

NOTICE OF COMMENT PERIOD

The Nebraska Supreme Court considered proposed amendments to Neb. Ct. R. App. P. § 2-105 entitled “Bill of exceptions; making, preserving, requesting, and delivery of the record of trial or other proceeding” and § 2-105.01 entitled “Bill of exceptions; preparation and form of record.” The Supreme Court seeks public comment on the proposed amendments.

The Nebraska Supreme Court invites interested persons to comment on the proposed rule amendments. Anyone desiring to submit a public comment for the Supreme Court’s consideration should do so via email to wendy.wussow@nebraska.gov, with the following text listed in the email subject line: **Neb. Ct. R. App. P. §§ 2-105 and 2-105.01 Amendments**. Comments will be accepted through March 1, 2023.

The full text of the proposal is available below. To obtain a paper copy, please call the Clerk’s Office at 402-471-3731.

CHAPTER 2: APPEALS

Article 1: Nebraska Court Rules of Appellate Practice.

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§ 2-105. Bill of exceptions; making, preserving, requesting, and delivery of the record of trial or other proceeding.

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(B) Requesting a Bill of Exceptions; Payment.

(1) Automatic Direct Appeals. In criminal cases where the sentence is capital punishment, no request for preparation of the bill of exceptions is required. The clerk of the district court in which the conviction was had shall notify the court reporting personnel, who shall prepare the bill of exceptions as expeditiously as possible, but in no event to exceed the time limitations prescribed in § 2-105.01, unless an extension for such later filing is granted by the Supreme Court. Unless directed otherwise, the court reporting personnel shall include in the bill of exceptions the verbatim record of all hearings, trials, or proceedings in the trial court.

(2) Requests for Bill of Exceptions; Appeals From Trial Court.

(a) Request by Appellant. Appellant shall file a request to prepare a bill of exceptions in the office of the clerk of the court from which the appeal is taken at the same time the notice of appeal is filed. Failure to file such request at the same time the notice of appeal is filed shall be deemed as a waiver of appellant of the right to request a bill of exceptions, unless pursuant to subsection (f) below the appellate court grants appellant leave to request a bill of exceptions out of time.

(b) Specification. The request shall specifically identify each portion of the evidence and exhibits offered at any hearing which the party appealing believes material to issues to be presented to the appellate court for review. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the bill of exceptions must include all evidence relevant to the finding or conclusion.

(c) Direction of Request. The request filed with the clerk of the court from which the appeal is taken shall be directed to the court reporting personnel responsible for the verbatim record of the proceedings, or if unknown, the name of the trial judge who heard the matter. The appellant shall serve a copy of the request upon the appellee.

(d) If the request is filed with the notice of appeal, ~~t~~The clerk of the court from which the appeal is taken shall send the request to prepare a bill of exceptions, along with the notice of appeal to

(i) the court reporting personnel listed on the request,

(ii) the court reporting personnel known by the trial court clerk to be responsible for responding to the request,

(iii) the judge who heard the matter if no court reporting personnel is listed or known, or

(iv) if court staff is tasked with assigning transcription of the record, to such court staff. The clerk of the trial court shall record such action on the register of actions.

(e) Supplemental Request by Appellee. If the appellee believes additional evidence should be included in the bill of exceptions, the appellee shall, within 10 days after service of the timely request for bill of exceptions filed by the appellant, file a supplemental request for preparation of bill of exceptions. The request shall be filed with the clerk of the court from which the appeal is taken. A copy of the request shall be sent to the court reporting personnel by the trial court clerk, who shall record such action on the register of actions.

(f) Failure to Request. If appellant fails to file a request to prepare the bill of exceptions at the same time the notice of appeal is filed, the Clerk shall notify the parties of the failure. In such event, appellee shall have 10 days from the date of filing of the notice of appeal to file a request for a bill of exceptions. Thereafter, no request for a bill of

exceptions may be filed without leave of the appellate court for good cause shown, which cause shall not be within a party's reasonable control. Where the request to prepare a bill of exceptions was not filed at the same time the notice of appeal is filed, the clerk shall not forward the request to the court reporting personnel. Court reporting personnel are not required to provide an estimate nor begin preparation of the bill of exceptions until appellant has been granted leave to file the request out of time by the appellate court, and such leave has been filed with the clerk of the court from which the appeal is taken.

(g) Copy of Request to Appellate Court. A copy of each request for preparation of a bill of exceptions filed in the trial court, together with a copy of the notice of appeal, shall be transmitted by the trial court clerk to the Clerk by System-To-System Transfer.

(3) District Court as Intermediate Appellate Court.

(a) Where an appeal is taken from a district court acting as an intermediate appellate court, the clerk of the district court shall transmit to the Clerk without a request by appellant:

(i) the bill of exceptions of the county court or other tribunal inferior to the district court which is the official record of the county court or other tribunal proceeding, and

(ii) any supplemental bills of exceptions from the county court or inferior tribunal which were reviewed by the district court.

(b) No specific request for the transmission of the official record of the county court or inferior tribunal bills of exceptions shall be required by appellant, and such bills of exceptions shall not be included as an exhibit in any bill of exceptions in the district court.

(c) A request by a party for preparation of a bill of exceptions of the district court proceedings shall be in the same manner as a request for a bill of exceptions upon direct appeal from the district court. See § 2-105(B)(2).

(4) Fee for preparation of a bill of exceptions on appeal.

(a) Per-Page Rate. The per-page fee to which an official court reporter or privately contracted court transcriber is entitled, as prescribed by the Supreme Court pursuant to Neb. Rev. Stat. § 25-1140.09, is set forth in Neb. Ct. R. § 1-218.

(b) Estimate of Cost and Deposit. Except in those cases where payment is to be made by a governmental agency, the State of Nebraska, or any political or governmental subdivision thereof, the court reporting personnel responsible for making the record shall advise appellant of the approximate cost of the bill of exceptions immediately after receipt of the timely request for preparation of the bill of exceptions, or after receipt of granting of leave to file a request out of time by the appellate court. Court reporting

personnel shall not provide an estimate of cost when the request to prepare a bill of exceptions is not filed with the notice of appeal. Appellant shall deposit the estimated cost with the clerk of the trial court within 14 days after receipt of the estimate. The trial court clerk shall retain the deposit in a trust account until the bill of exceptions is filed with the clerk of the trial court. When the bill of exceptions is filed by the court reporting personnel responsible for making the record, the clerk of the trial court shall immediately pay the court reporting personnel the amount of the cost of preparing the bill of exceptions as certified by the court reporting personnel, and refund any excess payment to the appellant. If additional compensation is due, appellant shall pay the additional amount to the clerk of the trial court within 10 days after receipt of a statement for the additional amount. A similar procedure shall be followed if an appellee requests a supplemental bill of exceptions, with the appellee being responsible for payments. Costs for a bill of exceptions shall be taxed only upon compliance with this rule.

(c) Failure to Make Deposit. If appellant fails to timely make the required deposit of the estimated cost of preparation, the clerk of the trial court shall transmit a notice thereof to the Clerk and to the court reporting personnel responsible for making the record. Thereafter, unless leave of the appellate court for an extension of time to make the deposit is granted for good cause shown, the appeal shall proceed as if no bill of exceptions had been requested.

(d) Settlement of Case. The party requesting the preparation of the bill of exceptions may, at any time before the bill of exceptions is completed, file with the trial court clerk a written notice advising the court that settlement has been reached. Upon receipt of the notice, the trial court clerk shall provide the notice to the court reporting personnel and to the Clerk. The trial court clerk shall record such action on the register of actions. Upon receipt of such notice, court reporting personnel shall cease any further work upon the bill of exceptions or, if applicable, immediately notify the private transcriber to cease further work upon the bill. Court reporting personnel shall be entitled to payment by the party ordering such bill of exceptions for the work performed up to the time that such notice was sent to the court reporting personnel and rules with regard to payment of the fees to the official court reporter or privately contracted court transcriber for the bill of exceptions, as otherwise provided herein, shall apply.

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§ 2-105.01. Bill of exceptions; preparation and form of record.

(A) Preparation of the bill of exceptions shall commence from the date the request to prepare the bill of exceptions and notice of appeal is filed with the clerk of the court from which the appeal is taken, or if the request to prepare the bill of exceptions was not filed with the notice of appeal, upon order of the appellate court granting appellant leave to file the request to prepare the bill of exceptions out of time. Upon filing the notice of appeal and request for preparation of the bill of exceptions, the clerk of the lower court shall forthwith notify the court reporting personnel of the filing. If the request to prepare the

bill of exceptions is not filed with the notice of appeal, the clerk of the lower court shall follow § 2-105(B)(2)(f), and the court reporting personnel shall not begin preparation of the bill of exceptions until leave of the appellate court is granted. The court reporting personnel shall prepare only those portions specified in the request for preparation of the bill of exceptions.

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