On September 3, 2025, the Nebraska Supreme Court adopted the following rule amendments to Neb. Ct. R. Disc. §§ 6-326 to 6-337 and to Neb. Ct. R. Pldg. § 6-1101 et seq., along with Comments to those rules:

CHAPTER 6: TRIAL COURTS

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Article 3: Nebraska Court Rules of Discovery in Civil Cases. (Effective January 1, 2025.)

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§ 6-326. General provisions governing discovery.

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COMMENTS TO § 6-326

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[11] One step that the producing party may take to correct its mistake is to notify the receiving party that privileged or protected documents were inadvertently produced. Subpart (b)(5)(B) addresses what the receiving party must do if it receives such notice and makes it clear that either party can file a motion for a protective order if they disagree on whether the ~~privileged~~ privilege or protection applies.

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[17] One of the issues that has divided the federal courts is whether a treating physician who testifies about causation should be classified as a retained or specially retained expert and therefore required to provide a signed report. Subpart (c)(1)(C)(i)~~(ii)~~ resolves the issue for the Nebraska courts by stating that a treating physician is not required to provide a written report solely because the physician's testimony may discuss "the diagnosis, prognosis, or causation of the patient's injuries."

[18] ~~Subpart (c)(2) addresses when the required disclosures must be made.~~ Subpart (c)(2)~~(A)~~ provides that disclosures must be made at the times and in the sequence the court orders. It would be helpful to all concerned if the court issued such an order. In terms of the sequence, the order could require the parties to make their disclosures at the

same time or at different times – for example, the order could require the party with the burden of proof to make its disclosures first. If the court does not issue such an order, the parties may stipulate when their respective disclosures must be made. If there is no court order or stipulation, then the parties must make their disclosures by the times specified in subpart (c)(2)(A)-(B).

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Rule § 6-328. Persons before whom depositions may be taken.

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(b) In a Foreign Country.

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(2) Issuing a Letter of Request or a Commission. A letter of request, a commission, or both may be issued:

(A) on appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

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§ 6-330. Depositions by oral examination.

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(b) Notice of the Deposition; Other Formal Requirements.

(1) In General. A party who intends to depose a person by oral questions must give reasonable written notice to every other party.

(A) The notice must state the deponent's name and address, if known. If the name is unknown-, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

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COMMENTS TO § 6-330

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[19] Subpart (c)(2) governs objections. The 2015 Amendments added the requirement that the interpreter must be sworn and that an objection to the interpreter's qualifications must be recorded. The 2015 Amendments also ~~add~~ added provisions on how objections must be stated and when a person may instruct the witness not to answer. Those provisions – which are modeled on Rule 30(c)(2) of the Federal Rules of Civil Procedure – are designed to eliminate speaking objections made for the purpose of disrupting the questioning or suggesting how the deponent should answer a question.

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[22] Subpart ~~(f)~~(e) was amended in 2015 to streamline the procedures for review and use of the deposition. Under the prior version of the rule, the deponent had a right to review the deposition unless the right was waived by deponent and the parties. . . .

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§ 6-330(A). Interstate deposition and discovery.

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(b) Issuance of Subpoena. To request issuance of a subpoena under this rule, a party must submit to the clerk of the district court for the county in which discovery is sought to be conducted a Request for the Issuance of a Nebraska Subpoena for a Proceeding in a Foreign Jurisdiction. The content of the request must be substantially the same as the content of the form in the Appendix to this rule, and ~~shall~~ must include the name and address of the person on which the subpoena ~~shall~~ will be served, and the method of service provided by Neb. Rev. Stat. §§ 25-1223(9), 25-1226(1), and/or 25-1228(2).

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§ 6-331. Depositions by written questions.

(a) When a Deposition May be Taken.

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(6) Questions from Other Parties. Any questions to the person from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with the cross-questions; and recross-questions, within 7 days after being served with redirect questions. The court may, for good cause, lengthen or shorten these times.

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§ 6-332. Using depositions in court proceedings.

(a) Using Depositions.

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(7) Substituting a Party. Substituting a party does not affect the right to use a deposition~~–~~ previously taken.

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COMMENTS TO § 6-332

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[2] Subpart (a)(4) creates an exception to the hearsay rule. In other words, a deposition does not have to satisfy the requirements of Neb. Rev. Stat. § 27-804(2)(a) to be admissible under this subpart. See *Walton v. Patil*, 279 Neb. 974, 984 (2010). Under subpart (a)(4)(B), the witness must be at least 100 miles away in order to use the deposition because Neb. Rev. Stat. § 25-1227 establishes 100 miles as the maximum distance a witness must ordinarily travel for a civil trial. Subpart (a)(4)(E) allows use of a deposition under exceptional circumstances; under subpart (a)(3)(F), the court may authorize use of the deposition in the absence of exceptional circumstances if the ~~application~~ motion is made before the deposition is taken.

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[5] ~~Section 6-332~~ Subpart (d)(3)(A) provides that if a deposition was recorded by audio or audiovisual means only, competency and relevance objections are waived unless they are made to the court before the hearing or trial. It makes sense to resolve competency and relevance objections beforehand – but a party needs to know beforehand that a deposition will be used so that it can raise its objections beforehand. Therefore, subpart (c)(3) provides that if a party ~~that~~ plans to use an audio or audiovisual deposition for any purpose other impeachment, the party must give the other parties reasonable written notice before the hearing or trial.

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§ 6-334. Producing documents, electronically stored information, and tangible things or entering onto land, for inspection and other purposes.

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(c) Procedure.

(1) Contents of the Request. The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

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§ 6-334(A). Subpoenas commanding nonparties to produce documents, electronically stored information, and tangible things or to allow entry onto land, for inspection and other purposes.

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(d) Issuance; Contents; Form of Production; Service.

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(2) Contents. A subpoena issued pursuant to this rule must:

(A) state the name of the court from which it is issued, the title of the action, and the case number;

(B) command the person to whom it is directed to produce the designated documents, electronically- stored information, or things or permit the designated entry;

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COMMENTS TO § 6-334(A)

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[9] The judge presiding over a case is in the best position to rule on discovery motions in the case. Therefore, the rule requires that motions related to the issuance and enforcement of a subpoena must be filed in the court in which the action is pending. Those include motions for a ruling on an objection to the issuance of a subpoena (subpart ~~(b)~~(c)(3)), motions to compel compliance with the subpoena (subpart (e)(1)(C)), and motions to quash or modify the subpoena (subpart (e)(2)).

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§ 6-336. Requests for admission.

(a) Scope and Procedure.

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(5) Answer. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of the matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

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§ 6-337. Failure to make disclosures or to cooperate in discovery: sanctions.

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(c) Failure to Admit.

If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move, within 30 days of so proving, that the party who failed to admit be ordered to pay the reasonable expenses, including attorney fees, incurred in making that proof. The court must so order unless:

(1) the request was held objectionable under Rule 36(a);

(2) the admission sought was of no substantial importance;

(3) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(4) there was other good reason for the failure to admit.

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COMMENTS TO § 6-337

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[3] The original version of the rule did not allow a court to impose sanctions on a party that provided the requested discovery after a motion to compel was filed but before the motion was heard. Subpart (a)(5)(A)~~(B)~~ now allows a court to do so. The possibility of sanctions may discourage parties from engaging in brinkmanship by refusing to provide the requested discovery until the requesting party incurs the expense of preparing and filing a motion to compel.

[4] The original version of the rule did not expressly give courts the discretion to impose sanctions on an attorney's law firm or ~~legal~~ employer. The 2024 Amendments

added provisions in Subparts (a), (b), and (d) to give courts the discretion to do so. Giving courts that discretion is appropriate because law firms and ~~legal~~ employers have an obligation to ensure that their attorneys conduct themselves in a professional and ethical manner. Furthermore, it is sometimes difficult to identify which attorneys are responsible for the conduct at issue. The attorney who signed a motion or objection may not be the attorney who decided that the motion should be filed or that the objection should be made. The term "~~legal~~ employer" was included to make it clear that the rule covers in-house and government attorneys.

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Article 11: Nebraska Court Rules of Pleading in Civil Cases. (Effective January 1, 2025.)

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§ 6-1101. Scope and purpose of rules.

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

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COMMENTS TO § 6-1101

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[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.

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

(a) Service: When Required.

(1) In ~~general~~ General. Unless the applicable statutes or these rules ~~provides~~ provide otherwise, each of the following documents must be served on every party:

. . . .

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

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COMMENTS TO § 6-1105

. . . .

[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 other means ~~manner~~ . . . that the court authorized . . . ."

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

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

(1) a complaint;

. . . .

§ 6-1109. Pleading special matters.

(a) Capacity or ~~authority to sue~~ Authority to Sue; ~~legal existence~~ Legal Existence.

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

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(f) Motion to Strike. The court may strike from a pleading an 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 a response is not allowed, within 30 days after being served with the pleading.

. . . .

(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

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[8] Subpart (b)(7) originally referred the defense of failure to join a necessary party. . . . The difference between the two is that the interest of an indispensable party ~~will~~ may 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).

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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 its pleading once as a matter of course no later than:

(A) 30 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 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. When a responsive pleading is required from multiple parties, the 14-day period commences on service of the first responsive pleading or motion under § 6-1112(b), (e), or (f).

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