

RULES OF PRACTICE AND PROCEDURE

SEPARATE JUVENILE COURT OF LANCASTER COUNTY, NEBRASKA

Effective January 1, 2015

The following rules of practice and procedure have been adopted by the Lancaster County Separate Juvenile Court Judges and are effective upon approval by the Nebraska Supreme Court. They supersede all former rules of practice and procedure promulgated by this court.

RULE I

ORGANIZATION OF THE COURT

The Court shall be a single division with each judge handling cases on an alternating assigned basis.

RULE II

MOTIONS AND OTHER FILINGS

- A. All motions or similar filings in which a hearing is requested shall be in writing and filed with the Clerk of the District Court (the Clerk) at least five (5) judicial days prior to hearing, except by permission of the court.
- B. Counsel at the time of making such filing shall obtain a date for hearing thereon from the judge to whom the case is assigned or the judge's bailiff and file a notice of hearing with the filing. Unless approved by the judge, a hearing date must be obtained for each motion, even if motions in the same case are already scheduled. The Clerk shall not accept said filing unless it is accompanied by notice of the time and date of the hearing.

- C. Notice of said hearing shall be mailed or personally delivered to other counsel or unrepresented parties three (3) full judicial days prior to said hearing. The use of the United States Postal Service shall constitute sufficient compliance. Judicial days refer to days that the court normally would be in session, not including weekends and legal holidays.
- D. All motions for orders sought to be entered without a hearing shall be accompanied by a proposed order for the judge's signature.
- E. A Motion to Continue can be filed disclosing that all other parties and counsel agree to the continuance in which case the court may grant the motion without a hearing. Once a case has been set for hearing, the case may not be continued except for good cause shown as determined by the court. Counsel seeking the continuance shall obtain a proposed date from the court's bailiff and verify the new date with other counsel and unrepresented parties. If the new date is not agreeable, it is the responsibility of the movant to obtain a new date that is agreeable to all counsel and unrepresented parties. A Motion to Continue without agreement of opposing counsel and parties shall be set for hearing by the court as previously outlined herein.
- F. Motions for Placement Change can be approved by the court without further hearing after seven (7) days from filing unless an objection is filed with the Clerk and notice is given to the judge or judge's bailiff, whereupon the matter shall be set for hearing by the court. The Nebraska Department of Health and Human Services shall notify in writing the court, guardian ad litem and counsel within twenty-four (24) judicial hours of any immediate change in placement.
- G. Motions for Immediate Custody involving delinquency cases may be set and heard by the court as early as twenty-four (24) hours of the court receiving notice of the detention occurrence, no later than forty-eight (48) hours, excluding non-judicial days. Orders for Immediate Custody based upon violations of conditional release may be waived in writing by counsel for the juvenile.
- H. Ex parte Motions for Temporary Custody involving non-delinquency cases shall come on for hearing within ten (10) days of the Ex Parte Order being signed.

- I. A written Denial may be filed with the Clerk and shall include counsel's estimate as to the amount of time necessary for trial.

RULE III

FORMAT AND SERVICE

- A. All pleadings, motions and proposed orders filed with the Clerk shall be printed or typewritten on 8 ½" by 11" paper.
- B. All pleadings shall contain the caption of the case.
- C. No pleadings, documents, exhibits, court orders, judgments and decrees filed in the court shall include birth dates, Social Security numbers, and financial account numbers of any persons, including minor children, as outlined in Nebraska Supreme Court rule (Neb. Ct. R. §§ 6-1701).
- D. The margin at the bottom of the first page of any pleading or other document filed with the Clerk shall be at least 2 ¼ inches. This area is reserved for court use to permit affixing a bar code or exhibit identification markings and for other official uses. No image, printing or marking of any nature may appear within the bottom margin except as made or authorized by the court or the Clerk.
- E. Any party making a filing shall serve the same upon all counsel of record or parties of record if not represented by counsel. Service by the United States Postal Service shall be deemed sufficient. Any pleading or document filed subsequent to the petition shall contain a certificate that service was made upon counsel or parties pursuant to this rule.

RULE IV

COURTROOM DECORUM AND PROCEDURES

- A. All counsel shall conduct themselves in a manner which promotes a positive image of the profession, assists the court in properly reviewing the case, and displays appropriate respect for the justice system.
- B. All parties and their counsel shall be punctual and prepared for all court appearances at the time set for hearing by the court.
- C. Counsel shall examine witnesses and address the court from the counsel's table and shall not approach the bench or witness stand while the court is in session without first obtaining permission of the court.
- D. Witnesses and parties shall be referred to and addressed by their surnames unless age or other circumstance allows for usage of their first name.
- E. Only one counsel for each party shall examine a witness or make objections during the testimony of such witness.
- F. At the discretion of the security officers, upon order of the court, any person may be subjected to a search of his or her person for possession of any weapons, destructive device or components thereof.
- G. Counsel shall be attired in ordinary business wear. All parties, witnesses and persons present in the courtroom shall be appropriately attired. The court may continue or delay hearing if any parties' appearance is inappropriate. The court may also cause the removal from the courtroom of any individual inappropriately attired.
- H. Cellular telephones, pagers or other such electronic devices shall be turned off or otherwise disabled so as not to cause a disturbance during court proceedings.
- I. All court hearings are open to the public as provided by law, however the court may close the hearing or a portion thereof pursuant to law and Nebraska Supreme Court rules.

- J. Unless expressly authorized by the judge, all broadcasting, televising, and/or taking photographs, as well as audio and video recording, except for the making of the official court record of the proceeding, are prohibited in the courtroom and in the areas immediately adjacent to all juvenile courtrooms, as well as in the juvenile court reception area, during sessions of court or during the recesses between sessions.

RULE V

FILES AND EXHIBITS

- A. No person except the Judge or the Clerk shall take from the courthouse or out of the office of possession of the Clerk, any records, papers or files of the court pertaining to the causes therein, except by permission of the Judge or the Clerk. Any legal file so removed shall be returned to the Clerk within five (5) days unless requested sooner by the Clerk, and at least forty-eight (48) hours prior to the commencement of any trial or hearing in conjunction with said case.
- B. All documents, including but not limited to, predisposition reports, case plans, and progress reports shall be delivered to all counsel and pro se parties in the court at least three (3) judicial days prior to the hearing in which the documents are to be offered. The party offering said exhibit shall have the exhibit numbered by page and then separately marked by the court reporter prior to the scheduled time of the hearing. Exhibits shall not contain any unrelated attachments.
- C. Copies of exhibits received into evidence may be placed in a social file corresponding to the respective case involving the child or children. Only the Judge and court staff may have access to said social file. All others shall not have access to the social file or exhibits without permission of the court. Those exhibits in the custody of the court reporter may be open for inspection by counsel appointed or appearing on behalf of the parties upon a reasonable request of the court reporter. All others may not have access to said exhibits without permission of the court.

RULE VI

APPOINTMENT OF COUNSEL AND FEES

- A. The court will appoint counsel for a party determined indigent by the court and whenever else appointment of counsel would be appropriate. The parties shall complete a Request for Court Appointed Counsel as directed by the court.
- B. The court may require any party to resubmit a financial statement periodically as ordered by the court. The court may order parties to reimburse Lancaster County for the services of court appointed counsel if their financial situation changes. Failure to maintain contact with counsel may result in the attorney being discharged.
- C. Attorneys willing to serve as court appointed counsel shall complete the form entitled "Request for Court Appointment List" and shall file it with the Juvenile Court Administrator. The Juvenile Court Judges shall review the request and place the attorney on the list in the appropriate categories. The Juvenile Court Administrator shall maintain a current list of attorneys and the list shall be open to public inspection upon request.
- D. Appointments of attorneys shall be made on an impartial and equitable basis and shall be distributed among attorneys on a rotation system, subject to the court's sole discretion to make exceptions due to the nature and complexity of the case, an attorney's experience, the nature and disposition of the defendant, a language consideration, a conflict of interest, the availability of an attorney, geographic considerations, prior or current representation of a party, and any other relevant factors that may be involved in a specific case.
- E. The court will monitor attorney performance on a continuing basis to assure the competency of attorneys on the appointment list. An attorney may be removed from the list by a majority vote of juvenile court judges. If an attorney is under consideration for removal from the list, written notification will be given indicating the concerns giving rise to consideration for removal, and be given the opportunity to respond in writing before a final decision is made. An attorney who has been removed

from the list may be considered for reinstatement by a majority vote of the judges after the deficiencies contained in the notice have been resolved. A practicing attorney who wishes to have his/her name removed from the list shall file a request for removal with the Juvenile Court Administrator.

- F. Court appointed counsel shall utilize the Juvenile Court web-based system to submit requests for approval of attorney fees pursuant to Lancaster County Juvenile Court Attorney Fee Guidelines.

RULE VII

CHILD SUPPORT REFEREE

- A. Intent. The Court finds that matters relating to the establishment, modification, enforcement and collection of child support and to paternity matters should be handled by the court in an expeditious manner, so that parties may obtain needed orders and other action as quickly as possible. It is determined that the appointment of a child support referee is necessary to aid the court in meeting the case progression standards established by Nebraska Supreme Court rule and federal law.
- B. Appointment. Each referee shall be appointed by order of the judges of the court and shall be an attorney in good standing admitted to the practice of law in the State of Nebraska. The referee shall be sworn or affirmed, and the oath for judicial officers shall be administered by the presiding judge of the court. The referee may be removed at any time by the court.
- C. Duties. The referee shall hear matters pertaining to the establishment, modification, enforcement and collection of child support, paternity, and all other matters permitted by law and assigned by the court. The referee shall have the power to summon and enforce the attendance of parties and witnesses, administer all necessary oaths, supervise pretrial preparation pursuant to the rules of discovery, grant continuances and adjournments, and carry out any other duties permitted by law and assigned by the court. The functions performed by the referee under expedited processes shall, at a minimum, include:

- (1) taking testimony and establishing a record;
 - (2) evaluating evidence and making recommendations to establish and enforce orders;
 - (3) accepting voluntary acknowledgment of support liability and stipulated agreements setting the amount of support and accepting voluntary acknowledgments of paternity;
 - (4) recommending default orders, if absent parents fail to respond within the time specified by law.
- D. Safeguards. Under the expedited processes established by this court rule:
- (1) The due process rights of the parties shall be protected.
 - (2) The parties must be provided a copy of the recommendation of the referee and the ratified order.
 - (3) To be enforceable, the referee's recommendations must be entered as an order by a judge.
- E. Hearings. A hearing before a referee shall be conducted in the same manner as a hearing before the court. Testimony in such matters shall be preserved by tape recording or other prescribed measures and in accordance with prescribed standards. Transcripts of all hearings shall be available upon request and all costs of preparing the transcript shall be paid by the party for whom it is prepared, unless he or she has been determined to be indigent.
- F. Findings and Recommendations. Upon the hearing of a matter, the referee shall prepare, in writing, his or her findings and recommendations to the parties or their attorneys and submit a report to the court containing findings of fact and recommendations and any and all exceptions.
- G. Judicial Review. In all cases referred to a referee, the parties shall have the right to file an exception within ten (10) days of the date of the referee's Findings and Recommendations. The exception shall be accompanied by a praecipe requesting the preparation of the bill of exceptions of the proceedings before the referee. The hearing before the court on the exception shall be de novo on the record before the referee. The court may ratify or modify the recommendations of the referee and enter judgment based thereon. If no exception is filed, the court shall proceed to consider the referee's Findings and Recommendations and render a final order without further notice or hearing.

- H. Case Progression. Actions to establish or enforce support obligations and/or paternity shall be completed in accordance with state and federal law.

RULE VIII

PREHEARING AND PRETRIAL CONFERENCES

- A. Prior to temporary custody hearings, prehearing conferences with all parties and counsel may be held and may be facilitated by mediators. The facilitators are disinterested parties who will gather necessary information regarding parentage, possible ICWA applicability, placement of the children, visitation, services, and evaluations or assessments offered. Any documents completed in the pre-hearing conference may be marked and offered into evidence.
- B. Pretrial conferences may be on order of the court and shall specify the date, hour and location requirement placed upon counsel, the manner in which the conference will be held, and any other matters the court deems appropriate. It is strongly encouraged that any and all stipulations should be entered into at the time of the pretrial. At the time of the pretrial conference, all counsel shall have made efforts to speak with their respective client and each other and shall be prepared to inform the court:
1. Whether the matter will be contested;
 2. If contested, the estimate of time necessary to adjudicate;
 3. Whether in-chambers testimony will be requested and any other objections thereto;
 4. Whether any matters may be stipulated;
 5. Whether an interpreter of any nature will be required;
 6. Whether there are any special health needs of counsel, parties, or witnesses requiring accommodation.

RULE IX

TRIAL TERMS

- A. Any case which is to be tried to the court may be assigned by the court to a Trial Term. A Trial Term is a period of time determined by each judge during which more than one case will be scheduled for trial. By order of the judge to whom the case is assigned, other requirements governing the progression of the case may be imposed. Cases assigned to a Trial Term for trial shall proceed as follows:
1. All counsel and persons having cases set for trial during a Trial Term shall be ready for trial whenever called during the next and all subsequent trial terms.
 2. The court's bailiff will maintain a current list of cases set for trial during the judge's Trial Terms. Cases set for trial during a Trial Term will be called up for trial in the order in which they are listed thereon.

RULE X

MISCELLANEOUS RULES

- A. Case plans and court reports shall be delivered to all counsel, parties and the Court at least five (5) days prior to the hearing.
- B. Guardian ad litem reports shall be delivered to all counsel, parties and the Court at least one (1) day prior to the hearing. The Guardian ad Litem shall utilize a form approved by the court.
- C. Counsel shall inform the court's bailiff if an interpreter is needed for any hearing so that arrangements can be made to obtain an appropriate interpreter.
- D. Counsel representing incarcerated parents shall request a transportation order sufficiently in advance from the court's bailiff if the party wants to be present.

- E. All children under the court's jurisdiction as defined by Neb. Rev. Stat. Section 43-247 (3)(a) shall be present in court at the dispositional hearing and at every six month review hearing unless excused by the court. A request to excuse a child or children from the hearing may be submitted to the court's bailiff in advance by any party and reviewed by the judge.

- F. Parties shall provide financial statements for child support as ordered by the court and shall submit said statements and any requests for deviations ten (10) days in advance of any child support hearing. The parties shall exchange calculations three (3) days in advance of the hearing.