

## NOTICE OF COMMENT PERIOD

The Nebraska Supreme Court Committee on Practice and Procedure proposed amendments to Chapter 6, Article 11, Nebraska Court Rules of Pleading in Civil Cases, and proposed amendments to Neb. Ct. R. § 2-205 entitled “Electronic service; certificate of service.” Along with the proposed amendments, Professor John P. Lenich, Reporter for Civil Procedure, has provided [\*\*A Discussion of the Proposed Court Rules of Pleading in Civil Cases\*\*](#) as a resource when reviewing 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 [erika.schafer@nejudicial.gov](mailto:erika.schafer@nejudicial.gov), with the following text listed in the email subject line: **Chapter 6, Article 11, Pleading Rules**. Comments will be accepted through May 31, 2024.

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

## CHAPTER 6: TRIAL COURTS

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

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#### § 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.

~~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.~~

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#### § 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 a statute provides 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 Rule § 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~~ 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~~ is in default for failing to appear, unless:

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

(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. Rule § 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~~ servicing 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 Rule § 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, depositions, interrogatories, requests for documents or tangible things or to permit entry onto land,

requests for admissions, deposition and discovery subpoenas, and returns of service must not be filed unless they are attached to a motion or the court orders them to be filed.

(3) Certificates of Service.

(A) Documents Served Electronically. Rule § 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.~~

**§ 6-1106. Time.**

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

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(b) ~~Enlargement~~ Extending Time.

(1) In General. When ~~by~~ under these rules ~~an act may or must~~ or 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 Rule § 6-1105(b)(3)(C) § 6-1105(b)(2)(B), (D), (E), or (F), three 3 days shall be~~ are added after the ~~to the prescribed period~~ would otherwise expire.

**§ 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 or other paper 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 or document. 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 Rule § 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.

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#### **§ 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.~~

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

(1) In General. Each ~~avermnt 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]

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## **§ 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.~~

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### **§ 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 Rule § 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.

**§ 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. Rule § 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. Rule § 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. Rule § 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]

**§ 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 servicing 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 Rule § 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 Rule § 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 Rule § 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 Rule § 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 Rule § 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 Rule § 6-1107(a); or

(B) by motion under Rule § 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 Rule § 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.

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### **§ 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]~~

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**§ 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 Rule § 6-1112(b), (e), or (f), whichever is earlier it is served.

(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~~ them to conform 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.

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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.

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