

On December 8, 2021, the Nebraska Supreme Court adopted the following new Rules for County Court Expedited Civil Actions, Neb. Ct. R. § 6-2201 et seq., along with new Appendices 1 through 5, all with a delayed effective date of January 1, 2022:

CHAPTER 6: TRIAL COURTS

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Article 22: Rules for County Court Expedited Civil Actions.

§ 6-2201. Application and Interpretation of Rules.

(a) These Rules apply to civil actions brought under the County Court Expedited Civil Actions Act (Neb. Rev. Stat. §§ 25-2741 to 25-2749) (the Act). The Expedited Civil Action forms referenced in these Rules can be found as Appendices to these Rules. These Rules and forms apply to the extent that they are not in conflict with the Act or other applicable statutes. The Nebraska Court Rules of Pleading in Civil Cases, Neb. Ct. R. Pldg. § 6-1101 et seq., and Nebraska Court Rules of Discovery in Civil Cases, Neb. Ct. R. Disc. § 6-301 et seq., apply whenever they address matters that are not addressed by the Act or these Rules.

(b) These Rules are designed to further the purpose of the Act, which is to increase access to the Nebraska courts by establishing a streamlined process for handling civil actions in which the only relief sought is a money judgment for a limited amount. The streamlined process is designed for cases that do not involve complex legal or factual issues. These Rules should be interpreted in light of the purpose of the Act.

(c) As used throughout these Rules, the term “side” means all litigants with generally common interests in the litigation.

§ 6-2202. Election to Proceed.

(a) A plaintiff who is an individual may elect to proceed under the Act regardless of whether the plaintiff is represented by an attorney or is self-represented. A plaintiff suing in a representative capacity (for example, a personal representative or next friend) or as an entity with the capacity to sue may elect to proceed under the Act only if the plaintiff is represented by an attorney.

(b) A plaintiff may elect to proceed by completing Appendix 1 and filing it along with the complaint in the county court. Both the complaint and Appendix 1 must be included when service is made on a defendant. If more than one plaintiff is named in the complaint, a separate section Appendix 1 must be created for each plaintiff.

§ 6-2203. Initial Disclosures.

(a) Unless the parties stipulate or the court orders otherwise, a party must disclose and provide the following to the other parties without awaiting a discovery request.

(1) Potential Witnesses. The name and, if known, the address, telephone number, and email address of each individual likely to have nonprivileged information that the party may use to support its claims or defenses, unless the use would be solely for impeachment. For each such individual, the party must also provide the subjects of the information that the individual is likely to have.

(2) Statements. Identification of a previous statement about the action or its subject matter that is in the party's possession, custody, or control and was made by any party or by any person not a party to the action. For each such statement, the party must state in its disclosure whether the party asserts that the statement is privileged or protected from disclosure, and if so, the basis for the assertion.

(3) Documents. A copy of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

(4) Damages. A list of each category of damages, economic and noneconomic, claimed by the party. If the category involves economic damages, the party must also provide a computation of the amount of each category of economic damages and a copy of the discoverable documents on which each such computation is based. For noneconomic damages, the party shall only list the category of damages, but is not required to provide an amount of damages claimed.

(i) In actions for the recovery of damages for a physical or mental injury or for injury to or loss of personal property, the term "category of damages" refers to the categories listed in NJI2d Civ. 4.00, which can be found as Appendix 5.

(ii) In actions for the recovery of damages for a physical or mental injury, the party seeking the recovery of damages must (a) state the name and address of each health care provider who treated or examined the party for the injury and (b) provide a signed release that allows the opposing party to obtain from each such provider the party's medical records.

(iii) The opposing party must give contemporaneous notice to the party who provided the release when the opposing party uses the release to obtain the party's medical records. The opposing party must also provide to all other parties, including the party who provided the release, a copy of all records obtained pursuant to the release. Any party who requests the opposing party to provide the records in nonelectronic form must pay the costs that the opposing party incurs in providing the records in that form.

(iv) Any party receiving medical records pursuant to this subpart shall keep the records confidential and use them solely for purposes of the litigation. The requirement to keep the records confidential does not preclude the party from using the records at trial or in support of a motion. If necessary, pursuant to Neb. Ct. R. Disc. § 6-326(c), the court may enter an order that includes specific requirements for keeping the records confidential, for using them at trial or in support of a motion, and for destroying or deleting them.

(5) Insurance. A defending party must provide a copy of the declarations page contained in any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment. If coverage is or may be contested, the defending party must also provide a copy of the agreement and state the ground(s) on which coverage is or may be contested.

(b) Format. Unless the court orders otherwise, the disclosures must be in writing and signed by the attorney or self-represented party. If a party has previously provided to other parties in writing any of the information that the party is required to include in its initial disclosures, instead of providing the information again, the party may state in its disclosures that the information was previously provided and shall indicate where the other parties can find the information in the previously provided materials.

(c) Time. The disclosures must be served electronically within the following times.

(1) A party serving a pleading that contains a claim for relief must serve its initial disclosures regarding the claim within 14 days after that party is served with the first responsive pleading to the claim. A defending party must serve its initial disclosures regarding a claim for relief within 28 days after that party serves a responsive pleading to the claim.

(2) A party need only serve its initial disclosures on the parties that have appeared in the action. The party must serve a later-appearing party within 14 days of when the later-appearing party serves its first pleading.

(d) Basis for Initial Disclosures; Unacceptable Excuses. A party must make its initial disclosures based on the information reasonably available to it at the time. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(e) Discovery. Unless the parties stipulate or the court orders otherwise, no discovery requests may be served before the parties have made their initial disclosures.

§ 6-2204. Expert Witness Disclosures.

(a) Unless the parties stipulate or the court orders otherwise, each side must disclose the identity of any expert witness that the side may use at trial and, for each such expert, the side must disclose and provide:

(1) a complete statement of all opinions the expert will express and the basis and reasons for them;

(2) the facts or data considered by the expert in forming them;

(3) any exhibits that will be used to summarize or support them;

(4) a copy of the expert's resume or curriculum vitae; and

(5) a statement of the compensation for the expert's work and testimony in the case, which may be satisfied by the production of a fee schedule.

(b) Unless the court orders otherwise, the expert witness disclosures must be in writing and signed by the attorney or self-represented party. The plaintiff's side must electronically serve its expert witness disclosures on the opposing side no later than 60 days after the first responsive pleading is served in the action and the opposing side must electronically serve its expert witness disclosures no later than 90 days after the first responsive pleading is served.

(c) Treating Health Care Providers. If a plaintiff intends to use a treating health care provider as an expert witness at trial, the plaintiff may provide a report using Appendix 2 instead of disclosing the information in subparts (a)(1)-(4).

(d) Objection to Provider's Report. The opposing side may file an objection to the health care provider's report on the grounds that the report is untimely, incomplete, or unsigned; the explanations are incomplete or insufficient; the provider failed to attach required records or documents; or the report does not otherwise comply with the Act. The objection must be filed and served no later than 30 days after the date on which the report was electronically served.

§ 6-2205. Expert Witness Depositions.

(a) Health Care Provider. If one side identifies a treating health care provider as its expert witness and provides a report from the provider using Appendix 2, any party against whom the report may be used has the right to cross-examine the provider by taking the provider's deposition. The designating side may also examine the provider at the deposition.

(b) Cost. The side taking the deposition is responsible for the costs of taking the deposition, including the payment of a reasonable fee to the health care provider for the time spent being deposed. If the side providing the report also examines the provider, the side shall be responsible for a proportionate share of the costs and fees. Unless the parties stipulate or the court orders

otherwise, each side's proportionate share shall be the percentage calculated by dividing the number of deposition pages attributable to the side's examination of the provider by the total number of deposition pages. Each side shall pay its percentage share of deposition costs and provider fees.

(c) Other Experts. Either side may take the deposition of any other expert witness after service of the disclosures required by § 6-2204. If the side that did not retain the expert takes the deposition, the side must pay the expert a reasonable fee for the time spent being deposed.

(d) Use at Trial. The application of the Act constitutes exceptional circumstances that allow the deposition of an expert witness to be used at trial pursuant to § 6-332(a)(3)(E).

§ 6-2206. Supplementing Disclosures and Responses.

(a) In General. A party that has made a required disclosure or that has responded to an interrogatory, request for production, or request for admission must supplement or correct its disclosure or response:

(1) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(2) as ordered by the court.

(b) Expert Witnesses. For an expert witness, the party's duty to supplement extends both to information included in the disclosure or report and, if the expert is deposed, to information given during the expert's deposition.

§ 6-2207. Consequences of Failure to Disclose or Supplement.

If a party or side fails to serve a disclosure or provide a release within the time specified by these Rules, any other party or side may file a motion to compel the party to do so. At the discretion of the court, a party may be precluded from using information, documents, or witnesses that the party failed to provide or identify as required by these Rules.

§ 6-2208. Pretrial Determination of Authenticity and Hearsay Objections to Admissibility of Documents.

(a) A party seeking to offer one or more documents into evidence without testimony or certification from a custodian or other qualified witness to establish the authenticity of the document or to establish either that the document is not hearsay or satisfies the requirements of an exception to the hearsay rule must file and electronically serve on other parties a Notice of Intent to Offer. Appendix 3 or another document containing the same information must be used.

(b) Unless the court orders otherwise, a Notice of Intent to Offer must be filed and electronically served no later than 90 days after the first responsive pleading is served in the action.

(c) A party objecting to any document listed in a Notice of Intent to Offer on the basis of authenticity or hearsay must file and electronically serve on all parties an Objection to Intent to Offer within 30 days after service of the Notice of Intent to Offer. Appendix 4 or another document containing the same information must be used.

(d) If an objection is made, the parties must in good faith confer to resolve the matter. In attempting to resolve the matter, the parties must consider the mandate of § 25-2747(1) of the Act: parties “should stipulate to factual and evidentiary matters to the greatest extent possible.” If the parties are unable to resolve the matter, either party may file a motion for a ruling on the objection. In its motion, the party must include a certification that the party conferred or attempted to confer with the other party to resolve the dispute without court action. If the court sustains the objection, a party is not precluded from offering the document at trial with testimony or certification from a custodian or other qualified witness.

§ 6-2209. Case Management and Scheduling.

(a) Mediation. The court may enter an order referring the case to mediation. The referral to mediation will not alter any of the times specified in these Rules, unless the parties stipulate or the court finds that there is good cause for doing so.

(b) Scheduling and Case Progression. As soon as the first responsive pleading is filed, the court shall enter an order setting the matter for trial. The trial date shall be no more than 180 days from the date the initial complaint was filed. The trial date is subject to a later continuance for good cause shown. The court may enter an order that states the dates for completing discovery, filing specified motions, or being prepared for trial, such dates shall not be in conflict with these Rules or timelines set forth in the Act.

(c) Witnesses and Exhibits. The court may enter an order that requires the parties or sides to identify the witnesses and documents that they may use at trial. The order may impose such requirements as the court deems appropriate, including a requirement that the parties or sides serve disclosures at specified times, file a joint statement of witnesses and exhibits, or participate in a pretrial conference.

Appendix 1 (Election and Certification Form)

IN THE COUNTY COURT OF [Insert] COUNTY, NEBRASKA

| | | |
|-----------------------------------|---|----------------------------|
| |) | No. _____ |
| |) | |
| [insert case title of proceeding] |) | ELECTION AND CERTIFICATION |
| |) | OF ELIGIBILITY TO PROCEED |
| |) | UNDER THE EXPEDITED CIVIL |
| |) | ACTIONS ACT |
| |) | |

[Insert name of plaintiff] is the plaintiff in this action. [Insert name of plaintiff] is:

___ Represented by counsel: [insert name of attorney].

___ A business or other entity, or in a representative capacity, and represented by counsel:
[insert name of attorney].

___ Proceeding as a self-represented litigant in this matter without an attorney.

Plaintiff certifies the following:

1. Plaintiff elects to proceed under the County Court Expedited Civil Actions Act, Neb. Rev. Stat. §§ 25-2741 to 25-2749. If represented by counsel, plaintiff has conferred with plaintiff’s attorney about using the Expedited Civil Action procedures. If a business or other entity, or in a representative capacity, [insert name] is duly authorized to execute this certification.

2. Plaintiff is eligible to proceed under the Act because (1) the only relief sought in this action is a money judgment and (2) the amount of the claim against the defendant(s) does not exceed the county court jurisdictional amount set forth in § 24-517, which is currently \$57,000.

3. Plaintiff further certifies that the amount of the claim includes all damages, penalties, attorney’s fees, and interest accrued before the filing date, but excludes prejudgment interest accrued after the filing date, postjudgment interest, and costs.

4. Plaintiff certifies this is not an action that can be filed in Small Claims Court, is not a domestic relations matter, and is not an action to determine paternity or custody as defined in Neb. Rev. Stat. § 25-2740.

5. Plaintiff understands plaintiff is waiving the right to recover more than \$57,000 in damages, penalties, attorney's fees, and accrued interest unless the court later enters an order terminating application of the Act. If the matter is tried to a jury as demanded by one of the parties pursuant to Neb. Rev. Stat. § 25-2705 and the jury returns a verdict for that results in a total award in excess of \$57,000--including damages, penalties, attorney's fees, and accrued interest, but excluding costs, postjudgment interest, and prejudgment interest that accrued after the complaint was filed--the court will reduce the total award to \$57,000 and enter judgment for \$57,000.

6. Plaintiff understands plaintiff is required to make the disclosures listed in Neb. Ct. R. §§ 6-2203 and 6-2204 and in the manner and at the times stated in the Rules. Plaintiff must make the disclosures without the court notifying plaintiff or the other parties asking plaintiff to do so. Pursuant to § 6-2205, plaintiff may not be allowed to use witnesses or exhibits at trial if plaintiff fails to disclose information about them or fails to disclose the information in the manner and at the times stated in the Rules.

7. Plaintiff has a duty to supplement disclosures and discovery responses under § 6-2206. If there is new information, if plaintiff omitted information, or if plaintiff provided incorrect information, plaintiff is required to provide the other parties with the new, omitted, or correct information. If the other parties received the new, omitted, or correct information in writing or through the discovery process, such as through interrogatories, requests for production of

documents, or depositions, plaintiff does not have to provide the new, omitted, or correct information again.

With this knowledge, plaintiff elects to proceed under the Expedited Civil Actions Act procedures.

Date:

[Plaintiff's Name, Address, Phone, and Email]

Date:

[Attorney's Name, Address, Phone, and Email]

[If there is more than one plaintiff, each plaintiff shall separately certify and file Appendix 1 with the Complaint.]

Appendix 2 (Health Care Provider Report and Attorney Disclosure)

IN THE COUNTY COURT OF [Insert] COUNTY, NEBRASKA

[insert case title of proceeding]) No. _____
)
) HEALTH CARE PROVIDER
) REPORT IN LIEU OF TESTIMONY
) PURSUANT TO NEB. REV. STAT.
) § 25-2747(6)(a)(b)

Patient Name:

Type of Incident:

Date of Incident:

Please answer the following questions with information and opinions regarding the named patient.

___ Check here if you are attaching separate pages for any of your answers to the questions below. Be sure that the question to which your answer relates appears at the top of each additional page. *Number of additional pages:* ___

1. What degrees, licenses, and board certifications do you hold, if any, and what year was each of them attained? If the information is included in your curriculum vitae or resume, you may attach it to this report and answer this question by stating "See Attached."

2. What injuries, if any, did the patient sustain in the above-referenced incident?

3. What medical care has the patient received from you that was reasonably needed to treat the injuries the patient sustained in the incident? Include treatment provided by other care providers to the extent you are aware of such. Include medications prescribed, therapy recommended, surgery recommended, and any other treatments needed as a result of this injury.

4. Have there been or are there any restrictions or limitations placed on the patient or the patient's employment due to injuries sustained in the incident? ___ YES ___ NO

If YES, please describe them, including the actual or expected duration of the restrictions or limitations.

5. Has the patient reached maximum medical improvement from the injuries sustained in the incident? ___ YES ___ NO.

If YES, what is the date of the patient's maximum medical improvement? If NO, when do you expect the patient will reach maximum medical improvement?

6. If you have given the patient a permanent impairment rating for the injury, please state the rating.

7. Is there any additional care or are there any additional medications that are reasonably certain to be needed by and provided to the patient in the future as a result of the injuries sustained in the incident? ___ YES ___ NO

If YES, please describe the expected care or additional medications. Include in your description the expected frequency, duration, and, if known, reasonable cost.

8. To your knowledge, did the patient have any preexisting, symptomatic conditions that were aggravated by the injuries sustained in the incident? ___ YES ___ NO

If YES, please describe the preexisting conditions and the extent of their aggravation.

9. To your knowledge, did the patient have any preexisting, nondisabling, nonsymptomatic conditions that became symptomatic as a result of the incident? ___ YES ___ NO

If YES, please describe the preexisting conditions and the extent of the symptoms.

10. To your knowledge, is there anything that the patient has done or failed to do that has aggravated the patient's condition or impaired the patient's recovery? ___ YES ___ NO

If YES, please explain.

11. Have you reviewed or relied upon any medical records other than those generated by you or other providers in your office in forming your opinions to the answers to the questions above?
___ YES ___ NO

If YES, please identify or attach the records that you have reviewed and relied upon in forming your answers.

12. Have you relied upon any other documents or information about the patient or the incident, other than the records indicated above? ___ YES ___ NO

If YES, please state what documents or information you relied upon, and the manner by which you received it.

Oath and Signature

I, [name of health care provider], certify under penalty of perjury and pursuant to the laws of the State of Nebraska that the contents of this Report are true and correct and the opinions are stated with a reasonable degree of medical certainty.

Date:

[Provider's Name, Address, Phone, and
Email]

Attorney's Disclosure of Communications

List any oral, written, or electronic communications between you or anyone in your office and the above-named treating health care provider or anyone in the provider's office regarding [name of patient].

For each such communication, identify the date of the communication and, if the communication was written or electronic, and attach copies of such communications.

Attorney's Oath and Signature

I, [name of attorney], certify under penalty of perjury and pursuant to the laws of Nebraska that the contents of my Disclosure are true and correct.

Date:

[Provider's Name, Address, Phone, and Email]

not to be hearsay or appears to fall within an exception to the hearsay rule.

[Repeat for each document]

Date:

[Party's or Attorney's Name, Address, Phone, and Email]

Appendix 4 (Response to Offer of Documents)

IN THE COUNTY COURT OF [Insert] COUNTY, NEBRASKA

| | | |
|-----------------------------------|---|-----------------------|
| |) | No. _____ |
| |) | |
| [insert case title of proceeding] |) | RESPONSE TO INTENT TO |
| |) | OFFER DOCUMENTS |
| |) | |
| |) | |

The undersigned, [name of party], received a Notice of Intent to Offer Documents from [party] on [date] and responds as follows:

Document # [insert]:

[Party objects / does not object] to the admission of this document on authenticity grounds. *[If there is an objection, explain the basis for the objection--i.e., explain why the document on its face does not appear to be what the proponent claims it to be or why there is a substantial question about the authenticity of the document.]*

[Party objects / does not object] to the admission of this document on hearsay grounds. [If there is an objection, explain the basis for the objection – i.e., explain why the document on its face appears to be hearsay, why the document on its face does not appear to fall within a hearsay exception, or why there is a substantial question about the trustworthiness of the document.]

[Repeat for each document.]

Date:

[Party's or Attorney's Name, Address, Phone, and Email]

NJI2d Civ. 4.00

General Instruction on Damages in a Tort Action Where Joint and Several Liability *Is* an Issue --Economic and Noneconomic Damages

In Instruction No. ____, I spoke of economic and noneconomic damages.

ECONOMIC DAMAGES

I am about to give you a list of things you may consider in making your decision regarding economic damages. From this list, you must only consider those things you decide were proximately caused by defendants' negligence.

1. The reasonable value of medical (*, hospital, nursing, and similar*) care and supplies reasonably needed by and actually provided to the plaintiff (*and reasonably certain to be needed and provided in the future*);
2. The (*wages, salary, profits, reasonable value of the working time, business*) the plaintiff has lost because of (*his, her*) (*inability, diminished ability*) to work;
3. The reasonable value of the (*earning capacity, business or employment opportunities*) the plaintiff is reasonably certain to lose in the future;
4. Reasonable funeral costs;
5. The reasonable value of plaintiff's loss of the use of (*his, her*) property;
6. The reasonable value of the cost of repair or replacement (*here describe the thing repaired or replaced*);
7. The reasonable cost of obtaining substitute domestic services.

NONECONOMIC DAMAGES

I am about to give you a list of things you may consider in making your decision regarding noneconomic damages. From his list, you must only consider those things you decide were proximately caused by defendants' negligence.

1. The reasonable monetary value of the physical pain and mental suffering (*and emotional distress*) the plaintiff has experienced (*and is reasonably certain to experience in the future*);

2. The reasonable monetary value of the inconvenience the plaintiff has experienced (*and is reasonably certain to experience in the future*);

3. The reasonable monetary value of loss of society and companionship suffered by the plaintiff and reasonably certain to be suffered in the future;

4. The reasonable monetary value of any injury to plaintiff's reputation;

5. The reasonable monetary value of any humiliation the plaintiff has experienced (*and is reasonably certain to experience in the future*);

6. The plaintiff's (*husband's, wife's*) loss of consortium. Consortium means those things to which a person is entitled by reason of the marriage relationship. It includes affection, love, companionship, comfort, assistance, moral support, and the enjoyment of (*sexual, conjugal*) relations.

ECONOMIC AND NONECONOMIC DAMAGES

In your determination of economic and noneconomic damages, you must consider the nature and extent of the injury, including whether the injury is temporary or permanent, and whether any resulting disability is partial or total.