

On July 1, 2020, the Nebraska Supreme Court adopted Neb. Ct. R. § 6-2101 et seq. entitled “Interim Rules on Livestreaming Proceedings in Nebraska Trial Courts”:

## **CHAPTER 6: TRIAL COURTS**

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### **Article 21. Interim Rules on Livestreaming Proceedings in Nebraska Trial Courts.**

#### **§ 6-2101. Purpose.**

It is the intent of the Nebraska Judicial Branch that court proceedings shall be open to the public unless otherwise required by law. When the public is prohibited or otherwise limited from attending court proceedings at the courthouse by reasons outside of the public’s control, use of livestreaming technology is an appropriate method to allow public access to court proceedings.

The Nebraska Supreme Court hereby authorizes approved Nebraska trial courts to use court-authorized video technology to livestream any court proceeding where the public would otherwise have the right to attend in person.

Livestreaming of court proceedings is limited to a pilot project beginning on the date of adoption of this rule, in trial courts where the technology is available, and as authorized by the Nebraska Supreme Court. A schedule shall be implemented by the Administrative Office of the Courts and Probation, and shall inform the public of those courtrooms where livestreaming may occur.

The following rules are hereby adopted for this livestream pilot:

#### **§ 6-2102. Authority.**

(A) Only authorized Nebraska trial courts may livestream court proceedings.

(B) No member of the public has the right to livestream any court proceeding without express permission of the judge presiding over the court proceeding.

(C) Members of the news media are governed by Neb. Ct. R. § 6-2001 et seq.

#### **§ 6-2103. Limitations.**

(A) Livestreaming shall not occur in any proceeding where by statute public access is limited or prohibited.

(B) No recording, video/audio taping, photographing, or otherwise reproducing, saving, disseminating, or sharing via social media or other means of any livestream feeds or content therein shall occur by any person. Violations of this rule are punishable by contempt.

(C) Livestream does not create, replace, or supplement the official record of the proceeding.

**§ 6-2104. Trial court procedure.**

(A) The proceeding should convene publicly in open court with the livestream activated.

(B) If a request to limit or close public access to the proceeding is made by counsel or a self-represented litigant due to extremely sensitive or confidential evidence, the court shall determine the matter on the record prior to the admission of the extremely sensitive or confidential evidence.

(1) The movant must describe the evidence in question and clearly identify the overriding interest that will be prejudiced if the evidence is publicly presented.

(2) The court should obtain the agreement or objection to the request of all counsel and self-represented litigants on the record.

(C) A court may also initiate the limitation of the public access via livestream sua sponte; however, courts should exercise caution in doing so over the objection of one or both parties.

(D) Before halting or terminating the livestream, the court shall find on the record that the evidence is of such a nature that the protection of the evidence or witness overcomes the presumption of public presentation.

(E) The court shall consider on the record all reasonable alternatives to terminating the livestream, including but not limited to:

(1) Reducing testimony to affidavit in lieu of live testimony;

(2) Interrupting video and temporarily permitting only audio streaming;

(3) Prohibiting screen sharing of the exhibits on livestream;

(4) Testimony in chambers or in-chambers interview of a child in lieu of live testimony; and

(5) Temporary interruption of the livestream.

(F) If the court determines to not halt or terminate the livestream but instead employs a lesser restriction, the court should find and state that a “substantial reason” for the measure exists, state that no less restrictive means would suffice, and make additional findings under subsection (G) below.

(G) If the court determines the livestream should be halted or terminated, the court should make the following findings and recite them on the record:

(1) The overriding interest at stake;

(2) The specific testimony or evidence found to be of extreme sensitivity or entitled to confidentiality that justifies closure;

(3) That public access shall be interrupted or terminated;

(4) That no less restrictive means would suffice; and

(5) Any other requirements set forth in Neb. Ct. R. § 6-204.

(H) All portions of the proceeding that do not independently meet this threshold should occur with the livestream activated.