsive pleadings to counterclaims and cross-claims – but did not include counterclaims and cross-claims themselves. The reason is that counterclaims and cross-claims are included in the answer, rather than in a separate pleading. The rule, however, did not expressly state that. In 2024, subpart (a) was amended to add an express statement that both types of claims are permissible pleadings but that both are included in the answer, rather than in a separate pleading.

[4] Historically, the title of the responsive pleading to a counterclaim was "reply," rather than "answer." The 2024 Amendments changed the title to "answer."

[5] Prior to 2024, subpart (b) had a title ("Motions and Other Papers") but did not have any text. It simply read "Reserved." The 2024 Amendments added three subparts that are designed to help parties determine the format they should use when drafting motions brought under the Court Rules of Pleading in Civil Actions.

[6] Subpart (b)(1) identifies the contents of a motion's caption. It is modeled on § 6-1110(a), the rule that addresses the caption of pleadings. Subpart (b)(2) addresses the format of motions through a cross-reference to § 2-103(A), the rule that sets the standard format for all documents, including motions. Subpart (b)(3) contains a cross-reference to § 25-910, the statute that addresses notice of a motion. Subpart(b)(3) also contains a reminder that motions authorized by statute must comply with the authorizing statute.

§ 6-1108. General rules of pleading.

(a) ~~Claims~~ Claim for Relief. A pleading ~~which sets forth~~ that states a claim for relief~~, whether an original claim, counterclaim, cross-claim, or third-party claim, shall~~ must contain:

(1) a caption;~~,~~

(2) a short and plain statement of the claim showing that the pleader is entitled to relief;~~,~~ and

(3) a demand for ~~judgment for~~ the relief ~~the pleader seeks. Relief~~ sought, which may include relief in the alternative or ~~of several~~ different types of relief ~~may be demanded~~.

(A) General Damages. ~~If the recovery of money be demanded, the amount of special damages shall be stated but the~~ The amount of general damages ~~shall~~ must not be stated.

(B) Special Damages. Each category of special damages sought and the total amount of special damages sought must be stated in either the statement of the claim or in the demand for relief.

(C) Interest. If the recovery of prejudgment ~~and if~~ interest on damages is sought ~~thereon be claimed~~, the ~~time~~ date from which interest is to be computed ~~shall also~~ must be stated in either the statement of the claim or in the demand for relief.

(b) Defenses; ~~Form of~~ Admissions and Denials.

(1) In General. In responding to a pleading, ~~A~~ a party must:

(A) ~~shall~~ state in short and plain terms ~~the party's~~ its defenses to each claim asserted against it; and

(B) ~~shall~~ admit or deny the ~~averments upon which the~~ allegations asserted against it by an opposing ~~adverse~~ party ~~relies~~. ~~If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, a party shall so state and this has the effect of a denial.~~

(2) Denials; Responding to the Substance. A denial must ~~Denials shall~~ fairly ~~meet~~ respond to the substance of the allegation ~~averments denied~~.

(3) General and Specific Denials. A party may generally deny all the allegations of a pleading if the party has a good faith basis for denying at least one material allegation, generally deny all the allegations except those specifically admitted, or specifically deny designated allegations.

(4) ~~When a pleader~~ Denying Part of an Allegation. A party that intends in good faith to deny only ~~a~~ part of an allegation must admit the part that ~~or a qualification of an averment, the pleader shall specify so much of it as~~ is true and ~~material and shall~~ deny ~~only~~ the rest ~~remainder~~.

(5) Lacking Knowledge or Information. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) Effect of Failing to Deny. An allegation – other than one relating to the amount of damages – is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

~~The pleader may make denials as specific denials of designated averments or paragraphs, may generally deny all the averments except such designated averments or paragraphs as are expressly admitted, or may controvert all the averments of the preceding pleading by general denial.~~

(c) Affirmative Defenses.

(1) In General. In responding ~~pleading~~ to a ~~preceding~~ pleading, a party ~~shall set forth~~ must affirmatively state any avoidance or affirmative defense, including but not limited to:

- absolute or qualified immunity;
- accord and satisfaction;~~,~~
- arbitration and award;~~,~~
- assumption of risk;~~,~~
- claim or issue preclusion;
- contributory negligence; ~~discharge in bankruptcy,~~
- duress;~~,~~
- estoppel;~~,~~
- failure of consideration;~~,~~
- fraud;~~,~~
- illegality;~~,~~
- ~~injury by fellow servant,~~
- laches;~~,~~
- license;~~,~~
- payment;~~,~~
- release; ~~res judicata,~~
- statute of frauds;~~,~~
- statute of limitations;~~,~~ and
- waiver~~, and any other matter constituting an avoidance or affirmative defense~~.

(2) Mistaken Designation. ~~When~~ If a party ~~has~~ mistakenly ~~designated~~ designates a defense as a counterclaim, or a counterclaim as a defense, the court must ~~on terms~~, if justice ~~so~~ requires, ~~shall~~ treat the pleading as though it were correctly designated, and may impose terms for doing so ~~if there had been a proper designation~~.

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

~~(e)~~ Pleadings to Be Concise and Direct; Alternative Statements; Inconsistency ~~Consistency~~.

(1) In General. Each ~~averment of a pleading shall~~ allegation must be simple, concise, and direct. No technical ~~forms of pleadings or motions are~~ form is required.

(2) Alternative Statements of a Claim or Defense. A party may set ~~forth~~ out two or more statements of a claim or defense alternately or hypothetically, either in ~~one~~ a single count or defense or in separate ones ~~counts or defenses~~. If a party makes alternative statements, ~~When two or more statements are made in the alternative and one of them if made independently would be sufficient,~~ the pleading is ~~not made~~

~~insufficient~~ sufficient if any one of them is sufficient ~~by the insufficiency of one or more of the alternative statements~~.

(3) Inconsistent Claims or Defenses. A party may ~~also~~ state as many separate claims or defenses as ~~the party~~ it has, regardless of consistency and whether based on legal or equitable grounds. ~~All statements shall be subject to the standards set forth in § 25-824.~~

(e) ~~(3) Construction of~~ Construing Pleadings. Neb. Rev. Stat. § 25-801.01(d) requires that all pleadings be construed as to do substantial justice. ~~[Reserved]~~

COMMENTS TO § 6-1108

~~See § 25-801.01(2)(d).~~

[1] When the rules were promulgated in 2002, the provisions on pleading damages were split between § 6-1108 and § 6-1109. The 2024 Amendments combined the provisions and put them in § 6-1103(a)(3). General damages are discussed in subpart (a)(3)(A), and special damages are discussed in subpart (a)(3)(B).

[2] Subpart (a)(3)(B) requires a party to state each category of special damages it seeks and the total amount of those damages. A party may state the total amount by stating the amount (e.g., plaintiff seeks $60,000 in special damages), the amount of each category of special damages (e.g., plaintiff seeks $45,000 in past medical expenses and $15,000 in lost wages), or both (e.g., plaintiff seeks $60,000 in special damages, consisting of $45,000 in past medical expenses and $15,000 in lost wages).

[3] The required statement may be included in the statement of the claim or in the demand. It may also be included in both. The primary purpose of stating special damages is to give the defendant notice of the categories of damages sought. Notice can be given equally well by stating the categories in either the statement of the claim or in the demand.

[4] If a party seeks prejudgment interest, subpart (a)(3)(C) requires the party to state the starting date for the computation. The date may be included in the statement of the claim or in the demand. It may also be included in both. The purpose of requiring the date to be stated is to give the defendant notice that the plaintiff is seeking prejudgment interest and to allow the defendant to begin preparing its defense. As with special damages, notice can be given equally well by stating the date in the statement of the claim or in the demand.

[5] The Federal Rules of Civil Procedure provide that a party may enter a general denial only if the pleader "intends in good faith to deny all the allegations of a pleading." Fed. R. Civ. P. 8(b). The drafters of the Nebraska Court Rules of Pleading excluded that language from § 6-1108(b) to preserve the general denial as it existed under Code Pleading. Under Code Pleading, a defending party could enter a general denial if the defendant had a good faith basis for denying at least one material allegation of the plaintiff's pleading. See *Marshall v. Rowe*, 126 Neb. 817, 831 (1934). Because the standard is based on pre-notice

pleading case law, there is a risk that the standard may eventually be lost to history. To prevent that from happening, the 2024 Amendments added the standard to subpart (b)(3).

[6] Subpart (c)(1) contains a nonexclusive list of affirmative defenses. The 2024 Amendments made three changes to the list.

[7] First, "injury by fellow servant" was deleted and "absolute or qualified immunity" was added. Injury by fellow servant was a significant defense prior to the adoption of the workers' compensation statutes. Although it is still an affirmative defense, injury by a fellow servant is not of sufficient contemporary significance to warrant including it in the list.

[8] Second, "discharge in bankruptcy" was deleted because it is not a true affirmative defense. Discharge was deleted from the rule's federal counterpart in 2010 because under the federal bankruptcy statutes, "a discharge voids a judgment to the extent that it determines a personal liability of the debtor with respect to a discharged debt. The discharge also operates as an injunction against commencement or continuation of an action to collect, recover, or offset a discharged debt. For these reasons it is confusing to describe discharge as an affirmative defense." Fed. R. Civ. P. 8(c), Advisory Committee Notes to the 2010 Amendment. Regardless of whether a party pleads discharge in its responsive pleading, the debt is discharged as a matter of federal law.

[9] Third, "res judicata" was recast as "claim or issue preclusion." Historically, "res judicata" was sometimes used to refer to claim preclusion and sometimes used to refer to both claim and issue preclusion. "Collateral estoppel" was also used to refer to issue preclusion. The Supreme Court has indicated a preference for using the modern terminology of claim preclusion and issue preclusion. See *In re Interest of Noah B. et al.*, 295 Neb. 764, 773 (2017). Subpart (c)(1) was amended to reflect that preference.

[10] Subpart (d) governs alternative and inconsistent statements in a pleading. The original version of the subpart provided that those statements are subject to the standards set forth in Neb. Rev. Stat. § 25-824. Among other things, the statute provides that the signature of a party or attorney is a certification that there are good grounds for filing the pleading and that it is not being interposed for purpose of delay. The 2024 Amendments deleted the provision because it was unnecessary. The statute is well-known and applies by its own terms.

[11] The statute that authorized the Supreme Court to promulgate pleading rules contains an admonition that pleadings must be construed so as to do justice. See Neb. Rev. Stat. § 25-801.01(2)(d). There is a risk that judges, parties, and attorneys may be unaware of the provision because the statute is primarily an authorizing statute and the rules that it authorized were promulgated years ago. To reduce that risk, the 2024 Amendments added a cross-reference to the statute in subpart (e).

§ 6-1109. Pleading special matters.

(a) Capacity or authority to sue; legal existence.

(1) In General. Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's ~~It is not necessary to aver the~~ capacity ~~of a party~~ to sue or be sued;

(B) ~~or the~~ a party's authority ~~of a party~~ to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.~~, except to the extent required to show the jurisdiction of the court.~~

(2) Raising Those Issues. ~~When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity,~~ To raise any of those issues, a ~~the~~ party ~~desiring to raise the issue shall~~ must do so by a specific denial ~~negative averment~~, which ~~shall include such~~ must state any supporting ~~particulars as~~ facts that are peculiarly within the ~~pleader's~~ party's knowledge.

(b) Fraud~~,~~ or Mistake~~, Undue Influence;, Condition~~ Conditions of ~~the~~ Mind. In ~~all averments of~~ alleging fraud~~,~~ or mistake, ~~or undue influence,~~ a party must state with particularity the circumstances constituting the fraud or~~,~~ mistake~~, or undue influence shall be stated with particularity~~. Malice, intent, knowledge, and other ~~condition~~ conditions of a person's mind ~~of a person~~ may be ~~averred~~ alleged generally.

(c) Conditions Precedent. In pleading ~~the performance or occurrence of~~ conditions precedent, it suffices ~~is sufficient~~ to ~~aver~~ allege generally that all conditions precedent have occurred or been performed ~~or have occurred~~. But when denying that a condition precedent has occurred or been performed, a party must do so ~~A denial of performance or occurrence shall be made specifically and~~ with particularity.

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

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

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

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

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

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

COMMENTS TO § 6-1109

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

[1] In addition to making stylistic changes to the rule, the 2024 Amendments deleted three matters: undue influence, special damages, and limited representation.

[2] First, the 2024 Amendments deleted undue influence from the list of matters that subpart (b) requires a party to plead with particularity. The requirement of pleading with particularity is not aimed at factual details in general. It is instead aimed at specific pieces of information. For example, pleading the circumstances of fraud "with particularity means the who, what, when, where, and how: the first paragraph of any newspaper story." *Chaney v. Evnen*, 307 Neb. 512, 525 (2022).

[3] While the circumstances of fraud may involve specific pieces of information, the circumstances of undue influence do not. They involve a bundle of facts that, taken together, support an inference of undue influence. The contents of that bundle will vary from case to case. Therefore, undue influence does not belong in subpart (b). It should be noted, however, that a party pleading undue influence must still plead the bundle of facts that support the inference of undue influence rather than simply plead the conclusion that undue influence was present.

[4] Second, the 2024 Amendments deleted subpart (g). That subpart required a party to state special damages with specificity. The requirement is now included in § 6-1108(a)(3)(B).

[5] Third, the 2024 Amendments deleted subparts (h)-(i). Those subparts reproduced the text of § 3-501.2(d)-(e) of the Nebraska Rules of Professional Conduct as a way of reminding lawyers about limited appearances. Section 6-1111 is a better place for such a reminder. Therefore, the subparts on limited representation were deleted and a cross-reference to § 3-501.2 was added in § 6-1111(b).

§ 6-1110. Form of pleadings.

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

(b) Paragraphs; Separate Statements. ~~All averments of claim or defense shall be made~~ A party must state its claims or defenses in numbered paragraphs, ~~the contents of~~ each ~~of which shall be~~ limited as far as practicable to a statement of a single set of circumstances.~~; and a paragraph~~ A later pleading may ~~be referred to~~ refer by number to a paragraph in an earlier pleading ~~in all succeeding pleadings~~. If doing so would promote clarity, each ~~Each~~ claim founded ~~upon~~ on a separate transaction or occurrence – and each defense other than a denial – ~~denials shall~~ must be stated in a separate count or defense. ~~whenever a separation facilitates the clear presentation of the matters set forth.~~

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

COMMENT TO § 6-1110

The rule governs the format of pleadings, including the content of captions, the use of numbered paragraphs, and the use of incorporation by reference. The 2024 Amendments made stylistic changes to the rule but did not make any substantive changes.

§ 6-1111. Signing of pleadings; attorney assistance to parties not otherwise represented.

(a) Signature.

(1) Every pleading, written motion, and other ~~paper~~ document must ~~shall~~ be signed by at least one attorney of record in the attorney's name~~,~~ or by a party personally if the party is not represented by an attorney. Section 2-201(M) governs what constitutes a signature for documents filed electronically through the court-authorized service provider.

(2) Unsigned Document. The court must strike an ~~An~~ unsigned document that is not filed through the court-authorized service provider ~~other than an electronic filing, shall be stricken~~ unless the omission of the signature is corrected promptly after being called to the filer's attention ~~of the filer~~.

~~(2) An electronic filing made through a filer's court-authorized service provider account and authorized by the filer, together with the filer's name on a signature block, constitutes the person's signature. A user is responsible for all filings made on his or her account, absent clear and convincing evidence of unauthorized use of the account.~~

(3) Required Information. ~~Each~~ Every document ~~for filing~~ filed ~~shall~~ must state the signer's address, email address, ~~if any, and~~ telephone number, and, if filed by an attorney, the attorney's bar identification number~~, if filed by an attorney~~. Unless a ~~Except when otherwise specifically provided by~~ statute specifically states otherwise, a pleading ~~pleadings~~ need not be verified or accompanied by affidavit.

(b) Assistance to Parties Not Otherwise Represented by an Attorney. ~~When a lawyer is not an attorney of record, such lawyer may prepare pleadings, briefs, and other documents to be filed with the court so long as such filings clearly indicate that said filings are "Prepared By" along with the name, address, email address, telephone number, and bar number of the lawyer preparing the same. Such actions or filings shall not be deemed an appearance by the lawyer in the case.~~

(1) Preparation of Documents. Section 3-501.2(c) governs an attorney's preparation of pleadings, briefs or other documents for a party not otherwise represented by an attorney.

(2) Limited Appearance. Section 3-501.2(d)-(e) governs an attorney's entry of a limited appearance on behalf of a party not otherwise represented by an attorney.

~~**(c) (d)** [Reserved]~~

COMMENTS TO § 6-1111

[1] The rule is a truncated version of Rule 11 of the Federal Rules of the Federal Rules of Civil Procedure. Both rules provide that pleadings, motions, and other documents must be signed. That is where the similarities end. Federal Rule 11(b)-(d) addresses sanctions for filing pleadings and other documents that lack a reasonable basis in law or fact. Section 6-1111 does not address sanctions because they are governed by statute, more specifically, by Neb. Rev. Stat. § 25-824.

[2] The 2021 Amendments incorporated verbatim the definition of "signature" that appears in § 2-201(M) of Electronic Filing, Service, and Notice System Rules. The 2024 Amendments replaced the definition with a cross-reference to § 2-201.

[3] In 2014, provisions were added to subpart (b) to address when an attorney may prepare pleadings and other documents for a self-represented party. The provisions were identical to provisions in § 3-501.2(c) of the Nebraska Rules of Professional Conduct. In 2024, subpart (b) was given a new title – "Assistance to Parties not Otherwise Represented by an Attorney" – and the text was replaced by cross-references to § 3-501.2(c) and § 3-501.2(d)-(e). The latter rule addresses limited appearances.

§ 6-1112. Defenses and objections: ~~—~~when and how presented; by pleading or motion; motion for judgment on the pleadings; consolidating motions; waiving defenses; pretrial hearing.

(a) ~~When Presented~~ Time to Serve a Responsive Pleading.

(1) In General. Unless another time is specified by this rule, the time for serving a responsive pleading is as follows:

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

(B) ~~(2)~~ A party must serve an answer to a counterclaim or ~~served with a pleading stating a~~ cross-claim ~~against that party shall serve an answer thereto~~ within 30 days after being served with the pleading that states the counterclaim or cross-claim.

(C) A ~~plaintiff shall~~ party must serve a reply to ~~a counterclaim in the~~ an answer within ~~30~~ 21 days after being served with ~~the answer, or, if a reply is ordered by the court, within 15 days after service of the~~ an order to reply, unless the order specifies a different time ~~otherwise directs~~.

~~(3) [Reserved]~~

~~(4)~~ (2) Effect of a Motion. Unless ~~a~~ the court specifies a different time ~~is fixed by court order~~, ~~the service of~~ serving a motion ~~permitted~~ under this rule alters these periods ~~of time~~ as follows:

(A) if the court denies the motion or postpones its disposition until ~~the~~ trial ~~on the merits~~, the responsive pleading ~~shall~~ must be served within ~~20~~ 21 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading ~~shall~~ must be served within ~~20~~ 21 days after ~~the service of~~ the more definite statement is served.

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

(1) lack of subject matter jurisdiction ~~over the subject matter~~;

(2) lack of personal jurisdiction ~~over the person~~;

(3) ~~[reserved]~~ pendency of another action that involves the same subject matter and parties;

(4) ~~insufficiency of~~ insufficient process;

(5) ~~insufficiency of~~ insufficient service of process;

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

(7) failure to join a ~~necessary~~ party under Neb. Rev. Stat. § 25-323.

A motion ~~making~~ asserting any of these defenses ~~shall~~ must be made before pleading if a responsive ~~further~~ pleading is allowed ~~permitted~~. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or in a motion.

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

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

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

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under § 6-1112(b)(6) or § 6-1112(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Neb. Rev. Stat. §§ 25-1330 to 25-1336. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

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

(e) Motion for More Definite Statement. A party may move for a more definite statement of ~~If~~ a pleading to which a responsive pleading is allowed ~~permitted~~ but which is so vague or ambiguous that ~~a~~ the party cannot reasonably ~~be required to frame~~ prepare a response ~~responsive pleading, the party may move for a more definite statement before interposing a responsive pleading~~. The motion must be made before serving a responsive pleading and must ~~shall~~ point out the defects complained of and the details sought ~~desired~~. If the court orders a more definite statement ~~motion is granted~~ and the order ~~of the court~~ is not obeyed within ~~10~~ 14 days after notice of the order or within ~~such~~ the time ~~as~~ the court sets, ~~may fix,~~ the court may strike the pleading or issue any other appropriate ~~make such~~ order ~~as it deems just~~.

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

(1) on its own; or

(2) on a motion made by a party either before responding to the pleading or, if response is not allowed, within 30 days after being served with the pleading.

(g) ~~Consolidation of Defenses in Motion~~ Joining Motions.

(1) Right to Join. A ~~party who makes a~~ motion under this rule may be joined ~~join~~ with ~~it~~ any other motion allowed by this rule ~~motions then available to the party~~.

(2) Limitation on Further Motions. Except as provided in § 6-1112(h)(2) or (3), ~~If~~ a party that makes a motion under this rule must not make another motion under this rule raising a ~~but omits therefrom any~~ defense or objection that was ~~then~~ available to the party but omitted from its earlier motion. ~~which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.~~

(h) ~~Waiver or Preservation of~~ Waiving and Preserving Certain Defenses.

(1) When Some Are Waived. A party waives any defense listed in § 6-1112(b)(2), (b)(4), and (b)(5) by: ~~defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived~~

(A) omitting it ~~if omitted~~ from a motion in the circumstances described in § 6-1112(g)(2); ~~subdivision (g),~~ or

(B) failing either:

(i) to make it by motion under this rule; or

(ii) to include it ~~if it is neither made by motion under this rule nor included~~ in a responsive pleading or in an amendment ~~thereof permitted~~ allowed by § 6-1115(a)(1) ~~to be made~~ as a matter of course.

(2) When to Raise Others. Failure ~~A defense of failure~~ to state a claim upon which relief can be granted, ~~a defense of failure~~ to join a ~~necessary~~ party under Neb. Rev. Stat. § 25-323, ~~and an objection of failure~~ or to state a legal defense to a claim may be ~~made~~ raised:

(A) in any pleading ~~permitted~~ allowed or ordered under § 6-1107(a);~~, or~~

(B) by motion under § 6-1112(c); ~~for judgment on the pleadings,~~ or

(C) at ~~the~~ trial ~~on the merits~~.

(3) ~~Whenever it appears by suggestion of the parties or otherwise that~~ Pendency of Another Action or Lack of Subject Matter Jurisdiction. If the court determines at any time that another action is pending that involves the same subject matter and parties, the court may dismiss or stay the action or issue any other

appropriate order. If the court determines at any time that it lacks subject matter jurisdiction ~~of the subject matter~~, the court ~~shall~~ must dismiss the action.

(i) Hearing Before Trial. If a party so moves, any defense listed in § 6-1112(b)(1)-(7) – whether made by a pleading or by motion – and a motion under Rule 12 § 6-1112(c) must be heard and decided before trial unless the court orders a deferral until trial.

COMMENTS TO § 6-1112

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

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

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

~~Subpart (g) promotes expeditious procedure by permitting the simultaneous presentation of defenses and objections by a single motion. Some defenses will be waived under subpart (h)(1) if they are omitted from a motion that is filed. Other defenses can be asserted in subsequent procedural steps under subpart (h)(2) if they are omitted from a motion that is filed. The opening clause of subpart (b) provides that any motion is optional and that all the defenses listed can be asserted in the responsive pleading.~~

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

[1] Subpart (a) sets the time periods for serving various motions and pleadings. The subpart was originally promulgated in 2002. In 2009, the time periods stated in Rule 12(a) of the Federal Rules of Civil Procedure were reset in multiples of 7 – in other words, 7 days, 14 days, 21 days, or 28 days. Using multiples of seven ensures that the "final day falls on the same day of the week as the event that triggered the period – the 14th day after a Monday, for example, is a Monday. See Fed. R. Civ. P. 12, Advisory Committee Notes to the 2009 Amendment.

[2] The 2024 Amendments followed much the same approach. Time periods that were shorter than 30 days were reset to multiples of seven. The 30-day time period for serving a responsive pleading was

retained. Although the Federal Rule 12(a) sets the time period for serving a responsive pleading at 21 days, the time period in Nebraska has been 30 days since Nebraska first became a State.

[3] There was a minor anomaly in the original version of subpart (a). The time period for serving a court-ordered reply to an answer was 15 days after service of the order. By contrast, the time period for serving a responsive pleading after the denial of a motion to dismiss or grant of a motion for a more definite statement was 20 days. There is no obvious reason for the different time periods. Therefore, the 2024 Amendments eliminated the anomaly by setting 21 days as the time period for both a court-ordered reply [subpart (a)(1)(C)] and a responsive pleading after the denial or grant of a § 6-1112 motion [subpart (a)(2)].

[4] Subpart (a) does not set the time for a plaintiff to act if the court grants a motion to dismiss or quash filed pursuant to subpart (b). If the defect can be corrected – for example, by serving an amended complaint to correct a defect in the statement of the claim or by serving the summons and complaint again to correct a defect in service – then the court must set the time for the plaintiff to act.

[5] The defense of another action pending can be raised when there are two pending actions that involve the same subject matter and the same parties. The defense is based on the doctrine of jurisdictional priority: as between two courts of concurrent jurisdiction, the first court that acquires jurisdiction should retain it to the exclusion of the other. See *Jesse B. v. Tylee H.*, 293 Neb. 973, 987 (2016).

[6] Prior to the adoption of the Nebraska Court Rules of Pleading, the defense of another action pending could have been raised by demurrer when the defect appeared on the face of the petition. Otherwise, it could have been raised in the answer. The defense was not mentioned in the original version of § 6-1112, however. As a result, it was unclear how a party could properly raise the defense. The 2024 Amendments provided the missing clarity by inserting the defense into subpart (b)(3).

[7] Subpart (b)(3) was empty at the time. The reason was that the mechanics of raising the defense of improper venue are different in federal and state court. Rule 12(b)(3) of the Federal Rules of Civil Procedure allows the defense of improper venue to be raised by a pre-answer motion to dismiss. In Nebraska, however, the defense must be raised by a motion to transfer. See Neb. Rev. Stat § 25-403.01. Because the defense is not raised by a pre-answer motion to dismiss, the drafters of the Nebraska Court Rules of Pleading left subpart (b)(3) empty so that the numbering of the remaining subpart (b) defenses would be the same as it is in Federal Rule 12(b).

[8] Subpart (b)(7) originally referred the defense of failure to join a necessary party. At the time that subpart (b)(7) was promulgated, the Supreme Court used the terms “indispensable party” and “necessary party” interchangeably. In 2017, however, the court recognized a distinction between indispensable and necessary parties. The court stated that both indispensable and necessary parties have an interest in the subject matter of the action. The difference between the two is that the interest of an indispensable party will be affected by the judgment and the interest of a necessary party will not be. See *Midwest Renewable Energy v. American Engr. Testing*, 296 Neb. 73, 91 (2017).

[9] Even though there is a distinction between the two types of parties, the basis of the defense is the same: the missing party should be joined. Therefore, subpart (b)(7) was amended in 2024 to read "failure to join a party under Neb. Rev. Stat. § 25-323." The statutory reference was used because § 25-323 governs the joinder of both indispensable and necessary parties.

[10] Subpart (f) authorizes a motion to strike particular parts of a pleading. By contrast, Neb. Rev. Stat. § 25-913 authorizes a motion to strike an entire pleading.

[11] Subpart (g)(2) prohibits successive pre-answer motions. If a party files a motion that raises a defense or objection under § 6-1112, the party must include any other defenses or objections that the rule allows to be raised by motion instead of raising them in a second pre-answer motion. The purpose of the prohibition is to eliminate the ability of a party to drag out the pleading stage of a case by raising defenses and objections piecemeal. If the party omits a defense or objection that was available to the party when it filed its motion, the party cannot file a second motion to raise the omitted defense or objection.

[12] For example, if a party unsuccessfully files a pre-answer motion to dismiss for failure to state a claim on one ground, the party cannot subsequently file a second pre-answer motion to dismiss for failure to state a claim on different ground. That is true even though the defense of failure to state a claim is not waived by failing to raise it in an earlier motion. Instead of filing a second motion to dismiss, the party must raise the other ground in a manner authorized by subpart (h)(2). To allow the party to raise the other ground by filing a second pre-answer motion to dismiss would be contrary to the language and purpose of subpart (g)(2).

[13] The defense of another action pending is not jurisdictional. The Supreme Court has indicated, however, that an appellate court may raise the defense on an appeal even though the parties did not raise it below. See *Brinkman v. Brinkman*, 302 Neb. 315, 319 (2019). That indicates that the defense is one that cannot be waived.

[14] Subpart (h)(3) provides that a court must dismiss the action if it determines that it lacks subject matter jurisdiction. Subpart (h)(3) takes a different approach for the defense of another action pending by giving the court the discretion to dismiss or stay the action rather than mandating that the court do so.

§ 6-1113. Counterclaim and crossclaim ~~cross-claim~~.

(a) Stating a Counterclaim ~~Counterclaims~~. A pleading may state as a counterclaim any claim ~~which at the time of serving the pleading,~~ that the pleader has against an opposing party when the pleading is served.

(b) Failing to State a Related Counterclaim ~~Failure to Include Counterclaim; Effect in Subsequent Action~~. The failure to ~~A party who does not assert~~ state as a counterclaim a claim that arises out of the transaction or occurrence that is the subject matter of ~~an~~ the opposing party's claim precludes the pleader from recovering ~~cannot recover~~ costs from ~~against~~ that party in ~~any~~ a subsequent action ~~thereon~~ on the claim.

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

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

(e) Counterclaim Maturing or Acquired After Pleading. The court may permit a party to file ~~A claim which either matured or was acquired by the pleader after filing~~ a supplemental pleading ~~may, with the permission of the court, be presented as~~ asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading ~~by supplemental pleading~~.

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

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

(g) ~~(h)~~ ~~Joinder of~~ Joining Additional Parties. ~~[Reserved]~~ Neb. Rev. Stat. §§ 25-323 and 25-705(4) govern the addition of a person as a party to a counterclaim or cross-claim.

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

COMMENTS TO § 6-1113

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

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

[1] Subpart (a) allows but does not require a party to assert any counterclaim that it has at the time it serves its responsive pleading. Subpart (b) encourages a party to assert as a counterclaim a claim that arises out of the same transaction or occurrence as the claim asserted against the party. The rule does so by precluding the party from recovering costs if it brings the claim in a subsequent action. Furthermore, depending on the subject matter of the claim, a party who brings a subsequent action may be precluded from litigating the claim by the doctrine of claim preclusion or may be barred from relitigating issues by

the doctrine of issue preclusion. In short, a party should carefully evaluate the nature of a particular claim when deciding whether to assert it as a counterclaim or to make it the subject of a subsequent action.

[2] A counterclaim is stated in the party's responsive pleading. See § 6-1107(a)(3). The original version of § 6-1113(f) provided that a party could add a counterclaim by seeking leave of court to amend its pleading. The provision was deleted in 2024 because it was unnecessary. Section 6-1115(a) governs the amendment of all pleadings, including the amendment of a responsive pleading to add a counterclaim.

§ 6-1114. Third-party practice [~~r~~Reserved].

COMMENTS TO § 6-1114

~~Third-party practice is governed by § 25-331.~~

Rule 14 of the Federal Rules of Civil Procedure governs third-party practice. In Nebraska, third-party practice is governed by statute. See Neb. Rev. Stat. § 25-331. Section 6-1114 was included in the Nebraska Court Rules of Pleading in Civil Cases without any text so that the numbering of the rules corresponds to the numbering of the Federal Rules of Civil Procedure.

§ 6-1115. Amended and supplemental pleadings.

(a) Amendments In General.

(1) Amending as a Matter of Course. A party may amend ~~the party's~~ its pleading once as a matter of course no later than:

(A) 30 days after serving it, ~~before a responsive pleading is served~~ or~~,~~

(B) if the pleading is one to which ~~no~~ a responsive pleading is required ~~permitted~~, ~~the party may amend it within 30~~ 14 days after service of a responsive pleading or 14 days after service of a motion under § 6-1112(b), (e), or (f), whichever is earlier ~~it is served~~. When a responsive pleading is required from multiple parties, the 14-day period commences on service of the first responsive pleading or motion under § 6-112(b), (e), or (f).

(2) Other Amendments. In all other cases, a party ~~Otherwise a party~~ may amend ~~the party's~~ its pleading only with the opposing party's written consent or the court's ~~by~~ leave. ~~of~~ The court ~~or by written consent of the adverse party, and leave shall be~~ should freely grant leave ~~given~~ when justice so requires.

(3) Time to Respond. Unless the court orders otherwise, any required ~~A party shall plead in~~ response to an amended pleading must be made within the time remaining ~~for response~~ to respond to the original pleading or within ~~10~~ 14 days after service of the amended pleading, whichever ~~period may be longer, unless the court otherwise orders~~ is later.

(b) Amendments During and After Trial ~~Amendments to Conform to the Evidence~~.

(1) Based on an Objection at Trial. If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

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

(c) Relation Back of Amendments. ~~[Reserved]~~ Relation back of amendments is governed by Neb. Rev. Stat. § 25-201.02.

(d) Supplemental Pleadings. ~~Upon~~ On motion ~~of a party the court may, upon~~ and reasonable notice, the court may, on just ~~and upon such~~ terms ~~as are just~~, permit ~~the~~ a party to serve a supplemental pleading setting out any transaction, occurrence, or event that ~~forth transactions or occurrences or events which have~~ happened ~~since~~ after the date of the pleading ~~sought~~ to be supplemented. ~~Permission may be granted~~ The court may permit supplementation even though the original pleading is defective in ~~its statement of~~ stating a claim for relief or a defense. ~~If the court deems it advisable that the adverse~~ The court may order that the opposing party plead to the supplemental pleading within a specified time~~, it shall so order, specifying the time therefor~~.

COMMENTS TO § 6-1115

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

[1] Subpart (a)(1) allows a party to amend its pleading once as a matter of course, without the need to obtain leave of court or the consent of the opposing party. The 2024 Amendments made changes to the time for amending as a matter of course. The purpose of the changes is to give plaintiffs (and other parties asserting claims) the opportunity to amend their pleadings to address issues raised by an answer or by a motion to dismiss, a motion for a more definite statement, or a motion to strike. Giving plaintiffs that opportunity may help to move the case forward more efficiently and avoid the need for the court to rule on some or all the motions. The changes were modeled on Rule 15(a)(1) of the Federal Rules of Civil Procedure but set a shorter time period than the federal rules do.

[2] Cases may involve multiple parties, with some defendants appearing and serving pleadings or motions earlier than others. In those cases, the time period for amending as a matter of course for all parties begins to run when the first responsive pleading or § 6-1112(b), (e), or (f) motion is served.

[3] Subpart (a)(3) provides that unless the court orders otherwise, the responsive pleading to an amended pleading must be served within the time remaining to respond to the original pleading or 14 days after service of the amended pleading, whichever is longer. The 2024 Amendments increased the number of days from 10 to 14 as part of the general resetting of time periods in multiples of 7. The reason for resetting the time periods is discussed in Comment [1] on § 6-1112.

[4] The original title of subpart (b) was "Amendments to Conform to the Evidence." The subpart provided, among other things, that an amendment was not necessary when the issues were tried by the express or implied consent of the parties. The most common scenario of implied consent is that of a party failing to object when the opposing party offers evidence that is uniquely relevant to an unpled issue.

[5] It was unclear whether the implied consent provisions applied to summary judgment motions or were instead limited to trials. The issue was raised but not decided in *Blinn v. Beatrice Community Hosp. & Health Ctr.*, 270 Neb. 809 (2006). The 2024 Amendments answer the question. The amendments changed the title of subpart (b) to "Amendments During and After Trial" and restructured the subpart to make it clear that the provisions only apply to objections made or to consent given during trial.

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

COMMENT TO § 6-1116

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

Rule 16 of the Federal Rules of Civil Procedure governs pretrial conferences, case scheduling, and case management. In Nebraska, pretrial conferences are governed by § 6-1421 of the Uniform County Court Rules of Practice and Procedure and by § 6-1522 of the Uniform District Court Rules of Practice and Procedure. Section 6-1116 was included in the Nebraska Court Rules of Pleading in Civil Cases without any text so that the numbering of the rules corresponds to the numbering of the Federal Rules of Civil Procedure.

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CHAPTER 2: APPEALS

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Article 2: Electronic Filing, Service, and Notice System in Nebraska Trial and Appellate Courts.

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§ 2-205. Electronic service; certificate of service.

(A) Electronic Service as defined in § 2-201(B) shall be used by Nebraska attorneys and other authorized non-attorney users for any electronically filed document, except for the initial pleading and summons.

~~(B) Electronic service to any Nebraska attorney or registered non-attorney user shall constitute service pursuant to Neb. Ct. R. § 6-1105(b)(2)(D).~~

~~(C)~~ (B) All users shall use the system-generated Certificate of Service and not separately attach a Certificate of Service document to the filing. This system-generated certificate shall be deemed to comply with ~~Neb. Ct. R. § 6-1105 and~~ all applicable statutes.

~~(D)~~ (C) If the system-generated Certificate of Service would be inaccurate, ~~or~~ misleading, or incomplete, then the user shall file a supplemental Certificate ~~certificate of service~~ to explain or reconcile the inaccuracy or to provide the missing information. ~~This~~ The supplemental Certificate must be attached to the filing unless the filing has already occurred and shall not repeat accurate information from the system-generated Certificate.

. . . .