REPORTERS' GUIDE TO MEDIA LAW AND NEBRASKA COURTS

Produced by:

The Nebraska State Bar Association
The Nebraska Broadcasters Association
The Nebraska Press Association

2005

TABLE OF CONTENTS

Subject

FOREWARD

This is the fourth edition of the Reporters' Guide to Nebraska Courts. The original edition was quthored in 1980 with subsequent editions being published in 1988 and 1996. This 2005 edition encompasses the changes that have been made in Nebraska law over the past nine years.

As both the legal profession and media understands, the law is a living creature that changes and adapts to our world. Since the last publication, several important changes have occurred and are described throughout the guide.

The Nebraska State Bar Association, Nebraska Broadcasters Association, and Nebraska Press Association publish this guide in an effort to aid the media in aunderstanding Nebraska law. This notebook shall stand as a symbol of the cooperation between our professions and our unrelenting goal to better serve the public.

Alan E. Peterson
Stanton N. Beeder
Cline, Williams, Wright, Johnson & Oldfather, L.L.P.
May 2005

Allen J. Beermann
Executive Director, Nebraska Press Association
Project Manager

Marty Riemenschneider
Executive Director, Nebraska Broadcasters Association
Project Consultant

NEBRASKA BAR-PRESS GUIDELINES

These voluntary guidelines reflect standards which bar and news media representatives believe are a reasonable means of accommodating, on a voluntary basis, the correlative constitutional rights of free speech and free press with the right of an accused to a fair trial. They are not intended to prevent the new media from inquiring into and reporting on the integrity, fairness, efficiency and effectiveness of law enforcement, the administration of justice, or political or government questions whenever involved in the judicial process.

As a voluntary code, these guidelines do not necessarily reflect in all respects what the members of the bar or the news media believe would be permitted or required by law.

Information Generally Appropriate for Disclosure, Reporting

Generally, it is appropriate to disclose and report the following information:

1. The arrested person's name, age, residence, employment, marital status and similar biographical information.

2. The charge, its text, any amendments thereto, and, if applicable, the identity of the complainant.

3. The amount and conditions of bail.

4. The identity of and biographical information concerning the complaining party and victim, and, if a death is involved, the apparent cause of death unless it appears that the cause of death may be a contested issue.

5. The identity of the investigating and arresting agencies and the length of the investigation.

6. The circumstances of arrest, including time, place, resistance, pursuit, possession of and all weapons used, and a description of the items seized at the time of arrest. It is appropriate to disclose and report at the time of seizure the description physical evidence subsequently seized other than a confession, admission or statement. It is appropriate to disclose and report the subsequent finding of weapons, bodies, contraband, stolen property and similar physical items if, in view of the time and other circumstances, such disclosure and reporting are not likely to interfere with a fair trial.

7. Information disclosed by the public records, including all testimony and other evidence adduced at the trial.

Information Generally not Appropriate for Disclosure, Reporting

Generally, it is not appropriate to disclose or report the following information because of the risk of prejudice to the right of an accused to a fair trial:

1. The existence or contents of any confession, admission or statement given by the accused, except it may be stated that the accused denies the charges made against him. This paragraph is not intended to apply to statements made by the accused to representatives of the news media or to the public.

2. Opinions concerning the guilt, the innocence or the character of the accused.

3. Statements predicting or influencing the outcome of the trial.

4. Results of any examination or tests or the accused's refusal or failure to submit to an examination or test.

5. Statements or opinions concerning the credibility or anticipated testimony of prospective witnesses.

6. Statements made in the judicial proceedings outside the presence of the jury relating to confessions or other matters which, if reported, would likely interfere with fair trial.

Prior Criminal Records

1. Generally, it is not appropriate for law enforcement personnel to deliberately pose a person in custody for photographing or televising by representatives of the news media.

2. Unposed photographing and televising of an accused outside the courtroom is generally appropriate, and law enforcement personnel should not interfere with such

photographing or televising except in compliance the an order of the court or unless such photographing or televising would interfere with their official duties.

3. It is appropriate for law enforcement personnel to release to representatives of the new media photographs of a suspect or an accused. Before publication of any such photographs, the news media should eliminate any portions of the photographs that would indicate a prior criminal offense or police record.

Continuing Committee for Cooperation

The members of the bar and the news media recognize the desirability of continued joint efforts in attempting to resolve any areas of differences that may arise in their mutual objective of assuring to all Americans both the correlative constitutional rights to freedom of speech and press and to a fair trial. The bar and the new media, through their respective association, have determined to establish a permanent committee to revise these guidelines whenever this appears necessary or appropriate, to issue opinions as to their application to specific situations, to receive, evaluate and made recommendation of the constitutional correlative rights of free speech, free press and fair trial.

NEBRASKA JUDICIAL SYSTEM

Article V, Section 1, of the Nebraska Constitution provides: The judicial power of the state shall be vested in a Supreme Court, an appellate court, district courts, county courts,... and such other courts inferior to the Supreme Court as may be created by law."

Supreme Court

The Supreme Court has seven judges and is Nebraska's court of last resort. The bulk of the court's work involves deciding cases appealed from lower courts.

Since 1970 the Supreme Court has exercised general administrative authority over all courts in the state.

Nebraska Court of Appeals

The Nebraska Court of Appeals consists of six judges. All cases except capital cases (cases involving life imprisonment or the constitutionality of a statute) will be appealed directly to the Court of Appeals.

Any party to a case may bypass the Court of Appeals review by filing a petition seeking direct review by the Supreme Court and is a case of the matter described in Section 24-1106.

All appeals from the Court of Appeals will go to the Supreme Court, the last court of review.

District Court

The state is divided into twelve judicial districts with forty-two district court judges.

The district court is a trial court of general jurisdiction.

Most of the court's work involves hearing civil cases (with no limit on the amount in controversy), hearing criminal cases involving felonies and some misdemeanors, and deciding domestic relations cases.

The district court also hears cases appealed from courts of limited jurisdiction and various administrative agencies.

Appeals from the district court are taken to the Court of Appeals and/or the Supreme Court.

Separate Juvenile Court

There are two (2) juvenile court judges for each county having a population of less than 400,000 and three (3) judges in counties having a population of 400,000 or more (until July 1, 1997, then four (4) judges for such counties.)

The juvenile court has exclusive jurisdiction of any child under the age of sixteen (16) years who has violated any law constituting a misdemeanor; the juvenile court has concurrent jurisdiction with the county courts with regard to persons sixteen (16) or seventeen (17) years of age who have violated any law constituting a misdemeanor; and concurrent jurisdiction with the district court with regard to persons under eighteen (18) years of age who have violated a law constituting a felony.

Appeals from the separate juvenile court are taken directly to the Court of Appeals and/or the Supreme Court.

Workers' Compensation Court

The Workers' Compensation Court was created pursuant to the Nebraska Workers' Compensation Act. The court consists of seven (7) judges with the authority to administer and enforce all provisions of the Act except all matters of appellate jurisdiction.

This court has original jurisdiction of all claims for workers' compensation benefits resulting from industrial accidents or occupational diseases.

Compensation court judges have statewide jurisdiction; appeals from this court go to the Court of Appeals and/or the Supreme Court.

County Court

The county courts are organized into 12 county judicial districts, which coincide with the district courts' districts. There is a county court for or in each county for Nebraska. There are 57 county court judges. The districts contain from on to 15 counties, with one to three judges per district.

Historically, the county court in Nebraska has been referred to as the "probate court." This court has exclusive, original jurisdiction in all matters pertaining to decedents' estates including the probate of wills and construction of wills.

County courts have the following jurisdiction:

Exclusive, original jurisdiction for:

A. Probate Division.

1) Exclusive original in all matters of decedent's estate.

2) guardianship or conservatorship

3) concurrent jurisdiction with the district court to involuntarily partition a ward's interest in common with others.

B. Civil/Small Claims Division

Concurrent with district court for:

1) All civil actions when amount does not exceed $45,00.

2) Misdemeanor or infraction. Exclusive original for:

3) Violation of city or village ordinances.

4) Juvenile matters, except those counties with juvenile courts.

5) Adoption.

6) Eminent domain.

The county court conducts preliminary hearings in felony cases and hears civil and criminal matters within its jurisdiction. Although the county courts have concurrent jurisdiction with the district courts in misdemeanor cases arising under state law, nearly all of such cases are tried in the county courts. County courts may not try civil cases over $45,000. Jurisdiction over lesser amounts is held concurrently with district courts.

The county court has exclusive jurisdiction in juvenile cases except in counties where a separate juvenile court has been established. Appeals from county court are taken to district court and, in certain circumstances, directly to the Court of Appeals and/or the Supreme Court.

Administrative Agencies

While several governmental boards, agencies or commissions are not technically considered to be courts, they do exercise quasi-judicial powers. Representatives of such boards are the county boards of equalization, city and county personnel boards, state motor vehicle department, etc. Appeals from the decisions of such boards and commissions are taken to the district court.

Appointment of Judges

The merit selection system is used for the selection and retention of Nebraska judges. When a judge leaves a district or county court, the Supreme Court holds a public hearing to determine whether or not a vacancy exists. If it is determined that a vacancy does not exist, the position is not filled.

The Judicial Resources Commission consists of three judges (one county, one district, one from the Supreme Court of Nebraska), six members of the Nebraska State Bar Association (one from each judicial district) who have practiced at least 10 years and six citizens (one from each judicial district.)

The Judicial Resources Commission shall determine in the event of a judge's death, retirement, resignation, or removal, the vacancies for judges, the creation and removal of judicial district boundaries, and the appropriate number of district or county judges for the respective.

Following the location selection, and initially for all other judicial positions, the judicial nominating commission holds a public hearing to interview candidates who have submitted their name for the open position. The judicial nominating commission submits the names of at least two qualified attorneys to the Governor. Generally, the Governor makes the final decision as to who will become the new judge. However, if the Governor elects not to make an appointment within 60 days after receiving the list of nominees from the judicial nominating commission, the Chief Justice of the Supreme Court makes the appointment from the list of nominees.

Each judicial nominating commission is made up of four lawyers elected by other lawyers in their district, and four non-lawyers who are appointed by the Governor. All members of the commission must live in the district for which they serve. In addition, the judicial nominating commission must not have more than two lawyers or two nonlawyer members from either political party.

Qualifications of Judges

Each applicant for a judicial appointment must be a U.S. citizen, at least 30 years of age, and must have had a minimum of five years of law practice, which may include prior service as a judge. In addition, the individual must be a current member of the Nebraska State Bar Association.

A Supreme Court judge applicant must be a resident and qualified voter/elector, for at least three years, of the district to be represented. District court, county court, and separate juvenile court judges must be residents of the districts to be served on the effective date of their appointment, and must remain residents of those districts during their periods of service. Workers' Compensation Court judges are required to reside in Lancaster County unless permission has been given by a majority vote of the compensation court to live elsewhere.

Retention of Judges

A judge must run for retention in office at the first general election that occurs more than three years after his or her appointment, and every six years thereafter.

When a judge runs for retention in office, the question presented to the voters is in the form, "Shall Judge _____ be retained in office?" If more than 50 percent of the voters indicate that the judge should not be retained, the judge is removed and a vacancy occurs.

The merit system was adopted by constitutional amendment in 1962. It originally applied to the selection of judges to the Supreme Court and district courts. Since then, it has been extended to include all judges.

Judges may retire at the age of 65, but are not required to retire at any age. Earlier retirement due to disability may be approved by the Commission on Judicial Qualifications, which also has the responsibility of investigating complaints against judges.

Discipline of Judges

In 1966, Nebraska voters adopted constitutional provisions for a Commission on Judicial Qualifications, which reviews complaints submitted by the general public regarding

the behavior of judges, and has the authority to reprimand judges as well as to order formal hearings on the matters in question. The commission was significantly modified by a constitutional amendment in 1980, and by legislation enacted in 1981 and 1984.

According to statute, a judge may be disciplined for behavior, which violates the laws and purposes of his or her office. In addition, a judge may be disciplined for misconduct in office, failure to perform his or her duties, frequent intemperance, conviction of a crime involving moral turpitude, and disbarment.

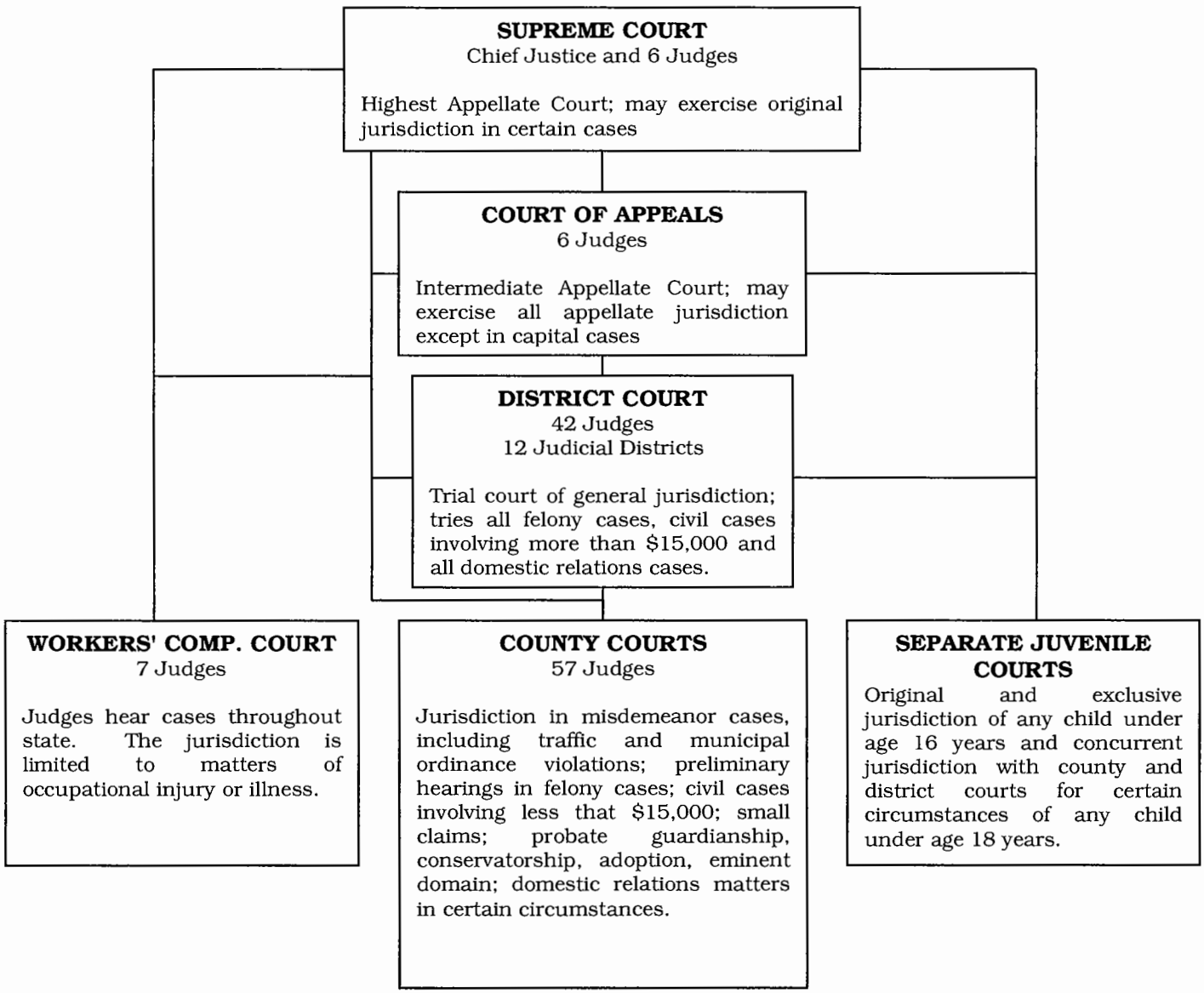
Once charges are established upon clear and convincing evidence, the commission may recommend to the Supreme Court that a judge be reprimanded, disciplined, censured, suspended without pay for a period not exceeding six months, removed, or retired. Disciplinary suspension of a judge does not create a vacancy in the office. A judge is not allowed to participate in any proceedings involving his or her own case.

The Commission on Judicial Qualifications prepared an annual report of its activities, which is available upon request from the State Court Administrator's Office, State Capitol, Lincoln, NE 68509.

OPEN JUDICIAL PROCEEDINGS

24-1001. Proceedings to be public. All judicial proceedings of all courts established in this state must be open to the attendance of the public unless otherwise specially provided by statute.

- Court Structure -
Process of Appeal



Federal Judicial System
United States Supreme Court

Article III of the Constitution of the United States provides, in part: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

The United States Supreme Court has nine justices and sits only in Washington, D.C. The bulk of the Court's work involves deciding cases appealed from the United States Courts of Appeals and the Supreme Courts of the several states. The Court also hears direct appeals from the Court of Claims and the Court of Customs and Patent Appeals, both of which sit in Washington, D.C. Generally, the United States Supreme Court is not required to hear and decide every appeal submitted to it, but has the right to select such cases, which it deems of sufficient importance to warrant its attention.

United States Courts of Appeals for the Eighth Circuit

There are eleven judicial circuits in the United States, each of which has a court of appeals. The bulk of the cases, which come before each circuit court of appeals are appeals from the federal district courts located in the judicial circuit. Such courts also hear cases decided by the United States Tax Court and also review orders of many administrative agencies.

The United States Court of Appeals for the Eighth Circuit hears appeals from the federal district court in Nebraska. There are eight judges on the United States Court of Appeals for the Eighth Circuit, but appeals are normally heard by a panel of three judges. The court usually sits in St. Louis, but also may sit in St. Paul, Kansas City and Omaha.

United States District Court for the District of Nebraska

The United States District Court for the District of Nebraska sits in Omaha, Lincoln, and North Platte, and has three full-time judges. The federal district courts are courts of general jurisdiction, but are limited to those areas specifically prescribed by Congress. The bulk of the court's work involves criminal cases where the offense charged is a violation of the federal laws; civil cases involving the federal Constitution or federal laws; cases between citizens of different states where the amount in dispute exceeds $75,000; and cases where the United States is a party.

The court also hears cases involving prisoners' claims that their convictions were obtained in violation of the United States Constitution as well as appeals from the bankruptcy court and appeals from certain determinations by federal agencies.

The district court presently has two full-time magistrates, as well as one part-time magistrate who conducts the initial hearings in criminal cases, and also hears special matters assigned by the district judges.

United States Bankruptcy Court

The United States Bankruptcy Court for the District of Nebraska is an adjunct to the district court and has original jurisdiction of all cases filed under the federal bankruptcy laws. The bankruptcy court has two full0time judges who are appointed by the district judges and who sit in Omaha, Lincoln, and North Platte. Appeals from decisions of the bankruptcy court are taken to the United States district court.

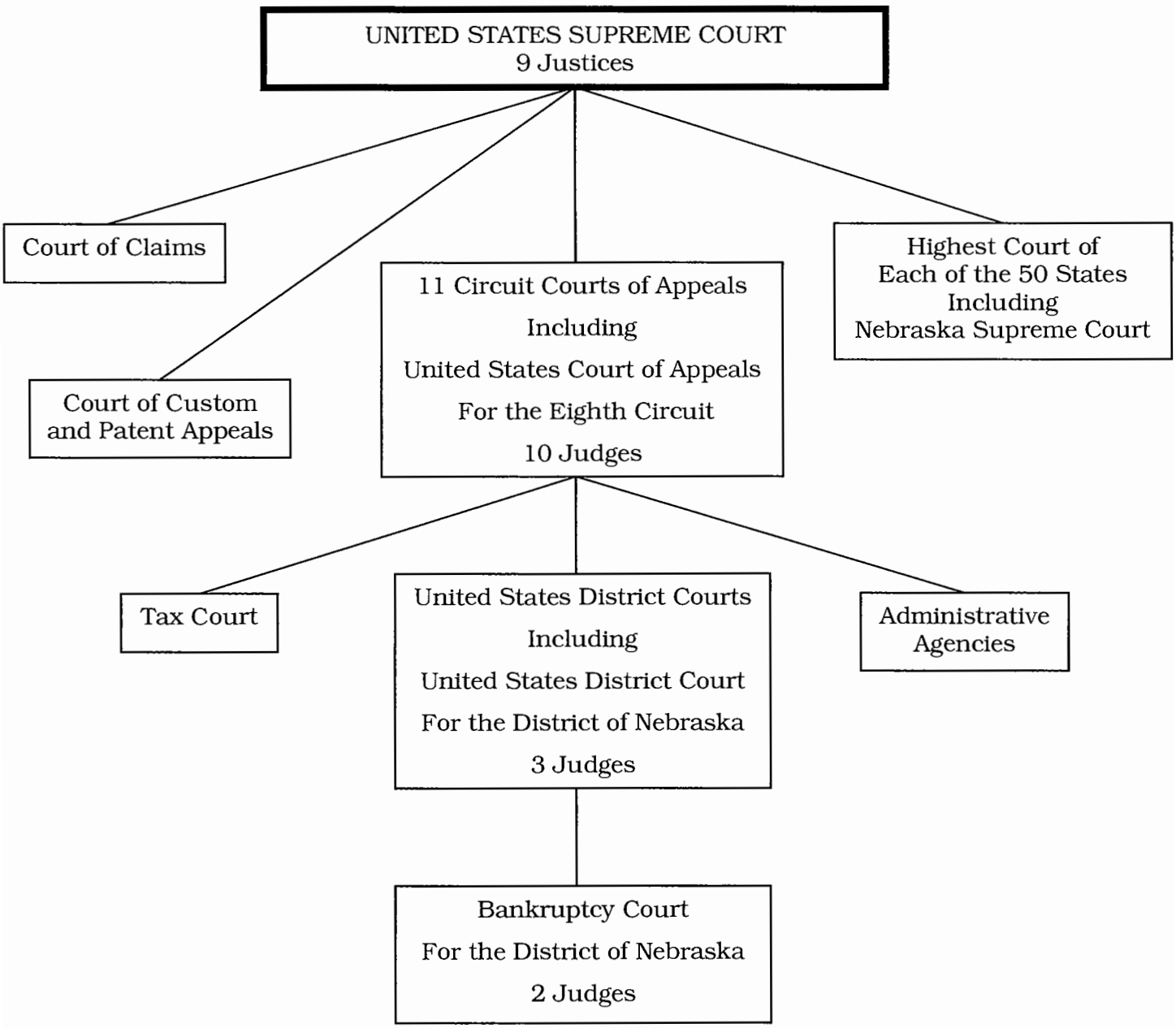
United States Tax Court

The tax court has its central office in Washington, D.C., and is composed of 16 full-time judges and eight special trial judges. The judges sit throughout the country, coming to each state as the need arises. The court comes to Omaha usually every ten months to hear tax cases arising out of Nebraska. The tax court hears all tax cases where the taxpayer has not paid taxes, which the Internal Revenue Service claims are due. The United States district courts hear tax cases where the taxpayer has already paid the disputed amounts, and seeks a refund. Appeals from the tax court are taken to the circuit court having jurisdiction of the state where the case is heard.

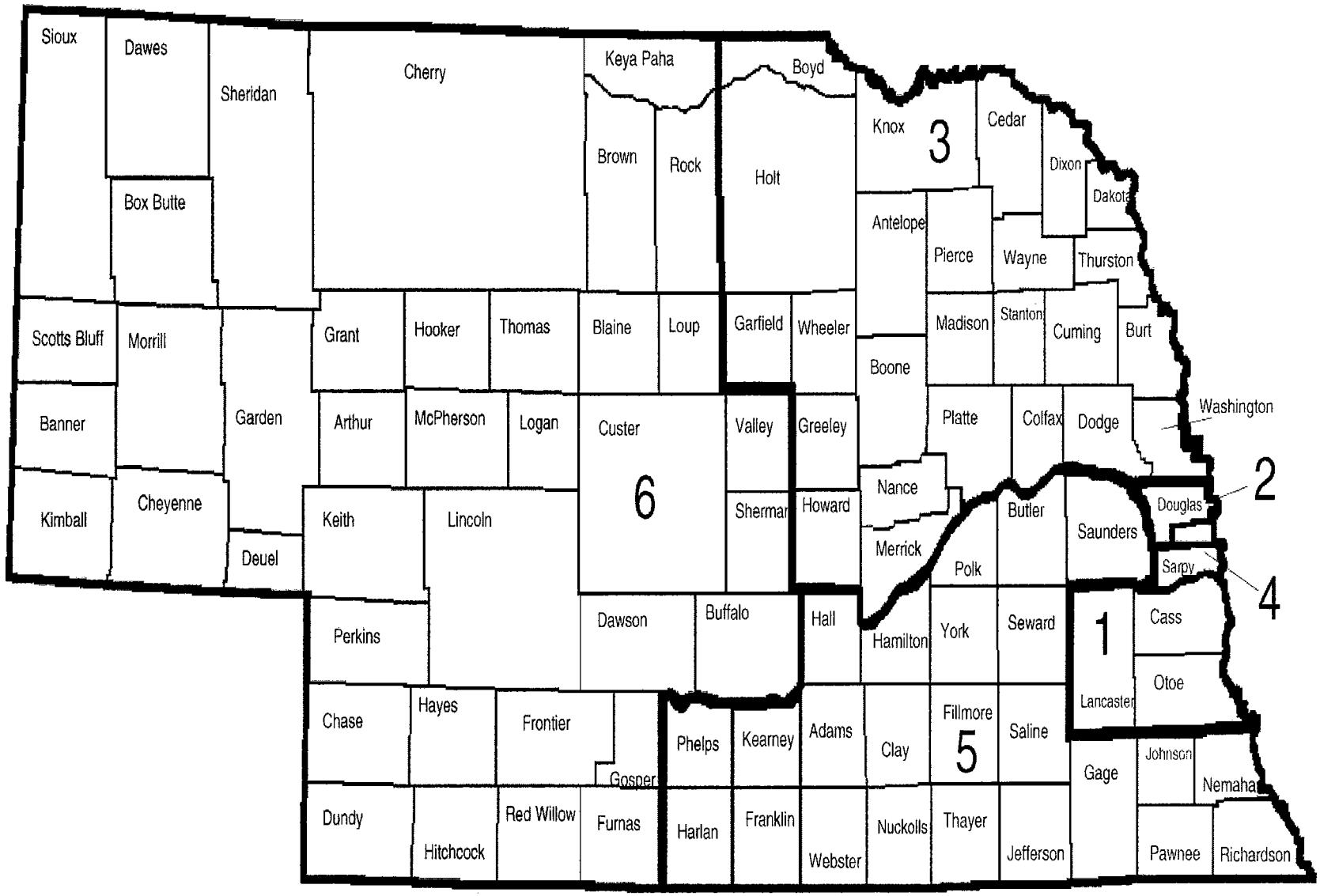
Federal Administrative Agencies

The federal government has many administrative agencies, which have internal proceedings to resolve disputes. Many of these agencies have appointed administrative law judges who conduct hearings much like the trials that are conducted in the courts.

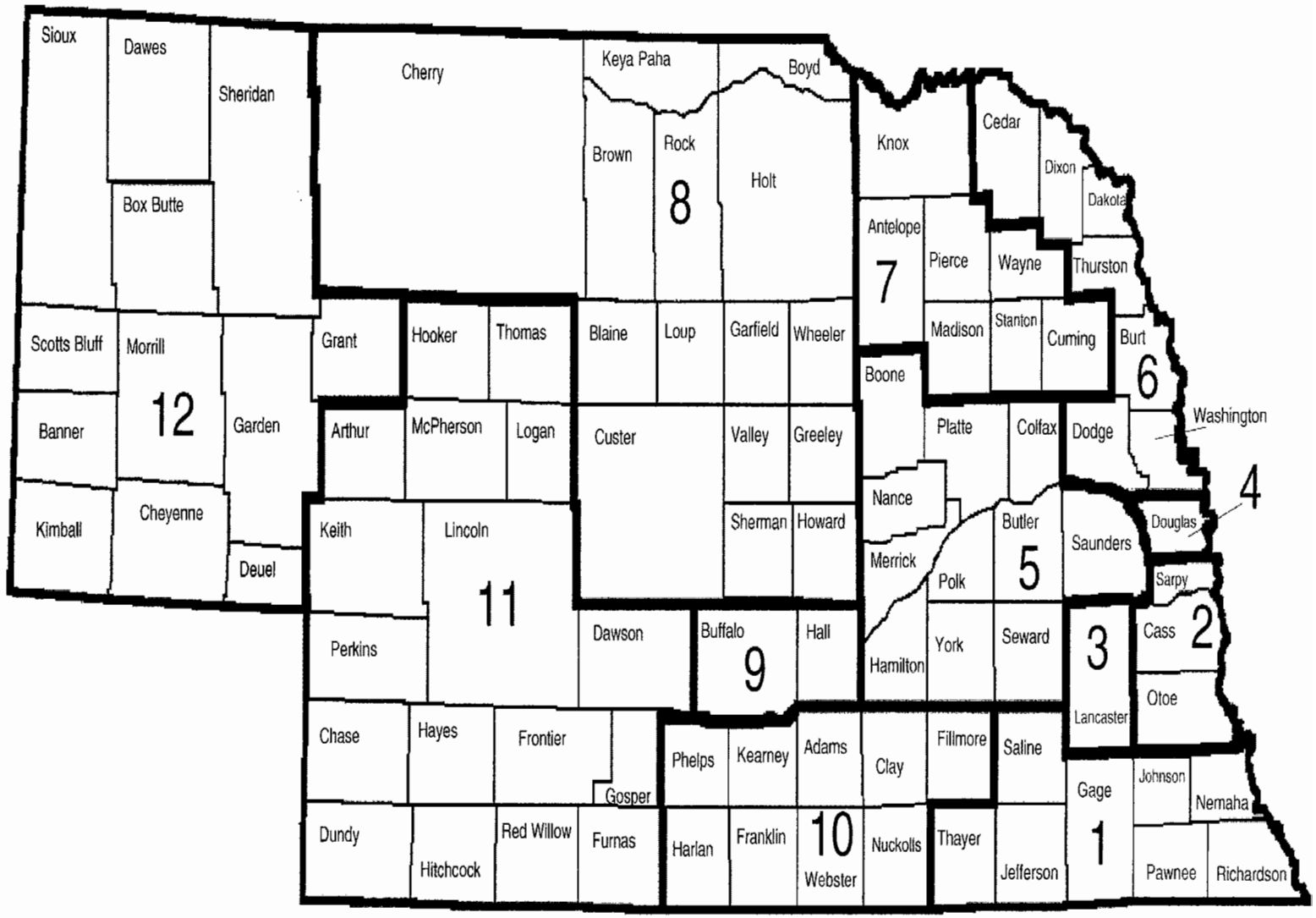
Depending upon the particular agency involved, appeals from decisions are taken either to the United States district court or directly to the circuit court appeals.



Nebraska Judicial Districts : Supreme Court and Nebraska Court of Appeals



Nebraska Judicial Districts



Fillmore County is in the 1st District for District Court and in the 10th District for County Court

Outline of Procedure for Civil Actions

The Beginning of a Lawsuit

Court actions fall into the categories of civil and criminal suits. Civil cases are those in which an individual, a business or an agency of government seeks monetary damages or another form of relief from another individual, business or agency of government, for actions taken either in the past or proposed to be taken in the future. Common examples are suits for damages arising from personal injuries or property damage in an automobile accident; or a suit to evict a tenant who will not pay the rent; or a suit for late or defective performance of a construction contract.

This section of the handbook attempts to outline the most familiar procedures, which take place in the course of a civil action, whether brought arising out of a contract breach, or out of a wrongful breach of some other legal duty created by statute, by past judicial decisions or simply by the particular relationship of the individuals involved. Generally speaking, the breach of duty not arising out of a contract is called a tort.

In England and in the early development of the American theory of lawsuits, it was often held that if a particular set of facts did not fit clearly into an established "form of action," then the injured party had no remedy for his loss. Consequently, a new system called "equity" developed in order to fill in some of those gaps where relief previously had not bee available. Thus, equity is a general description covering such matters as lawsuits to prevent the continuance of a wrongdoing (injunction), and lawsuits to compel the performance of a contract (specific performance); or a suit to required an accounting of the financial status of a business in which the complaining party claims an interest. Ordinarily, equity matters are decided by a judge, although in some cases, a factual determination of the damages can be obtained in the same case using a jury. A person who believes that he or she has been injured in some manner by another person, business or agency of government, consults a lawyer, who asks the new client to describe the facts and circumstances of the event. The attorney would normally take the client's statement, which is confidential information, in a question and answer session and then proceed to interview possible witnesses, examine applicable statutes and court decisions, and attempt to determine whether the client has a valid cause of action, or case.

If the attorney concludes that the client does have a valid cause of action, he or she prepares and files a document called a *complaint.* The lawyer's client is the *plaintiff* and the person, firm, or agency against whom the case is filed is the *defendant.*

In many cases, prior to filing the lawsuit, the attorney will attempt to arrange by negotiation a settlement of the dispute and the filings will take place only if such negotiations fall through.

The complaint states the facts of the plaintiff's action against the defendant and sets forth the demand for damages, injunction, or other form of relief sought. Normally, the complaint also asks for the allowable court costs of the lawsuit, and in some cases, where permitted by statute asks that the plaintiff's attorney fee also be paid by the defendant. However, the mere filing of the suit does not prove that the plaintiff has a cause of action. Later events may demonstrate that the claim is invalid, and the petition or complaint itself consists only of unproved *allegations* at this point.

In federal court, a total amount of damages demanded may be set forth; however, in Nebraska state courts under our statutes, only the amount of "special" damages" in an amount unspecified. The amount asked for in the demand, however, again is only an allegation, and the mere winning of the lawsuit on the questions of liability does not mean that damages in the amount requested would automatically be awarded. The amount of actual damages must always be proved by the party claiming the damages by the greater weight, or preponderance, of the evidence, so the amount demanded in the petition or complaint should not necessarily be regarded as the true amount ultimately in dispute.

The attorney for the plaintiff also files with the clerk of the court a *praecipe*, which is a written request for the court clerk to issue, either to the United States marshal or to the sheriff of the county in which the action was filed if it is in state court, a *summons* for service upon the defendant. Usually personal delivery is sought, although sometimes a summons may be left at defendant's residence or mailed to him, her, or it.

After the sheriff or U.S. marshal has served the defendant with a copy of the summons, he then files in the clerk's office a notation written on the original of the summons describing where, when, and how the defendant was served with a copy of the summons. The serving of the summons is the defendant's formal notification of the lawsuit, and completes the commencement of the case.

After receiving the summons, the defendant is entitled to a certain period of time, always noted upon the summons, within which to file his *pleading* in response to the plaintiff's petition.

Preparation of the Case for Trial

The plaintiff and defendant, through their respective attorneys, next attempt to identify, gather and organize all of the pertinent facts bearing upon the case. The defendant may begin the defense of the case by filing certain pleadings in response to the petition, which may include one or more of the following:

Motion to Strike

This is a request that the court strike out all or portions of any pleading if it contains or consists of redundant, scandalous or irrelevant matter.

Motion to Make More Definite and Certain

This is a request that the court require that the author of a pleading make its allegations more precise so that they may be better understood and answered.

Motion to Dismiss

This motion asks the court to rule that the plaintiff's complaint be dismissed for a specific reason set forth in the motion or accompanying brief, without further pleading, trial or other proceedings in the case. A motion to dismiss in federal court may be based on such reasons as:

(1) lack of jurisdiction over the subject matter of the lawsuit;
(2) lack of jurisdiction of the person of the defendant;
(3) improper venue or place of trial;
(4) impropriety in the manner in which the summons was prepared or served;
(5) failure of the plaintiff to allege sufficient facts to state a valid claim, even though those facts which are pleaded are assumed to be true; or
(6) failure to join an additional party needed for full adjudication of the suit.

Answer

This is a statement by the defendant admitting, denying, or partially admitting and partially denying the allegations in the petition and complaint, and in some cases pleading additional excuses or other forms of legal defense.

Cross-petition or Cross-complaint

This is a pleading by a defendant sometimes combined with the answer and sometimes filed separately, asking for relief or damages against the original plaintiff and, in some cases, other defendants or other parties. When a cross-petition is filed, the party against which it was filed may then file an answer or most of the previously mentioned types of motions in response to the cross-petition or cross-complaint.

Reply

Either party in the case may file a reply, which constitutes an answer to any new allegations raised by the other party in prior pleadings.

Discovery Pleadings, Notices and Motions

In order to determine the relevant facts of the case, either in party may use various devices to learn what information the opponent has or can readily obtain which may be useful in finding out the truth and presenting it to the court or jury at the trial. Three of the most familiar and frequently used forms are depositions, interrogatories, and requests for admissions of the truth of specific facts or the genuineness of specific documents.

A *deposition* is an out-of-court statement of a witness, taken under oath in front of a notary public or court reporter, intended for use in its transcribed form in the trial or in further preparation for the trial. Either of the parties may take the deposition of the other party or of any witness. In some cases, depositions are taken simply to preserve the testimony of important witnesses who may not be able to appear in court or who reside in another state or jurisdiction so that they could not be legally summoned actually to attend the trial.

Depositions may be read into evidence at the trial, subject to the same rules of evidence that govern live testimony at the trial. If a person who is a witness, and not a party, has given a deposition but then appears or can be summoned as a witness at the trial, his or her deposition may normally be used to attack his or her credibility, if the witness's oral testimony at the trial is inconsistent with that contained in the deposition. The deposition of a party, on the other hand, may much more freely be read into evidence whether the party is present or not.

In addition to taking depositions in an attempt to ascertain the facts upon which another party relies, either party may submit written questions called *interrogatories*, to the other party and require that such be answered under oath. Such interrogatories are normally answered with the assistance of the answering party's attorney. Requests for admissions required that the part to whom these are written requests are given admit or deny the facts set forth, or admit or deny the genuineness of documents attached or referred to within a particular period of time. If there is no response to such a request, the facts are deemed admitted and the genuineness of documents is deemed admitted.

Other methods of discovery include requiring by motion or request adverse parties to produce books, records, and documents for inspection or copying, or requiring adverse parties to submit to a physical examination to determine any relevant physical facts that bear on the issues of the case.

Pre-Trial Conference

After all the pleadings of both parties have been filed, and the discovery completed, the case is deemed to be *at issue*. The federal courts in this state, and many of the state district and county courts will then set the case for a pre-trial conference or hearing. At this hearing, the attorneys appear, generally without their clients, and, in the presence of the judge, or in the case of the federal trial courts, in the presence of the United States magistrate, seek to

agree on what issues and facts are still disputed or undisputed. There may be stipulations of facts entered, which means that such facts need not be specifically proved at trial, other than to read the stipulation into evidence. Stipulations may include such matters as the exact time and place of an accident, the genuineness or authenticity of pictures or other documents, and other matters even including pointes of law, which the parties can agree upon.

Pre-Trial Objective

The objective of the pre-trial hearing is to shorten the actual trial time without infringing upon the rights of either party, and to limit the issues to those which are truly in dispute. The pre-trial procedure, used extensively in federal district courts as well as in most of our state district courts, frequently assists in developing a settlement of the case without trial.

Where the case is not settled, however, the court assigns a specific trial date for the case following the pre-trial hearing, or at least a specific period of time during which the attorneys and parties can expect that they might be called for trial on short notice. The judges, or magistrates, then in many cases send out to the attorneys a copy of a pre-trial order reflecting the fact stipulations, the scheduling of trial and other matters resolved at the pre-trial conference. This is normally called the *pre-trial order* and would provide an excellent summary of the status of the case just before trial. In most cases, it is placed in the file in the clerk's office, and in the federal court is actually deemed to be the truest and final authority on what the issues are for trial resolution.

Trial of Civil Cases

Officers of the Court

The judge is the officer who is appointed (subject to voter approval at certain election intervals) to preside over the court. If the case is tried before a jury, the judge rules upon legal questions dealing with trial procedure, the manner and order of presenting the evidence and instructs the jury upon the law governing the particular case. If the case is tried before the judge alone, then he or she also has the duty of determining the facts in addition to performing the aforementioned duties.

The clerk of the court is an officer of the court, who, at the beginning of the trial, upon the judge's instruction, gives the entire panel of prospective jurors (the *venire*) an oath. By this oath, the members of the venire promise that they will truly answer any question concerning their qualifications to sit as jurors in the case.

Any member of the venire who is disqualified, for such reasons as being less than 19 years of age, not having the qualifications of electors in their county, being unable to read, speak or understand the English language, or because they are within certain categories exempted from jury duty, would ordinarily be excused by the judge at this time. A person may also be exempted if he or she is a judge, court clerk, sheriff, jailer, a party to the suit or another suit pending before the same jury panel, or if previously convicted of a felony, or if the person's spouse has been summoned as a juror on the same panel, or if he or she is incapable of serving by reason of physical or mental disability. Also, persons over 65 years of age may make requests for exemption if they wish, but need not do so and are not automatically exempt unless they so request.

The court reporter records all proceedings in the courtroom, including testimony of the witnesses, objections to evidence made by the attorneys and the rulings of the court on the objections, and the listing and marking for identification of any exhibits offered or introduced into evidence. Normally, the clerk of the court has charge of the exhibits until such time as those admitted in to evidence are give to the jury for their deliberations at the end of the case.

Attorneys are also considered officers of the court, and their duties are to represent their respective clients, and present the evidence on their behalf so that the jury or the judge may reach a just verdict or decision.

Selection of the Jury

As mentioned above, normally in state court a jury of 12 tries a civil proceeding, while in most federal civil trials a jury of six is selected in this state. In some courts, alternate jurors are also selected to take the places of members of the regular panel who may become disabled or otherwise disqualified during the trial. The alternate jurors hear the evidence just as do the regular jurors, but do not participate in deliberations unless they must become a substitute for a disable or disqualified juror.

The process of selection of the jury, after a group of the members of the venire are seated in the jury enclosure, usually begins with the judge making a brief statement of the type of case before the court, possible acquainting the jurors very generally with some of the facts. Then, the judge and normally the attorneys also questions the jurors in a process known as *voir dire*, asking them information such as their occupation, place of business, past experience in similar fact situations as that which is involved in the case, previous litigation or jury service they may have been involved with and the like. The purpose of this questioning is to determine whether any bias or prejudice might affect the judgment of a particular juror in the case. If a member of the venire indicates that he or she may in fact have a prejudice or confirmed opinion, which will affect his or her judgment, the judge will dismiss this prospective juror *for cause*, and a substitute juror will be called by the court clerk. There is no limit on the number of jurors who may be excused for cause.

In addition to such challenges for cause, each party has the right to exercise some specific number of *peremptory challenges*. These challenges permit an attorney for a party to excuse a particular juror without having to state why. This process reduces the number of prospective jurors to the actual number needed for the jury, and each party has had some role in choosing the final jury panel. The jury is then sworn in, and the remaining members of the venire are excused and normally directed to report at a future date when another case will be called, or excused from all further service if the court does not expect to try additional cases during that session.

Opening Statements

After selection of the jury, the plaintiff's attorney may make an opening statement to advise the jury what her or she intends to prove in the case. The statement is to be confined to facts intended to come out in the evidence and should not be argumentative. The attorney for defendant may also make an opening statement for the same purpose.

Presentation of Evidence

Next, the plaintiff in a civil case begins the presentation of evidence through witnesses, and by introducing documents, pictures or other physical exhibits. Witnesses may testify to all matters of actual fact which they have observed through their senses, and in many instances may also state their opinions, whether they be expert in the particular field, or if not to be helpful to the jury in deciding the factual issues before it.

Expert witnesses may give their opinions based upon facts in evidence, or facts which they have obtained through their research and preparation, even though not all of those facts may be in the evidence.

While there are exceptional cases, generally a witness cannot testify to hearsay, that is, the relating of anyone's statements, when offered as proof of the truth of the matter asserted in the statement. There are many exceptions for hearsay which is deemed sufficiently reliable

to allow in; but the general rule against hearsay prevents the insertion of evidence which is un-sworn and lacks subjection to cross-examination.

Also, a witness is generally not permitted to testify about matters that are too remote to have any bearing on the decision of the case and are therefore irrelevant or immaterial, nor about matters, which the witness did not sufficiently observe personally, and which therefore would result in pure speculation.

Under normal circumstances, an attorney may not ask leading questions of a witness he or she has called. However, if the witness is considered adverse or *hostile*, or if the questions pertain only to routine, non-controversial preliminary information, *leading questions* may be asked. A leading question is one which suggests the answer desired.

Objections may be made by the opposing counsel to leading questions, to questions that call for speculation or unhelpful opinions, or which require an answer based on hearsay, or other reasons under the rules of evidence. The judge will thereupon sustain or deny the objection. If sustained, another question must then be asked, or the same question in some cases can be rephrased in a proper and acceptable for.

If an objection to a question is sustained, the attorney asking the question may also make an *offer of proof*. This offer is dictated to the court reporter away from the hearing of the jury, and in it the attorney re-states the question along with the answer, which the witness would have given if the objection had not been sustained. The offer then becomes part of the record, in the even the case is subsequently appealed.

Cross Examinations

When the plaintiff's attorney has finished direct examination of each particular witness, the opposing counsel may then cross-examine the witness on any matter about which the witness has been questioned initially in the direct examination. The cross-examining attorney may ask leading questions for the purpose of inducing the witness to testify about matters which he or she may otherwise have chosen to ignore.

On cross-examination, the attorney may try to bring out prejudice or bias of the witness, such as a relationship or friendship with the adverse party, or other interest in the case. The credibility or opportunity of the witness to have observed the matters to which he has testified may be challenged also on cross-examination.

After examination and cross-examination, the attorney who originally called the witness has the right to ask questions on *re-direct examination*, covering only those matters brought out on cross-examination, and normally attempting to rehabilitate a witness whose testimony on direct has been weakened by the cross-examination. There then may be a *re-cross-examination*, and so forth.

Motion for Directed Verdict

At the conclusion of the plaintiff's presentation of evidence, the attorney will announce that the plaintiff rests his or her case. Then, away from the presence of the jury, the defendant's counsel may make a motion to dismiss the case, or, in the alternative, to have the judge order the jury to return a verdict in favor of the defendant, on the basis that the plaintiff did not present sufficient evidence even to let the jury make the factual determination.

The attorneys may at that time argue to the judge the merits of the case, and the question of whether or not there is a fatal defect to the plaintiff's evidence. The judge will either sustain or overrule the defendant's motion. If it is sustained, the case is concluded, subject to the plaintiff's right to appeal. If the motion to dismiss or to direct a verdict is overruled, then the defendant is given the opportunity to present evidence in defendant's favor.

Presentation of Evidence by the Defendant

The defense may elect to present no evidence, or may present evidence, either placing the defendant upon the stand or not. In a civil case, the burden on the plaintiff is in most cases to prove each element of his or her case by a preponderance, or greater weight, of the evidence. In some cases, the standard also requires *clear and convincing* evidence, or similarly phrased descriptions, meaning something a little more than just a slightly greater weight, though not as demanding a requirement as *beyond a reasonable doubt*, the standard for criminal cases.

The defendant is generally presumed to be not negligent or liable in a civil case, and therefore the plaintiff has to accept that initial burden of bringing forth at least some substantial evidence on each of the necessary elements of his or her claim. In some cases, the defense attorney may feel that the burden of proof has not been sustained by the plaintiff, or that presentation of the defendant's witnesses might actually strengthen the plaintiff's case, and in such cases may call forth no evidence.

If defendant does present evidence, it is presented in the same manner as was the plaintiff's, and there will be direct examination, cross-examination, and possibly documentary or other exhibits offered by the defendant.

Rebuttal Evidence

At the conclusion of the defendant's case, the plaintiff may then present rebuttal witnesses or evidence designed to refute the testimony and evidence presented by the defendant. The matter covered is evidence of facts which the plaintiff did not present in its case in chief initially, but rather is aimed at those matters and issues brought forth by the defendant. If there is a so-called *surprise witness*, this is often where that witness will appear, since under pre-trial rules in Nebraska normally it is not necessary to give specific advance warning of witnesses called strictly for the purposes of refutation or for impeaching credibility.

After the plaintiff's rebuttal evidence, the defendant may present additional evidence to contradict the rebuttal evidence.

Final Motions

At the conclusion of all the evidence, the defendant and the plaintiff both having rested their cases, the parties may make motions for a judge determination of the case. Again, this is done out of the presence of the jury. The defense may move to dismiss the case; the plaintiff may move to have the judge decide the case in his or her favor because the evidence is so clear that a reasonable jury could not come in with contrary verdict. The court may or may not hear arguments at that time, and will rule on those motions, or in some situations may take those motions under consideration without immediately ruling upon them. Occasionally in such cases, the court may permit the jury to give its judgment first before the judge makes his or her actual final decision on the motions.

Closing Arguments

The attorney for the plaintiff will present the first argument in closing the case, and has the job of summarizing and commenting on the evidence in the most favorable light for the plaintiff's side. He or she may argue from the facts and from properly drawn inferences from the facts. Plaintiff's attorney may not talk about issues on which there is no evidence or about evidence that was not received by the court. If the attorney argues about improper matters, the opposing attorney may object and the judge will rule on the objection. If the offending remarks are deemed seriously prejudicial, in some cases the opposing attorney may even ask

for a *mistrial*; that is, the attorney may request that the present trial be terminated and that the case start over for retrial at a later date.

Ordinarily, before the closing arguments, the judge will have indicated to the attorneys either the general nature or the precise language of the legal instructions that the judge intends to give the jury, and it is proper for the attorneys in closing argument to comment upon those instructions of law and to try to relate them to the evidence which the jury has heard.

After the plaintiff has made argument, defendant's attorney is entitled to present argument, answering statements made in the opening argument, pointing out defects in the plaintiff's case and summarizing the facts favorable to the defendant.

The plaintiff is entitled to the concluding argument to answer the defendant's argument and make a final appeal to the jury.

Instructions to the Jury

Giving instructions to the jury is the function of the trial judge. In Nebraska, however, the attorneys for each side are entitled to submit a set of requested instructions of law which are designed to appropriately apply the law to the facts in evidence. The judge will indicate which of these instructions are acceptable and which ones are refused. The attorneys may make objections to such rulings for the purpose of preserving the record for any appeal.

The judge reads the instructions to the jury sometimes before but usually after the closing argument. This is commonly referred to as the judge's charge to the jury.

The customary pattern of instructions includes a set of instructions which set forth the issues and basic legal positions of the parties to the case, and define any terms or words necessary for the jury's complete understanding. The judge will tell the jury what decisions it must make on the issues if it is to find for the plaintiff or for the defendant. The judge will advise the jury that it is the sole judge of the facts and of the credibility of witnesses. After describing other points of law for the jury's use in reaching its decision, the court will advise the jury to retire to the jury room, choose a foreman of the jury and reach a decision based upon the judgment of each individual juror. The bailiff will protect the privacy and confidentiality of the jury deliberations, and no one is permitted to speak with the jurors, argue to them or in any other ay attempt to tamper with their deliberations.

Ordinarily, the court furnishes the jury with written forms of all possible verdicts, sometimes with blank spaces upon which the amount of any verdict in favor of the plaintiff can be set forth, and the jury is to choose the proper verdict form, fill it in and have it signed by the foreman.

For the purpose of its deliberations, the jury is normally entitled to take the judge's instructions and the exhibits introduced into evidence into the jury room to study and use.

If necessary, the jury may return to the courtroom in the presence of counsel to ask a question of the judge about the instructions. In such instances, the judge may reread all or certain parts of the instructions previously given, or supplement or clarify them by further instructions.

If the jury is out overnight, the members often will be housed together in a hotel and secluded from all contacts with other persons. In other cases, however, the jury is excused to go home at night, with an admonition not to discuss the case with any person.

Verdict

Upon reaching its verdict, the jury returns to the courtroom with the bailiff, and in presence of the judge, the parties and their attorneys, the verdict is read or announced aloud in open court. Attorneys for either party, though usually the losing party, may ask that the jury be polled, in which case each individual juror will be asked if the verdict is his or her

verdict. It is, of course, rare for a juror to say otherwise. When the verdict is read and accepted by the court, the jury is dismissed, and the trial is concluded.

In a few cases, the jury is asked not only to reach a general verdict in favor of one party or the other, but also to answer specific questions on issues of fact. On rare occasions, the answers to the specific questions will be so inconsistent with the general verdict reached that the court will at that time either grant a new trial or, in effect, change the verdict in order to create consistency. Such a change would normally come about upon the motion of the losing party, asking for a *judgment non obstante verdicto (judgment n.o.v.)* or judgment notwithstanding the verdict, or a motion for a new trial.

Judgment

The verdict of the jury is not effective until the judge enters judgment upon the verdict. In a civil damage action, this judgment might read: "It is, therefore, ordered, adjudged and decreed that the plaintiff do have and recover the sum of $1,000 of and from the defendant."

At the request of the plaintiff's lawyer, the clerk of the court may deliver a paper called an *execution* to the sheriff or marshal, commanding the sheriff or marshal to take and sell the property of the defendant and apply the proceeds to the amount of the judgment.

Appeal

In a civil case, either party may appeal to a higher court, based on a claim of error of law or in trial procedure.

The record on appeal consists of the papers filed in the trial court and the court reporter's typed transcription of the oral evidence, the objections, rulings by the court and so forth which took place during the trial or previous hearings prior to trial. The former document, basically the pleadings, is called the transcript. The latter document is called the *bill of exceptions*. It is not necessary in all cases that the entire record be included, but only so much as will properly and fully present the questions which are raised on appeal.

Procedures for Appeal

Within 30 days after the final judgment has been entered by the court, the losing party must file a notice of appeal if such party wishes to preserve its rights to having the case reviewed by a higher court. The appeal is initiated by filing the notice, and next the transcript and/or bill of exceptions to the extent required. Then, the appealing party, called the *appellant,* must file within a certain period of a brief setting forth the reasons and the law relied upon in seeking a reversal of the trial court.

The prevailing party in the trial court, now called the *appellee*, then has a specified time within which to file an answer brief. Following this, the appellant may file a reply brief to the appellee's brief.

When the appeal has been fully briefed, the case may be set for hearing on oral argument before the appellate court. The appellate court for trials which take place in the county courts in Nebraska is the district court; the appellate court for the trials which take place in the district court is the Nebraska Supreme Court. The appellate court for trials which take place in the United States District Court for the District of Nebraska is the United States Court of Appeals for the Eighth Circuit.

In some cases in the federal system, the United States Court of Appeals will determine that it does not wish to hear oral argument, and prefers to decide the case based upon the briefs submitted with out argument.

Courts of appeal do not hear further evidence and it is very unusual for any of the actual parties to the cased to attend the hearing of the oral argument, which is made only by the lawyers.

Generally, after argument the case is assigned to one of the judges of the appellate court; all the judges who heard the arguments may confer on the issues presented and the judge who has been assigned the case will write and opinion. Those judges who disagree with the proposed result in that draft of an opinion, however, may dissent and file a dissenting opinion.

Normally, an appellate court does not independently weigh the evidence, and generally will decide to affirm or reverse a trial court for errors of law only. Not every error of law necessarily warrants a reversal, either. Some are considered harmless errors, that is to say, the rights of a party to a fair trial were not truly prejudice by such errors.

After the opinion of the appellate court is handed down, the losing party has a short period in which to file a request or a rehearing. If it does not do so, or if the rehearing is denied, the losing party also has the right to attempt to appeal to the United States Supreme Court, either from decision of the Nebraska Supreme Court or decisions of the United States Court of Appeals for the Eighth Circuit.

The attempted appeal to the United States Supreme Court is generally made by petitioning for a *writ of certiorari*. The granting of a writ of certiorari would mean that the United States Supreme Court ahs agreed to hear the case and decide it. Such grants are extremely rare, however, and in almost every case the final decision of the Nebraska Supreme Court or of the United States Court of Appeals for the Eighth Circuit will be the final review of the legal merits of the case.

Media Equipment in the Courtroom

Media equipment, such as cameras and recorders, is traditionally prohibited from the courtroom in order to insure a fair trial to all parties. Included here are some rules and restrictions upon media equipment use in various courts.

Code of Judicial Conduct

Canon 3(7) A judge should prohibit broadcasting, televising, recording or photographing in courtrooms and areas immediately adjacent thereto during sessions of court, or recesses between sessions, except that under rules prescribed by a supervising appellate court or other appropriate authority, a judge may authorize broadcasting, televising, recording and photographing of judicial proceedings in courtrooms and areas immediately adjacent thereto consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with the administration of justice.

Media Coverage of Proceedings before the Nebraska Supreme Court and the Nebraska Court of Appeals

A. Definitions.

Judicial proceeding or *proceeding* as referred to in these rules shall include all public trials, hearings, or other proceedings in the Supreme Court and the Court of Appeals, except those specifically excluded by these rules.

Expanded media coverage includes broadcasting, televising, electronic recording, or photographing of judicial proceedings for the purpose of gathering and disseminating news to the public.

Supreme Court shall mean the Supreme Court of Nebraska.

Chief Justice shall mean the Chief Justice of the Supreme Court of Nebraska.

Court of Appeals shall mean the Nebraska Court of Appeals.

Chief Judge shall mean the Chief Judge of the Nebraska Court of Appeals.

B. General.

Except as provided below, broadcasting, televising, recording, and photographing will be permitted in all judicial proceedings in the courtroom during sessions of the Supreme Court and the Court of Appeals, including recesses between sessions, under the following conditions:

1) There shall be no audio pickup or broadcast of conferences in a court proceeding between attorneys and their clients, between co-counsel, or between judges.

2) The quantity and types of equipment permitted in the courtroom shall be subject to the discretion of the Chief Justice within the guidelines set out in the accompanying rules.

3) Notwithstanding the provisions of any of these procedural or technical rules, the Chief Justice, or the Chief Judge as to the Court of Appeals, upon application, may permit the use of equipment or techniques at variance therewith, provided the application for variance is made at least 10 days prior to the scheduled hearing. Ruling upon such a variance application shall be in the sole discretion of the Chief Justice or the Chief Judge, as the case may be. Such variances may be allowed by the Chief Justice or the Chief Judge without advance application or notice if all counsel and parties consent.

4) The rights provided for herein may be exercised only by persons or organizations which are part of the news media.

5) These rules are designed primarily to provide guidance to media and courtroom participants and are subject to withdrawal or amendment by the Supreme Court at any time.

C. Preservation of Rights.

Expanded media coverage of a proceeding shall be permitted in all judicial proceedings unless the court concludes, after objection and showing of good cause, that under the circumstances of the particular proceeding such coverage would materially interfere with the rights of the parties to a fair trial. The Chief Justice or the Chief Judge, when applicable, may, as to any or all media participants, limit or terminate photographic or electronic media coverage at any time during the proceeding in the event the Chief Justice or Chief Judge finds

1) that rules established under this order or additional rules imposed by the Chief Justice or the Chief Judge have been violated or

2) that substantial rights of individual participants or rights to a fair trial will be prejudiced by such manner of coverage if it is allowed to continue.

D. Objections.

A party to a proceeding objecting to expanded media coverage under these rules shall file a written objection, state the grounds therefore, at least 3 days before commencement of the proceeding. All objections shall be heard and determined by the Chief Justice, or the Chief Judge as to the Court of Appeals, prior to commencement of the proceeding. Time for filing of objections may be extended or reduced in the discretion of the Chief Justice, or the Chief Judge as to the Court of Appeals, who may also, in appropriate circumstances, extend the right of objection to persons not specifically provided for in these rules.

E. Technical.

1) Equipment to be used by the media in the courtrooms during the proceeding must be unobtrusive and must not produce distracting sound. In addition, such equipments must satisfy the following criteria:

a. Still cameras are to be standard, professional quality, single-lens reflex or rangefinder 35 mm cameras, or twin-lens reflex 120 mm cameras in good repair. Motor-driven film advances and auto-winders on still cameras are not allowed.

b. Television cameras are to be electronic and, together with any related equipment to be located in the courtroom, must be unobtrusive in both size and appearance, and without distracting sound or light. Television cameras are to be designed or modified so that participants in the proceeding being covered are unable to determine when recording is occurring.

c. Microphones, wiring, and audio recording equipment shall be unobtrusive and of adequate technical quality to prevent interference with the proceeding being covered. No modifications of existing systems shall be made. Microphones for use of counsel and judges shall be equipped with off/on switches.

2) Other than light sources already existing in the courtroom, no flashbulbs or other artificial lighting device of any kind shall be employed in the courtroom.

3) The following limitations on the amount of equipment and number of photographic and broadcast media personnel in the courtroom shall apply:

a. At any one time, not more than one still photographer, using not more than two camera bodies and two lenses, shall be permitted in the courtroom during a proceeding.

b. Not more than one television camera, operated by not more than one person knowledgeable in its use, shall be permitted in the courtroom during any proceeding. Where possible, recording and broadcasting equipment which is not a component part of a television camera shall be located outside the courtroom.

c. Not more than one audio system shall be set up in the courtroom for broadcast coverage of a proceeding. Audio pickup for broadcast coverage shall be accomplished from any existing audio system present in the courtroom, if such pickup would be technically suitable for broadcast. Where possible, electronic audio recording equipment and any operating personnel shall be located outside the courtroom.

d. Where the above limitations on equipment and personnel make it necessary, the media shall be required to pool the equipment and personnel. Pooling arrangements shall be the sole responsibility of the media, and neither the Supreme Court or the Court of Appeals nor their employees shall be called upon to mediate any dispute as to the appropriate media representatives authorized to cover a particular proceeding.

4) Equipment and operating personnel shall be located in, and coverage of the proceeding shall take place from, and area or areas within the courtroom designated by the Chief Justice or Chief Judge.

5) Television cameras and audio equipment may be installed in or removed from the courtroom only when court is not in session. In addition, such equipment shall at all times be operated from a fixed position. Still photographers and broadcast media personnel shall not move about the courtroom while a proceeding is in session, nor shall they engage in any movement which attracts undue attention. Still photographers shall not assume body positions inappropriate for spectators.

6) All still photographers and broadcast media personnel shall be properly attired and shall maintain proper courtroom decorum at all times while covering the proceeding.

Media Coverage of Proceedings before any Court
Other than the Nebraska Supreme Court or the Nebraska Court of Appeals

A. Other than as provided above, there shall be no broadcasting, televising, recording, or photographing in courtrooms and areas immediately adjacent thereto during sessions of a court or recesses between sessions, except that under rules which may be prescribed by the Nebraska Supreme Court a judge of a court other than the Supreme Court or Court of Appeals may authorize proceedings in such courtrooms and areas immediately adjacent thereto consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with administration of justice.

Media Coverage of Proceedings before Federal Court

83.1 Free Press-Fair Trial Provisions. (a) Statement Not to be Made. A lawyer shall not make an extrajudicial statement that the lawyer knows or reasonable should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. An extrajudicial statement, other than one permitted by paragraph (b) of this rule, ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, or a criminal matter or proceeding that could result in incarceration, and the statement relates to:

(1) The character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) In a criminal case or proceeding that could result in incarceration the possibility of a plea of guilty to the offense or the existence or contents or any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) Any Opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration; or

(5) Information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial.

(b) Statements Which May Be Made. A lawyer involved in the investigation or litigation of a matter may state without elaboration:

(1) The general nature of the claim or defense;

(2) Information contained in a public record;

(3) That investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved;

(4) The scheduling or result of any step in litigation;

(5) A request for assistance in obtaining evidence and information necessary thereto;

(6) A warning of danger concerning the behavior of a person involved, when there is reason to believe that such danger exists; and

(7) In a criminal case:

(A) The identity, residence, occupation and family status of the defendant or suspect;

(B) If the defendant or suspect has not been apprehended, information necessary to aid in apprehension of that person;

(C) The fact, time and place of arrest, resistance, pursuit and use of weapons; and

(D) The identity of investigating and arresting officers or agencies and the length of that investigation.

83.2 Courtroom and Courthouse Decorum

(a) Counsels' Standing. Counsel shall stand when addressing or addressed by the court. When making objections, counsel need not stand unless otherwise directed by the court.

(b) Counsel's Examination of Witnesses. Except when it shall be necessary for counsel to approach the witness or an exhibit, the examination of witnesses shall be conducted from the counsel table or, if the courtroom be equipped with an attorney's lectern, from the lectern. When examining witnesses from a lectern, counsel shall stand in close proximity to the lectern and with the lectern between him or her and the witness. When

examining witnesses from the counsel table, counsel shall remain seated in the chairs provided for counsel beside the counsel table or may stand immediately adjacent to the counsel's table.

(c) Counsel's Moving About The Courtroom. Counsel shall not approach opposing counsel, the bench, a witness, the court reporter's table, or the clerk's desk, or otherwise move from the counsel table or lectern, without the permission of the court, except the make an opening statement or closing argument. If many such movements will be necessary during a trial, the court, upon request, may grant continuing leave to make specified approaches.

(d) Colloquy Between Counsel. Counsel shall not participate in colloquy with opposing counsel, whether audible or inaudible to others, or whether in the form of a conference or otherwise, without permission of the court.

(e) Counsel's Leaving the Courtroom. If any counsel, including co-counsel, wishes to leave the courtroom, permission of the court should be obtained. Co-counsel may receive continuing permission to leave the courtroom at any time, although no counsel should leave during the testimony of any witness he or she has examined.

(f) Addressing and Referring to Witnesses and Parties. Witnesses and parties shall be referred to and addressed by their surnames, unless leave to do otherwise is granted.

83.3 Public Security and Conduct in Courthouse.

(a) General Conduct. No person shall loiter, sleep, or conduct himself or herself in an abusive or disorderly manner.

(b) Entering and Leaving Building, Courtroom or Corridor. Persons shall enter or leave the building or courtroom or corridor of the building only through doorways designated by a security officer, if the persons have been informed of the designation.

(c) Weapons and Components. No person, except federal, state, county and city law enforcement officers who are duly authorized to carry weapons in the performance of their duties, shall have in his or her possession or cause to be brought into a courthouse any weapon, destructive device, or component thereof. Except for those law enforcement officers, all persons, including attorneys, shall be subject to a search of their persons and possessions for any weapons, destructive device, or component thereof, and to a determination by a security officer that such persons have in their immediate possession no weapon, destructive device or component thereof, as a condition to such persons' entry into a courtroom or movement about the floor on which a courtroom is located.

(d) Seating of Spectators and News Media. On days of judicial proceedings the officer in charge of security may reserve for members of the news media and spectators designated areas for seating in the courtrooms, and all persons shall abide by such designation. Spectator seats not designated for the press shall be available to spectators on a first-come, first-served basis. When all regular spectator seats, except those reserved for the news media, are filled, only the persons seated shall be permitted to remain as spectators. There shall be no reserved seats for spectators or members of the press leaving the courtroom after having once been admitted. Only court personnel, attorneys of record, and other persons specifically authorized by the court shall be in the well of the courtroom.

A pass system may be instituted by which equitable allocation is made of some of the spectator seats in the courtrooms for persons receiving passes from the court and the parties. If a pass system is instituted, those spectator seats not covered by passes from the court or the parties shall be available to spectators on a first-come, first-served basis.

(e) Food, Drink and Tobacco. No person shall consume any beverage, eat any food, or use any tobacco in a courtroom at any time.

(f) Enforcement. The marshal and other United States security personnel authorized by law or deputized, are to enforce this rule and to take into custody and promptly bring any violator before a judge.

(g) Exemption from or Interpretation of this Rule. Any person seeking an exemption from or interpretation of this rule should present his or her request to the officer in charge of security, who may present it to a judge.

Nebraska Open Meetings Law

Neb. Rev. Stat. Sections 84-1408 through 84-1414

84-1408. Declaration of intent; meetings open to public.

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

84-1409. Terms, defined.

For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions.

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders, and (iii) the Policy Cabinet created in section 81-3009;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Videoconferencing means conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Discussion regarding deployment of security personnel or devices;

(c) Investigative proceedings regarding allegations of criminal misconduct; or

(d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The vote of each member on the question of holding a closed session, the reason for the closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the minutes as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

(4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, is readily available for public inspection at the principal office of the public body during normal business hours. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than fifty counties in this state, or of the governing body of a risk management pool or its

advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

(a) Reasonable advance publicized notice is given;

(b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;

(c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;

(d) At least one member of the state entity, advisory committee, or governing body is present at each site of the videoconference or telephone conference; and

(e) No more than one-half of the state entity's, advisory committee's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of the governing body of an entity formed under the Interlocal Cooperation Act or the Joint Public Agency Act or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by telephone conference call if:

(a) The territory represented by the member public agencies of the entity or pool covers more than one county;

(b) Reasonable advance publicized notice is given which identifies each telephone conference location at which a member of the entity's or pool's governing body will be present;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the entity or pool or at a place which will accommodate the anticipated audience;

(d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;

(g) The telephone conference call lasts no more than one hour; and

(h) No more than one-half of the entity's or pool's meetings in a calendar year are held by telephone conference call.

Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at the meeting.

(5) When it is necessary to hold an emergency meeting with out reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of

subsection (4) of the section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by not later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

84-1412. Meetings of public body; rights of public; public body; powers and duties.

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting. The body may require any member of the public desiring to address the body to identify himself or herself.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(6) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if:

(a) A member entity of the public body is located outside of this state and the meeting is in that member's jurisdiction;

(b) All out-of-state locations identified in the notice are located within public buildings used by members of the entity or at a place which will accommodate the anticipated audience;

(c) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including making a telephone conference call available at an instate location to members, the public, or the press, if requested twenty-four hours in advance;

(d) No more than twenty-five percent of the public body's meetings in a calendar year are held out-of-state;

(e) Out-of-state meetings are not used to circumvent any of the public government purposes established in the Open Meetings Act;

(f) Reasonable arrangements are made to provide viewing at other instate locations for a videoconference meeting if requested fourteen days in advance and if economically and reasonably available in the area; and

(g) The public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.

(7) The public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting.

(8) Public bodies shall make available at the meeting or the instate location for a telephone conference call or videoconference, for examination and copying by members of the

public, at least one copy of all reproducible written material to be discussed at an open meeting.

84-1413. Meetings; minutes; roll call vote; secret ballot; when.

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a municipality which utilizes an electronic voting device which allows the yeas and nays of each member of the city council or village board to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.

(1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

79-317. State Board of Education; meetings; open to public; exceptions; compensation and expenses.

(1) The State Board of Education shall meet regularly and periodically in the office of the State Department of Education at least four times annually. Meetings shall be held during the first full week in June and during the first full week in December of each year. The board may meet at such other times and places as it may determine necessary for the proper and efficient

conduct of its duties. Special meetings may be called in accordance with this section and the Open Meetings Act. Five members of the board shall constitute a quorum.

(2) The public shall be admitted to all meetings of the State Board of Education except to such closed sessions as the board may direct in accordance with the Open Meetings Act. The board shall cause to be kept a record of all public meetings and proceedings of the board. The commissioner, or his or her designated representative, shall be present at all meetings except when the order of business for the board is the selection of a Commissioner of Education.

(3) The members of the State Board of Education shall receive no compensation for their services but shall be reimbursed for actual and essential expenses incurred in attending meetings or incurred in the performance of duties as directed by the board as provided in sections 81-1174 to 81-1177.

85-104. Board of Regents; meetings; open to public; closed sessions; record of meetings; expenses.

All meetings of the Board of Regents shall be open to the public. The board may hold closed sessions in accordance with the Open Meetings Act. Public record shall be made and kept of all meetings and proceedings of the board. The regents shall meet at least twice each year at the administration building. They shall receive for their services no compensation, but they may be reimbursed their actual expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177.

Nebraska Public Records Law

Nebraska's statutory definition of public records not only declines which records are public, but provides for the rights to examine public records and make memoranda or abstracts from them free of charge. A person can also get a certified copy of a public record for a small charge. Photocopies of records may normally be obtained from offices with photocopying facilities for the cost of copying.

The statute essentially defines a public record as any record or document, regardless of physical form, which belongs to or was prepared by this state, any county, cit, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of these. It is still a public record even if in computer form.

The law particularly indicated that wherever the record involved deals with the financial aspects of government, the definition of public record is to be liberally construed "in order that the citizens of this state shall have full rights to know of, and have full access to information on the public finances of the government and the public bodies and entities created to serve them."

The basic principle is that all government documents are public records unless expressly designated otherwise by the Public Records Law or by other statutory exceptions. The exceptions which are set forth in Chapter 84 of the statutes are generally as follows:

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has elected not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as it existed on January 1, 2003;

(2) Medical records, other than records of births and deaths and except as provided in number (5), in any form concerning any person, and also records of elections filed under section 44-2821;

(3) Trade secrets, academic and scientific research work, which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training. This subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; or lock combinations;

(9) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize-winner, and the city, village, or county where the prize winner resides;

(10) With respect to public utilities and except as provided in sections 43- 512.06 and 70-101, personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;

(11) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(12) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(13) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This subsection shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

(14) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act;

(15) Job application materials submitted by applicants, other than finalists, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, job application materials means employment applications, resumes, reference letters, and school transcripts, and finalist means any applicant who is offered and who accepts an interview by a public body or its agents, representatives, or consultants for any public employment position; and

(16) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens.

The same statute that the Attorney General may be enlisted to assist in obtaining a public record if the officers of the public body refuse to disclose it to the public. Courts are given the power or order a public body, by a mandamus proceeding, to turn over a record, and if the public essentially wins the legal action, then reasonable attorney's fees and other litigation costs are also paid by the public body which was wrongfully withholding the public record.

Additionally, where a record is partially private and partially public, the law provides that the public body is required to furnish the public portion after deletion of the confidential portion or portions.

In one area, records which are normally private may become public: records and documents disclosed at a public meeting. Under our public meetings law, once a governmental unit uses a record as evidence or support as disclosed information at a public meeting, then that record becomes public for all purposes.

Exceptions to Public Record Law Pertaining to Particular Subjects

Scattered throughout our statutes, there appear various laws which provide for confidentiality of a few kinds of documents.

For example,

(1) an area in which access is greatly restricted is in the area of records prepared or kept on patients and inmates of our various correctional and mental health facilities governed by the Department of Public Institutions - the Beatrice State Developmental Center, the Nebraska Orthopedic Hospital, the Nebraska Veterans' Home, the hospitals for the mentally ill, various skilled nursing care and intermediate care facilities as are established by the Department, the Nebraska Hospital for the Tuberculous, the Nebraska Penal and Correctional Complex, and the State Reformatory, the Youth Development Center-Kearney and the Youth Development Center-Geneva. With regard to the records pertaining to individuals who are either patients or inmates, Nebraska Revised Statute 83-109 expressly provides that those records are accessible only to the department, a legislative committee, the Governor, any federal agency requiring medical records to adjudicate claims for federal benefits, any public or private agency under contract to provide facilities, programs and patient services, upon order of a judge or court, in accordance with sections 20-161 to 20-166 (providing access to certain records of a person with developmental disabilities or of a mentally ill individual), to the Nebraska State Patrol pursuant to section 69-2409.01, or to those portions of the record required to be released to a victim as defined in section 29-119 in order to comply with the victim notification requirements pursuant to subsections (4) and (5) of section 81-1850.

A patient, or his or her legally authorized representative, may authorize the specific release of his or her records, or portions thereof, by filing with the department a signed written

consent. The only other way to obtain those records legally, therefore, from a public standpoint would be to seek a court order in a filed lawsuit.

Several other statutes provide for a degree of confidentiality for specific types of records. Those statutes prohibit the release of:

(2) The names of persons drawn to serve on any jury and all lists of potential jurors, except by court order, Section 25-1635 (Reissue 1995).

(3) Any registered voter's name, address and telephone number who has filed an affidavit with the election commissioner asking this information to remain confidential, Section 32-330, 32-331.

(4) Any information whose release would cause the federal government to deny funds, services, or essential information to a state agency, Section 84-712.08 (Reissue 1999).

(5) All adoption papers, except as provided in the Nebraska Indian Child Welfare Act, or by a court order, Section 43-113 (Reissue 1998).

(6) Information on the rights-of-way for a proposed highway until after the highway's route has been publicly announced, Section 39-1364 (Reissue 1998).

(7) Information about any source of air, land, or water pollution which the source's owner declares to be a trade secret (emission date which is required by the federal government is public, however), Section 81-1527 (Reissue 1999).

(8) Information which the Commissioner of Labor demands from an employer in order to enforce certain labor laws, except that which is needed as evidence in court, Section 48-612 (Cum. Supp. 2002).

(9) The name and report of anyone who warns the Department of Insurance of any insurance law violations, Section 44-393 (Reissue 1998).

(10) The names of a bank's depositors and creditors which are included in any report to the Director of Banking and Finance, Section 8-112 (cum. Supp. 2002).

(11) Slaughter livestock purchasers' records which have been examined by the Department of Agriculture, except when needed as evidence in court, Section 54-1807 (Reissue 1998).

(12) Records and documents prepared by a metropolitan transit authority for use in labor negotiations, actions, or proceedings, Section 14-1814 (Cum. Supp. 2002).

(13) Information furnished to the State Board of Examiners of Land Surveyors by applicants for surveyor licenses, Section 81-8,110.14 (Reissue 2003).

(14) The financial records of persons, corporations, and government subdivisions which have been examined by the tax commissioner, except for use in court proceedings in some cases, 77-27,119(6) (Cum. Supp.2002).

See Also Section 77-2711(7) (Cum. Supp.2002) (Sales Tax - sellers and retailers); Section 77-5544 (Cum. Supp. 2002) (Invest Nebraska Act - company records)

((15) Juvenile court documents which are medical, psychological, psychiatric and social welfare reports and the records of juvenile probation officers as they relate to individual proceedings in the juvenile court, as provided in Section 43-2, 108 (Reissue 1998).

Presumption of Openness

In most cases, the presumption pertaining to any governmental record is that it is a public record, and under our laws, the individual agency denying a request is required either to furnish the record or to show the valid reason why it is not permitting examination of the record.

Criminal History Information

Nebraska has a separate statute governing the security, privacy and dissemination of criminal history information, found at Nebraska Revised Statute, Sections 29-3501 through 29-3528. Criminal history information mans that information collected by criminal justice

agencies on individuals consisting of personally identifiable descriptions and notations about the issuance of arrest warrants, arrests, detentions, indictments, charges by information or by other formal criminal charge method, and any disposition arising out of such arrests, charges, sentencing, correctional supervision, and release. The term does not include, however, intelligence or investigative information.

All criminal history record information is public, under Nebraska Law, with the specific exception that one year after an arrest is made, if there has been no prosecution and there is no active prosecution pending, the record of the arrest itself is sealed and no longer public. However, if the subject of the record is currently the subject of prosecution of correctional control as a result of a separate arrest, or is currently an announced candidate for or holder of public office, or has made a notarized request for the release of such record to a specific person, or if the record is simply sought without the name of the individual as part of a survey, then those arrest records are also available. Otherwise, all criminal history record information is public record when it is in the hands of any criminal justice agency. Criminal justice agency does include investigative agencies such as the state police, the city or village police forces, sheriffs' offices, probation offices, as well as the courts themselves.

The statute, because of possible confusion on what is and what is not covered by the term "public record" specifically makes four classes of records public in Section 29-3521. That law provides that information consisting of the following classifications is public record:

(1) Posters, announcements, lists for identifying or apprehending fugitives or wanted persons, or photographs taken in conjunction with an arrest for purposes of identification of the arrested person;

(2) Original records of entry such as police blotters, offense reports, or incident reports maintained by criminal justice agencies;

(3) Court records of any judicial proceedings; and

(4) Records of traffic offenses maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, replication, or renewal of driver's or other operator's licenses.

The criminal history record law, passed in 1978 and slightly modified in 1979, resolves most, though probably not all, of the questions as to which criminal records are available and from whom. The general rule is that they all are, except for investigative records and in a few cases old arrest records where there was no prosecution, as mentioned above.

Nebraska Open Records Law

Neb. Rev. Stat. Sections 84-712 through 84-712.09

84-712. Public records; free examination; memorandum and abstracts; copies; fees.

(1) Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in section 84-712.01, are hereby fully empowered and authorized to (a) examine the same, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

(2) Copies made by citizens or other persons using their own copying or photocopying equipment pursuant to subdivision (1)(a) of this section shall be made on the premises of custodian of the public record or at a location mutually agreed to by the requester and the custodian.

(3) (a) Copies may be obtained pursuant to subdivision (1)(b) of this section only if the custodian has copying equipment reasonably available. Such copies may be obtained in

any form designated by the requester in which the public record is maintained or produced, including, but not limited to, printouts, electronic date, discs, tapes, and photocopies.

(b) Except as otherwise provided by statute, the custodian of a public record may charge a fee for providing copies of such public record pursuant to subdivision (1)(b) of this section, which fee shall not exceed the actual cost of making the copies available. For purposes of this subdivision, (i) for photocopies, the actual cost of making the copies available shall not exceed the amount of the reasonably calculated actual cost of the photocopies, (ii) for printouts of computerized data on paper, the actual cost of making the copies available shall include the reasonably calculated actual coast of the computer run time, any necessary analysis and programming, and the production of the report in the form furnished to the requester. State agencies which provide electronic access to public records through a gateway service shall obtain approval of their proposed reasonable fees for such records pursuant to sections 84-1205.02 and 84-1205.03, if applicable, and the actual cost of making the copies available may include the approved fee for the gateway service.

(c) This section shall not be construed to require a public body or custodian of a public record to produce or generate any public record in a new or different form or format modified from that of the original public record.

(d) If copies requested in accordance with subdivision (1)(b) of this section are estimated by the custodian of such public records to cost more than fifty dollars, the custodian may require the requester to furnish a deposit prior to fulfilling such request.

(4) Upon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request, either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate for the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

84-712.01 Public records; right of citizens; full access; fee authorized.

(1) Except when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

(2) When a custodian of a public record of a county provides to a member of the public, upon request, a copy of the public record by transmitting it from a modem to an outside modem, a reasonable fee may be charged for such specialized service. Such fee may include a reasonable amount representing a portion of the amortization of the cost of computer equipment, including software, necessarily added in order to provide such specialize service. This subsection shall not be construed to require a governmental entity to acquire computer capability to generate public records in a new or different for when that new form would require additional computer equipment or software not already possess by the governmental entity.

(3) Sections 84-712 to 84712.03 shall be liberally construed whenever any state, county, or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt, or other record of receipt, cash, or expenditure involving public funds is involved in order that the citizens of this state shall have the full

right to know of and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

84-712.02. Public records; claimants before United States Department of Veterans Affairs; certified copies free of charge.

When it is requested by any claimant before the United States Department of Veterans Affairs or his or her agent or attorney that certified copies of any public record be furnished for the proper and effective presentation of any such claim in such department, the officer in charge of such public records shall furnish or cause to be furnished to such claimant or his or her agent or attorney a certified copy thereof free of charge.

84-712.03. Public records; denial of rights; remedies.

Any person denied any rights granted by sections 84-712 to 84-712.03 may elect to:

(1) File for speedy relief by a writ of mandamus in the district court within whose jurisdiction the state, county, or political subdivision officer who has custody of the public record can be served; or

(2) Petition the Attorney General to review the mater to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections. This determination shall be made within fifteen calendar days of the submission of the petition. If the Attorney General determines that the record may not be withheld or that the public body is otherwise not in compliance, the public body shall be ordered to disclose the record immediately or otherwise comply. If the public body continues to withhold the record or remain in noncompliance, the person seeking disclosure or compliance may (a) bring suit in the trial court of general jurisdiction or (b) demand in writing that the Attorney General bring suit in the name of the state in the trial court of general jurisdiction for the same purpose. If such demand is made, the Attorney General shall bring suit within fifteen calendar days of its receipt. The requester shall have an absolute right to intervene as a full party in the suit at any time.

In any suit filed under this section, the court has jurisdiction to enjoin the public body from withholding records, to order the disclosure, and to grant such other equitable relief as may be proper. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court may view the records in controversy in camera before reaching a decision, and in the discretion of the court other persons, including the requester, counsel, and necessary expert witnesses may be permitted to view the records, subject to necessary protective orders.

Proceedings arising under this section, except as to the cases the court considers of greater importance, shall take precedence on the docket over all other cases and shall be assigned for hearing, trial or argument at the earliest practicable date and expedited in every way.

84-712.04. Public records; denial of rights; public body; provide information.

(1) Any person denied any rights granted by sections 84-712 to 84-712.03 shall receive in written form from the public body which denied the request for records at least the following information:

(a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.01 relied on as authority for the denial.

(b) The name of the public official or employee responsible for the decision to deny the request; and

(c) Notification to the requestor of any administrative or judicial right of review under section 84-712.03.

(20 Each public body shall maintain a file of all letters of denial of requests for records. This file shall be made available to any person on request.

84-712.05. Records which may be withheld from the public; enumerated.

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on January 1, 2003;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person, and also records of elections filed under section 44-2821;

(3) Trade secrets, academic and scientific research work, which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; or lock combinations;

(9) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

(10) With respect to public utilities and except as provided in sections 43- 512.06 and 70-101, personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;

(11) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(12) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(13) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

(14) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act;

(15) Job application materials submitted by applicants, other than finalists, who have applied for employment by any public body as defined in section 84- 1409. For purposes of this subdivision, job application materials means employment applications, resumes, reference letters, and school transcripts, and finalist means any applicant who is offered and who accepts an interview by a public body or its agents, representatives, or consultants for any public employment position; and

(16) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens.

84-712.06. Public record, portion provide; when.

Any reasonably segregable public portion of a record shall be provided to the public as a public record upon request after deletion of the portions which may be withheld.

84-712.07. Public records; public access; equitable relief; attorney's fees; costs.

The provisions of sections 84-712, 84-712.01, 84-712.03 to 84-712.09, and 84- 1413 pertaining to the rights of citizens to access to public records may be enforced by equitable relief, whether or not any other remedy is also available. In any case in which the complainant seeking access has substantially prevailed, the court may assess against the public body which had denied access to their records, reasonable attorney fees and other litigation costs reasonably incurred by the complainant.

84-712.08. Records; federal government; exception.

If it is determined by any federal department or agency or other federal source of funds, services, or essential information, that any provision of sections 84-712, 84-712.01, 84-712.03 to 84-712.09, and 84-1413 would cause the denial of any funds, services, or essential information from the United States Government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

Note: "This act" includes sections 84-712, 84-712.03 to 84-712.01, and 84-1413.

84-712.09 Violation; penalty.

Any official who shall violate the provision of sections 1 to 8 of this act shall be subject to removal or impeachment and in addition shall be deemed guilty of a Class III misdemeanor.

Note: "Sections 1 to 8 of this act" include sections 84-712, 84-712.01, and 84-712.03 to 84-712.08.

Nebraska Records Management Act
Neb. Rev. Stat. Section 84-1201 through 84-1227

The Nebraska Records Management Act is very comprehensive and includes provisions dealing with the creation of a State Records Board and various provisions relating to the records management of state agencies. Only the most pertinent sections are reproduced herein.

84-1201. Legislative intent.

The Legislature declares that:

(1) Programs for the systematic and centrally correlated management of state and local records will promote efficiency and economy in the day-to-day record-keeping activities of state and local governments and will facilitate and expedite governmental operations;

(2) Records containing information essential to the operations of government, and to the protection of the rights and interests of persons, must be safeguarded against the destructive effects of all forms of disaster and must be available as needed; wherefore it is necessary to adopt special provisions for the selection and preservation of essential state and local records, thereby insuring the protection and availability of such information;

(3) The increasing availability and use of computers is creating a growing demand for electronic access to public records, and agencies should use new technology to enhance public access to public records;

(4) There must be public accountability in the process of collecting, sharing, disseminating, and accessing public records;

(5) The Legislature has oversight responsibility for the process of collecting, sharing, disseminating, and providing access, including electronic access, to public records and establishing fees for disseminating and providing access;

(6) Several state agencies, individually and collectively, are providing electronic access to public records through various means, including gateways; and

(7) There is a need for a uniform policy regarding the management, operation, and oversight of systems providing electronic access to public records.

84-1202 Terms defined

For purposes of the Records Management Act, unless the context otherwise requires:

(1) Agency means any department, division, office, commission, court, board, or elected, appointed, or constitutional officer, except individual members of the Legislature, or any other unit or body, however designated, of the executive, judicial, and legislative branches off state government or of the government of any local political subdivision;

(2) Agency head means the chief or principal official or representative in any such agency or the presiding judge of any court, by whatever title known. When an agency consists of a single official, the agency and the agency head are one and the same;

(3) State agency means an agency of the state government;

(4) Local agency means any agency of a local political subdivision, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act;

(5) Local political subdivision means any county, city, village, township, district, authority, or other public corporation or political entity, whether existing under charter or general law, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. Local political subdivision does not include a city of the metropolitan class or district or other unit which by law is considered an integral part of state government.

(6) Record means any book, document, paper, photograph, microfilm, sound recording, magnetic storage medium, optical storage medium, or other material regardless of physical form or characteristics created or received pursuant to law, charter, or ordinance or in connection with any other activity relating to or having an effect upon the transaction of public business;

(7) State record means a record which normally is maintained within the custody or control of a state agency or any other record which is designated or treated as a state record according to general law;

(8) Local record means a record of a local political subdivision or of any agency thereof unless designated or treated as a state record under general law;

(9) Essential record means a state or local record which is within one or the other of the following categories and which shall be preserved pursuant to the Records Management Act:

(a) Category A. Records containing information necessary to the operations of government under all conditions, including a period of emergency created by a disaster; or

(b) Category B. Records not within Category A but which contain information necessary to protect the rights and interests of persons or to establish or affirm the powers and duties of state or local governments in the resumption of operations after a disaster;

(10) Preservation duplicate means a copy of an essential record which is used for the purpose of preserving the record pursuant to the act;

(11) Disaster means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage, or other conditions of extreme peril resulting in substantial injury or damage to persons or property within this state, whether such occurrence is caused by an act of nature or of humans, including an enemy of the United States;

(12) Administrator means the State Records Administrator;

(13) Board means the State Records Board;

(14) Electronic access means collecting, sharing, disseminating, and providing access to public records electronically;

(15) Gateway means any centralized electronic information system by which public records are provided through dial-in modem or continuous link;

(16) Public records includes all records and documents, regardless of physical form, of or belonging to this state or any agency, branch, department, board, bureau, commission, council, subunit, or committee of this state except when any other statute expressly provides that particular information or records shall not be made public. Data which is a public record in its original form shall remain a public record when maintained in computer files; and

(17) Network manager means an individual, a private entity, a state agency, or any other governmental subdivision responsible for directing and supervising the day-to-day operations and expansion of a gateway.

84-1203. Secretary of State; State Records Administrator; duties.

The Secretary of State is hereby designated the State Records Administrator, hereinafter called the administrator. The administrator shall establish and administer, within and for state and local agencies, (1) a records management program which will apply efficient and economical methods to the creation, utilization, maintenance, retention, preservation, and disposal of state and local records, (2) a program for the selection of preservation of essential state and local records, (3) establish and maintain a depository for the storage and service of state records, and advise, assist, and govern by rules and regulations the establishment of similar programs in local political subdivisions in the state and (4) establish and maintain a central microfilm agency for state records and advise, assist, and govern by rules and

regulations the establishment of similar programs in state agencies and local political subdivisions on the State of Nebraska.

84-1204. State Records Board; established; members; duties; meetings.

(1) The State Records Board is hereby established. The board shall:

(a) Advise and assist the administrator in the performance of his or her duties under the Records Management Act;

(b) Provide electronic access to public records through a gateway;

(c) Develop and maintain a gateway or electronic network for accessing public records;

(d) Provide appropriate oversight of a network manager;

(e) Approve reasonable fees for electronic access to public records pursuant to sections 84-1205.02 and 84-1205.04;

(f) Have the authority to enter into or renegotiate agreements regarding the management of the network in order to provide citizens with electronic access to public records;

(g) Explore ways and means of expanding the amount and kind of public records provided through the gateway or electronic network, increasing the utility of the public records provided and the form in which the public records are provided, expanding the base of users who access public records electronically, and if appropriate, implementing changes necessary for such purposes;

(h) Explore technological ways and means of improving citizen and business access to public records and, if appropriate, implement the technological improvements;

(i) Explore options of expanding the gateway or electronic network and its services to citizens and businesses;

(j) Have the authority to grant funds to political subdivisions for the development of programs and technology to improve electronic access to public records by citizens and businesses consistent with the act; and

(k) Perform such other functions and duties as the act requires.

(2) In addition to the administrator, the board shall consist of:

(a) The Governor or his or her designee;

(b) The Attorney General or his or her designee;

(c) The Auditor of Public Accounts or his or her designee;

(d) The State Treasurer or his or her designee;

(e) The Director of Administrative Services or his or her designee;

(f) Three representatives appointed by the Governor to be broadly representative of banking, insurance, and law groups; and

(g) Three representatives appointed by the Governor to be broadly representative of libraries, the general public, and professional members of the Nebraska news media.

(3) The administrator shall be chair person of the board. Upon call by the administrator, the board shall convene periodically in accordance with its rules and regulations or upon call by the administrator.

(4) Six members of the board shall constitute a quorum, and the affirmative vote of six members shall be necessary for any action to be taken by the board. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(5) The representatives appointed by the Governor shall serve staggered three-year terms as the Governor designates and may be appointed for one additional term. Members of the board shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

84-1205.03. State agency; electronic access to public records; approval required; when; one-time; courts; report; fees.

(1) Any state agency other than the courts or the legislature desiring to enter into an agreement to or otherwise provide electronic access to public records through a gateway for a fee shall make a written request for approval to the board. The request shall include (a) a copy of the contract under consideration if the electronic access is to be provided through a contractual arrangement, (b) the public records which are the subject of the contract or proposed electronic access fee, (c) the anticipated or actual timeline for implementation, and (d) any security provisions for the protection of confidential or sensitive records. The board shall take action on such request in accordance with section 84-1205.02 and after a public hearing within thirty days after receipt. The board may request a presentation or such other information as it deems necessary from the requesting state agency.

(2) A state agency other than the courts or the Legislature may charge a fee for electronic access to public records without the board's approval for a one-time sale in a unique format. The purchaser may object to the fee in writing to the board, and the one-time fee shall then be subject to approval by the board according to the procedures and guidelines established in sections 84-1205 to 84-1205.04.

(3) Courts or the Legislature providing electronic access to public records through a gateway for a fee shall make a written report. The report shall be filed with the State Records Board by the State Court Administrator for the courts and the chairperson of the Executive Board of the Legislative Council for the Legislature. The report shall include (a) a copy of the contract under consideration if the electronic access is to be provided through a contractual arrangement, (b) the public records which are the subject of the contract or proposed electronic access fee, (c) the anticipated or actual timeline for implementation, and (d) any security provisions for the protection of confidential or sensitive records. The State Records Board ma request a presentation or such other information as it deems necessary. The courts and the Legislature shall take into consideration any recommendation made by the State Records Board with respect to such fees.

(4) Courts and the Legislature may charge a fee for electronic access to public records for a one-time sale in a unique format without providing a report to the board as required under subsection (3) of this section.

84-1205.06 Public record; copies; media; denial of request; effect; appeal.

(1) If a state agency is required to provide a copy of public records on request, a person requesting a copy of a public record may elect to obtain it in any and all media in which the agency is capable of providing it. No request for a copy of public record in a particular medium shall be denied on the ground that the custodian has made or prefers to make the public record available in another medium.

(2) A state agency may deny a request for a copy of a public record available in a particular medium if:

(a) The request is unreasonably complicated;

(b) The request specifies a medium not regularly used by the state agency and would cause undue time or expense for the state agency to comply with the request; or

(c) The public record is available in the requested medium from another source at a fee equal to or lower than any fee that would be charged by the state agency.

(3) A state agency may not deny a request for paper copies of public records.

(4) The requester may appeal a decision by a state agency to deny a request for a copy of a public record in a particular medium in writing to the board. The denial shall then be subject to the approval of the board based upon it's determination of the state agency's compliance with this section.

(5) If a state agency provides copies of public records in a particular medium, the state agency shall provide notice not less than ninety calendar days prior to discontinuing such

practice. The notice shall be published at least three times in a newspaper of general circulation.

84-1211. Records; confidential; protection.

(1) When an essential record is required by law to be treated in a confidential manner, the administrator, in effectuating the purposes of the Records Management Act, shall protect its confidential nature, as well as that of any preservation duplicate or other copy thereof. Any hospital or medical record submitted to the administrator for microfilming or similar processing shall be made accessible in a manner consistent with the access permitted similar records under sections 71-961 and 83-109.

(2) Nothing in the Records Management Act shall be construed to affect the laws and regulations dealing with the dissemination, security, and privacy of criminal history information under the Security, Privacy, and Dissemination of Criminal History Information Act.

Nebraska Free Flow of Information Act (Shield Law)

Neb. Rev. Stat. Sections 20-144 through 20-148

Free Flow of Information Act

20-144. Finding by Legislature. The Legislature finds:

(1) That the policy of the State of Nebraska is to insure the free flow of news and other information to the public, and that those who gather, write, or edit information for the public or disseminate information to the public may perform these vital functions only in a free and unfettered atmosphere;

(2) That such persons shall not be inhibited, directly or indirectly, by governmental restraint or sanction imposed by governmental process, but rather that they shall be encouraged to gather, write, edit, or disseminate news or other information vigorously so that the public may be fully informed;

(3) The compelling such persons to disclose a source of information or disclose unpublished information is contrary to the public interest and inhibits the free flow of information to the public;

(4) That there is an urgent need to provide effective measures to halt and prevent this inhibition;

(5) That the obstruction of the free flow of information through any medium of communication to the public affects interstate commerce; and

(6) That sections 20-144 to 20-147 are necessary to insure the free flow of information and to implement the first and fourteenth amendments and Article I, section 8, of the United States Constitution, and the Nebraska Constitution.

20-145. Terms, defined. As used in sections 20-144 to 20-147, unless the context otherwise requires:

(1) Federal or state proceeding shall include any proceeding or investigation before or by any federal or state judicial, legislative, executive, or administrative body;

(2) Medium of communication shall include, but is not limited to, any newspaper, magazine, other periodical, book pamphlet, news service, wire service, news or feature syndicate, broadcast state or network, or cable television system;

(3) Information shall include any written, audio, oral or pictorial news or other material;

(4) Published or broadcast information shall mean any information disseminated to the public by the person from whom disclosure is sought;

(5) Unpublished or nonbroadcast information shall include information not disseminated to the public by the person from whom disclosure is sought, whether or not

related information has been disseminated and shall include, but not be limited to, all notes, outtakes, photographs, film, tapes, or other date of whatever sort not itself disseminated to the public through a medium of communication, whether or not published or broadcast information based upon or related to such material has been disseminated;

(6) Processing shall include compiling, storing, transferring, handling, and editing of information; and

(7) Person shall mean any individual, and any partnership, corporation, association, or other legal entity existing under or authorized by the law of the United States, any state or possession of the Untied States, the District of Columbia, the Commonwealth of Puerto Rico, or any foreign country.

20-146. Procuring, gathering, writing, editing, or disseminating news or other information; not required to disclose to courts or public. No person engaged in procuring, gathering, writing, editing, or disseminating news or other information to the public shall be required to disclose in any federal or state proceeding;

(1) The source of any published or unpublished, broadcast or nonbroadscast information obtained in the gathering, receiving, or processing of information for any medium of communication to the public; or

(2) Any unpublished or nonbroadcast information obtained or prepared in gathering, receiving, or processing of information for any medium of communication to the public.

20-147. Act, how cited. Section 20-144 to 20-147 shall be known and may be cited as the Free Flow of Information Act.

Civil Remedies

20-148. Deprivation of constitutional and statutory rights, privileges, or immunities; redress.

(1) Any person or company, as defined in section 49-801, except any political subdivision, who subjects or causes to be subjected any citizen of this state or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the United States Constitution or the Constitution and laws of the State of Nebraska, shall be liable to such injured person in a civil action or other proper proceeding for redress brought by such injured person.

(2) The remedies provided by this section shall be in addition to any other remedy provided by Chapter 20, article 1, and shall not be interpreted as denying any person the right of seeking other proper remedies provided thereunder.

20-205. Publication or intrusion; not actionable; when.

Any publication or intrusion otherwise actionable under section 20-202, 20-203, or 20-204 shall be justified and not actionable under sections 20-201 to 20-211 and 25-840.01 if the subject of such publication or intrusion expressly or by implication consents to the publicity or intrusion so long as such publication or intrusion does not differ materially in kind, extent, or duration from that implicitly or expressly authorized by the consent may be given by a parent or guardian. If the subject of the alleged invasion of privacy is deceased, such consent may be given by the surviving spouse, if any, or by the personal representative.

20-209. Libel, slander, or invasion of privacy; one cause of action.

No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication, exhibition, or utterance, such as any one issue of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion

picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions.

25-208. Actions for libel, slander, malpractice, and recovery of tax.

The following actions can only be brought within the periods stated in this section: Within one year, an action for libel or slander; and within two years, an action for malpractice which is not otherwise specifically limited by statute.

In the absence of any other shorter applicable statute of limitations, any action for the recovery of any excise or other tax which has been collected under any statute of the State of Nebraska and which has been finally adjudged to be unconstitutional shall be brought within one year after the final decision of the court declaring it to be unconstitutional. This section shall not apply to any action for the recovery of a property tax.

The changes made to this section by Laws 2000, LB 921, shall apply to causes of action accruing on and after July 13, 2000.

Nebraska Search Warrant Law

Neb. Rev. Stat. Section 29-813

29-813. (1) A warrant may be issued under sections 29-812 to 29-821 to search for and seize any property (a) stolen, embezzled, or obtained under false pretenses in violation of the laws of the State of Nebraska, (b) designed or intended for use or which is or has been used as the means of committing a criminal offense, (c) possessed, controlled, designed, or intended for use or which is or has been possessed, controlled, designed, or used in violation of any law of the State of Nebraska making such possession, control, design, or use, or intent to use, a criminal offense, or (d) which constitutes evidence that a criminal offense has been committed or that a particular person has committed a criminal offense.

(2) Notwithstanding subsection (1) of this section, no warrant shall be issued to search any place or seize anything in the possession, custody, or control of any person engaged in procuring, gathering, writing, editing, or disseminating news or other information for distribution to the public through a medium of communication unless probable cause is shown that such person has committed or is committing a criminal offense. For Purposes of this subsection, the terms person, information, and medium of communication shall be defined as provided in section 20-145, Reissue Revised Statutes of Nebraska, 1943.

Procedure for Criminal Actions

Preface

The adversary system, which is central to the administration of criminal justice, is a result of the slow evolution from trial by combat to a less violent form of testing by evidence and argument.

Justice Frankfurter probably said it best when he observed, "The history of American freedom is in no small part the history of procedure." The system of procedure governing trials to which Justice Frankfurter referred is man-made and is directed to higher values and greater purposes than a system which would guarantee the conviction of every person violating the law. For example, the constitution prohibits various investigatory methods which would be highly efficient but which would be incompatible with the values of free people. Accordingly, when a conviction is sought by methods repugnant to our basic values protected by the Constitution, reliable evidence gained from an illegal search of a residence, for example, may be excluded from a trial. Because of the exclusion of reliable evidence from trials, our system of criminal justice has frequently been subject to severe criticism.

Nevertheless, responsible people realize that the greatest peril to a people would come if the administrative agencies, courts, judges and procedures under which our government operates ever become mere creatures of the popular will. Then hysteria and passion take over.

The Prosecution Function

The office of the prosecutor, the chief law enforcement official in a jurisdiction, is an agency of the executive branch of the government.

The prosecutor has a duty to see that the laws are faithfully executed and enforced in his or her jurisdiction. Accordingly, the decision to institute criminal proceedings should be initially and primarily the responsibility of the prosecutor.

Two factors must be present before a prosecutor is justifies in filing a charge. First, the prosecutor must possess sufficient evidence to support the belief that a person is guilty; second, the prosecutor must believe that the individual can be convicted of a crime. If both factors are present, the prosecutor has a duty to file a complaint. If either factor is missing, he or she is not justified in filing a complaint.

When there appears to have been a breakdown in the administration of justice, the district judges have the authority to call a grand jury. The citizens may also petition for a grand jury. After hearing the evidence presented by the prosecutor, the grand jury – rather than a prosecutor – determines whether or not charges should be filed against the accused. The grand jury is rarely used in state courts and is viewed by many as an expensive, archaic and cumbersome institution.

While a prosecutor ordinarily relies on police and other investigative agencies for investigation of alleged criminal acts, he or she has the affirmative responsibility to investigate suspected illegal activity when it is not adequately dealt with by other agencies.

Finally, the prosecutor has the duty of presenting the evidence at the trial.

The Defense Function

Counsel for the accused is an essential component of the administration of criminal justice. A court properly constituted to hear a criminal case must be viewed as a tripartite consisting of the judge (and jury, where appropriate), the prosecutor, and defense counsel.

The basic duty the lawyer for the accused owes to the administration of justice is to serve as the accused's counselor and advocate with courage and devotion, to the utmost of his or her ability, and according to law.

A question frequently heard is, "How can lawyers defend people they know are guilty?" The answer is simple. In their role as advocates, defense lawyers must press all points legally available even if that means subordinating their personal evaluation of their clients' conduct. Lawyers are prevented from disclosing what they learn in confidence from their clients. While they may personally believe that certain rules of law which benefit the client are wrong and ought to be changed, it is their obligation in the course of representing the client to invoke them on his or her client's behalf

Often, when the accused is called to the bar of justice by the government, he or she finds in the defense lawyer a single voice on which the accused must be able to rely with confidence that his or her interests will be protected to the fullest extent consistent with due process of law.

The Function of the Trial Judge

The trial judge has the responsibility for safe-guarding both the rights of the accused and the interests of the public in the administration of criminal justice.

It is the trial judge's responsibility to direct and guide the course of the trial so as to allow the jury a fair opportunity to reach an impartial result on the issue of guilt.

The trial judge, mantled with neutrality, presides at all hearings commencing with the arraignment and concluding with the imposition of sentence. He or she is empowered to clarify obscure issues or evidence, prevent unnecessary delay, and promote the expeditious, fair and dignified course of the trial.

Procedure Before Trial

Generally speaking, the Constitution and the statutory law guarantee every citizen the right:

1. To receive notice of the charges against him or her;
2. To receive notice in the state court, as distinguished from the federal court, of the names of the witnesses who will be called by the prosecution to testify against him or her;
3. To bail;
4. To be represented by counsel;
5. To a public trial;
6. In the case of state law violations, to have the case heard by a jury if the individual so desires;
7. To refuse to testify against oneself;
8. To confront and examine one's accuser;
9. To be tried only once by the same sovereignty for the same offense;
10. To call or subpoena witnesses in one's own defense; and
11. To require the state to prove his or her guilt beyond a reasonable doubt.

If a prosecutor, based upon an investigation of the facts, believes that the accused is guilty of committing a crime and, also, believes that the accused can be convicted of a crime, he or she initiates the criminal charges by filing a complaint in the county court. A warrant is then issue for the arrest of the accused. After the accused is arrested, he or she is brought before the *magistrate* (usually a county judge) for a bond hearing. The Bill of Rights of the Constitution of the State of Nebraska provides in Section 9:

"All persons shall be bailable by sufficient sureties, except for treason, sexual offenses involving penetration by force or against the will of the victim, and murder, where the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

After the amount of bond is fixed and the defendant meets the conditions of the bond, he or she is released from custody pending the preliminary hearing. The magistrate will set a date not far distant for a preliminary hearing. At the preliminary hearing the prosecutor has the burden of producing evidence:

1. That a crime has been committed; and
2. That there is probable cause to believe that the defendant committed the crime.

If evidence is produced to support the above elements, the magistrate will *bind over* the defendant to stand trial in district court. If the evidence does not support the above elements, the complaint will be dismissed.

After the transcript of the proceedings in the magistrate's court reaches the district court, the prosecutor files an *information* formally charging the defendant with committing the crime. At the arraignment in district court, the charge is read to the defendant and he or she is called upon to plead "guilty" or "not guilty."

If the defendant enters a plea of "guilty" and is adjudged guilty, the judge orders a pre-sentence investigation and, at a later date, imposes sentence.

If the defendant enters a plea of "not guilty," the judge schedules the case for trial.

In most instances, the defendant has the right to have the case heard by a jury, or may elect to waive his or her right to a jury trial and have the case heard by a judge.

If at any time prior to the trial of the case it appears that the accused has become mentally incompetent to stand trial, the county attorney, the accused, and the accused's attorney or the court on its own motion may raise the issue. The Court must make a determination as to whether or not the accused is, in fact, competent to stand trial. The test of mental competency to stand trial is whether the defendant has the capacity to understand the nature and object of the proceedings against him or her, and comprehend his or her own condition in reference to those proceedings, and to make a rational defense.

If the court finds the accused to be incompetent to stand trial, the court may commit the individual to a mental institution for treatment in order to assist the accused to become competent to stand trial. If it is determined that the accused will not become competent to stand trial in the reasonable future, the court must discharge the defendant and dismiss the criminal charges. If this occurs, the county attorney can file a petition alleging that the accused is mentally ill and dangerous and can seek a commitment to a mental health facility.

Before the criminal trial begins, counsel for the defendant may file a number of procedural motions.

The procedural motions serve the following needs:

1. To promote an expeditious as well as a fair determination of the charges;
2. To provide the defendant with sufficient information to make an informed plea;
3. to permit thorough preparation for trial and minimize surprise;
4. to avoid repetitious trials by exposing any latent procedural or constitutional issues and affording remedies therefore prior to trial;
5. To reduce interruptions and complications of trials by identifying issues collateral to guilt or innocence, and determining them prior to trial; and
6. To effect economies in time, expense, and talents of the judges and lawyers.

Examples of the above procedural motions would be motions concerning:

1. A change of venue;
2. The suppression of illegally obtained evidence;
3. The defendant's mental capacity to stand trial; and
4. The severance of a defendant's trial from the trial of a co-defendant.

All of the procedural motions filed by the prosecutor and counsel for the defendant will be heard and decided by the judge prior to trial.

Often, the net effect of the judge's rulings on the procedural motions is that the charges are dismissed, the defendant enters a plea of "guilty" to the charges, or a plea bargain is agreed upon.

Procedure During Trial

The defendant has the right to determine whether to have the case heard by a jury or by a judge, if it involves a state statutory violation. Violators of city or village ordinances which carry penalties not exceeding six months' imprisonment do not have the right to a jury trial.

The purpose of the jury is to guard against the exercise of arbitrary power and to make available the common sense judgment of the community as a hedge against excesses by the prosecutor or the judge.

Jury Selection

It has been said that the jury is the only governmental body which does not seek to perpetuate itself in office. The jury convenes, does its duty, and then melts back into the community from whence it came.

A group of 12 citizens are given the duty of listening to the evidence and, thereafter, the power of decision. They are permitted to deliberate in secret and to announce their verdict without giving reasons for it. Their decision, if based upon proper evidence, is final. Thus, it is important to know something of the background or experience of each juror.

The prosecutor and the defense counsel are, by law, allowed to challenge prospective jurors "for cause" and, in addition, are allowed a specific number of "peremptory challenges." *For cause* means for reasons which the law recognizes as sufficient to show bias or inability to be impartial. An example of a challenge for cause would be if one of the prospective jurors were a relative of the victim or of the defendant. A *peremptory challenge* allows counsel to excuse a limited number of jurors without name a reason. There need not be a legal cause.

The procedure under which jurors are examined prior to being selected is known as the *voir dire* (to speak the truth) examination. The purpose of the *voir dire* examination is to elicit information that will assist the attorney in determining whether each juror should be challenged, whether for cause or as a peremptory challenge.

After the jury has been impaneled and sworn, the trial begins.

The prosecutor is permitted to make a short opening statement outlining the evidence which will be presented in support of the charges which he or she has filed against the defendant. At the conclusion of the prosecutor's opening statement, defense counsel is permitted to make a short opening statement outlining the evidence which he or she intends to produce at the trial.

It must be remembered that under our system of criminal justice, the defendant is presumed to be innocent and is not required to produce any evidence. The prosecutor has the duty of proving the essential elements of the crime charged by evidence beyond a reasonable doubt.

Since the prosecutor has the burden of proof, he or she must call witnesses first, and each witness is subject to cross-examination by defendant's counsel. After the prosecution has called all of its witnesses and presented all of its evidence (*the prosecution rests its case*), the defense has the right to present evidence.

After the defense has rested its case and the prosecution has presented any rebuttal evidence relating to the defendant's evidence, the prosecution and defense counsel are allowed to *sum up* the evidence to the jury. Again, since the prosecution has the burden of proof, the prosecutor is allowed a short rebuttal argument to the jury after defense counsel has completed his or her summation.

Next, written instructions on the law pertaining to the case are read to the jury. The trial judge is the judge of the *law* pertaining to the case and the members of the jury are the judges of the *facts* pertaining to the case.

After listening to the instructions on the law of the case, the jurors retire to the jury room to begin deliberations. After agreeing upon a unanimous verdict, the jurors are brought back into the courtroom and announce their verdict in the presence of the judge, counsel and the defendant. After the verdict is accepted by the judge, the jurors are discharge.

Insanity Defense

Any person prosecuted for an offense may plead that he or she is not responsible by reason of insanity at the time of the offense. The burden is upon the defendant to prove the defense of not responsible by reason of insanity by a preponderance of the evidence. Notice of intention to rely on the insanity defense must be given to the county attorney no later than 60 days before trial.

When notice has been given that insanity will be a defense, the court may order the defendant to be examined by one or more qualified experts appointed by the court.

If the jury finds that the defendant is not responsible by reason of insanity, the court must hold a hearing to determine whether there is probable cause to believe that the person is dangerous to himself or herself or to others by reason of mental illness or defect, or that the individual will be dangerous in the foreseeable future as demonstrated by an overt act or threat. If the court finds probable cause, the court shall determine whether and under what conditions of confinement the acquitted person should be committed to a Regional Center or other appropriate facility for a period not to exceed 90 days for an evaluation of the person's

mental condition. Prior to the expiration of the 90-day period the court must conduct an evidentiary hearing regarding the condition of the person. If the court finds that there is clear and convincing evidence that the person is dangerous to himself or herself or to others by reason of mental illness or defect, or will be dangerous in the foreseeable future, as demonstrated by an overt act or threat, the court must commit the person for treatment to one of the Regional Centers or other appropriate facility. Thereafter, the acquitted person's case must be reviewed on an annual basis by the court.

Sentencing Alternatives

The public intends to evaluate the disposition of a criminal case more in terms of the kind of sentence handed down than anything else.

In no other judicial function is the judge more alone, no other act carries greater potentialities for good or evil than the determination of how society will treat is transgressors.

Someone one said that there is a little furry animal inside of us that calls out for blood under certain circumstances. This additional pressure places a heavy burden upon the sentencing judge.

After a defendant is adjudged guilty of a felony by jury verdict or by the court when a jury trial has been waived, the judge will order a pre-sentence investigation.

The pre-sentence investigation report will contain the circumstances surrounding the commission of the crime, the defendant's history of criminality, physical and mental condition, occupation and personal habits, and a victim impact statement.

After studying the pre-sentence investigation report and examining the range of penalties provided by law, the judge has available the following sentencing alternatives:

1. The judge may withhold sentence of imprisonment and place the defendant on probation for a fixed term under specific conditions unless, having regard for the nature and circumstances of the crime and history, character and condition of the defendant, the court finds that imprisonment is necessary for the protection of the public.

2. The judge may place the defendant on probation, but require that the defendant, as a condition of probation, be confined periodically in the county jail for a period not to exceed 90 days.

3. The judge may sentence the defendant to the State Department of Correctional Services for a period of time with the range fixed by the legislature.

Procedural Steps in Felony Prosecution Where Defendant Is Not Yet in Custody of Law Enforcement Officials

1. Prosecutor files a complaint with magistrate. The complaint, the charging document, states the allegations against the accused in the language of the state statute which is alleged to have been violated.

2. Warrant of arrest issued by magistrate. The warrant is a command from the magistrate to all law enforcement personnel to take the accused into custody and bring him or her before the magistrate.

3. Defendant taken into custody.

4. Bond hearing. Bond is set by the magistrate. Constitutional provisions of both the federal and state constitutions provide that excessive bail must not be required. State statutes require that the accused be released on his or her personal recognizance (an agreement to come to court when ordered) unless the judge determines that such a release will not reasonably assure the appearance of the accused as required. When such a determination is made, the magistrate shall, either in lieu of or in addition to such a personal recognizance release, impose any number of conditions listed by statute. These include placing the accused in the custody of a designated person or organization agreeing to supervise the accused, or requiring the execution of an appearance bond in a specified amount and the deposit with the

Clerk of the Court in cash a sum not to exceed ten percent of the amount of the bond. The court can also require a surety bond or cash deposit for the full amount of the bond.

5. Preliminary hearing before the magistrate. The magistrate, usually a county judge, must determine from the evidence whether a crime has been committed and whether there is probably cause to believe the accused committed the crime.

6. Defendant is either ordered to stand trial in district court or released.

7. Appearance bond for district court set by magistrate. The original appearance bond is often simply continued in full force and effect.

8. Prosecutor files information in district court. The information is the charging document in the district court.

9. Preliminary motions filed attacking the sufficiency of the evidence at the preliminary hearing (Plea in Abatement), attacking the sufficiency of the charge (Demurrer) and/or attacking the constitutionality or other defects in the state statute (Motion to Quash).

10. Arraignment in District Court. The accused enters a plea (guilty or not guilty, no contest, not responsible by reason of insanity) or stands mute. If the accused stands mute (does not enter a plea) the court will enter a plea of not guilty on the accused's behalf.

11. Pre-trial motions are filed. These can include Motions to Discovery and Motions to Disclose to provide the defense with the evidence upon which the charges are based. They may also include Motions to Suppress, which can related either to evidence illegally seized by law enforcement officials or to statements that were made by the accused that were either involuntary or were not take in compliance with constitutional requirements.

12. Trial by jury or to the court. The accused can waive his or her right to a trial by jury and choose to have the judge determine his or her guilt or innocence.

13. Motions for New Trial. This motion, following a conviction, gives the judge an opportunity to review alleged errors that occurred which may require a new trial. This motion is no longer required as a precedent to appeal.

14. Final judgment – sentence. Following conviction of a felony, the judge is required to order a pre-sentence investigation before imposing sentence.

15. Notice of appeal filed. Notice of appeal must be filed within 30 days following final judgment.

Libel Law

A. Summary of Libel Law

1. Introduction

Nebraska Libel Law derives from court cases decided in this state and in the United States Supreme Court, from statutes found at Nebraska Revised Statutes sections 25-208, 25-839, 25-840 and 25-840.01, and from the First Amendment to the United States Constitution, Free Speech and Free Press clauses. Basically, libel law is a series of checks and balances between the concept of free speech and the concept of the right to personal reputation.

The technical definition of "libel" is a publication of language, the obvious meaning of which imputes to a person a criminal act, or subjects the person to ridicule or disgrace, public hatred or contempt, and which in essence detracts from the person's reputation in a substantial way. To be actionable, a libel must be a false statement, and in most cases it must be a statement of fact, not a statement of opinion. Truth is a "defense," but actually the burden of proving falsity is on the plaintiff or complaining party, rather than on the defendant to prove the truth. That applies both in public figure and private figure in plaintiff cases.

In cases where a person is a public official and acting in an official capacity, or a public figure who has voluntarily put himself in the spotlight, then almost all of the applicable law derives from the United States Supreme Court decisions and the First Amendment to the Constitution. In those cases, particularly New York Times v. Sullivan decided in 1964, and

the many cases which have explained that case, such a complaining party is required to prove that the defendant not only published a false fact, but that the defendant actually knew of the falsity or at least had very strong doubts of the truth of what was being published. That is the concept of "actual malice."

In private figure cases, where a person who is neither a public official nor a public figure complains of libel, the burden is still on the plaintiff to show not only that a false fact was published of him which would damage his reputation, but also that it was a result of some degree of fault although not fault so extreme as "actual malice." In most states, it is necessary for the plaintiff still to prove that negligence on the part of the publisher resulted in that publication of the falsehood. In some states the plaintiff must prove gross negligence or something like that, which is a higher degree of fault.

The Nebraska Supreme Court has not yet defined exactly what standard will apply here but one should assume that if it can be proved that your reporters, editors and/or publisher breached the normal professional standard of care in gathering, editing and publishing a news or informational item, then if it is false a private figure who is damaged thereby might succeed in a libel case. In other words, assume that mere negligence may well become the standard of fault required to be proved in Nebraska, unless and until the Nebraska Supreme Court decides otherwise.

Nevertheless, it should be understood that a totally innocent error where due care was used and yet the error still occurred, is not actionable in libel. Some fault has to be proved.

2. Prevention of Libel.

a. Sources. If you have only a single source and that source insists on confidentiality, then you are in a rigorously dangerous situation if you print reputation-injuring material. Because if you are sued for libel, you will face the moral and possibly legal choice of either disclosing your source contrary to your promise, or losing the libel case because you are unable to satisfy the judge and jury that you used due care to find the truth. If at all possible, obviously it is best to find a source who will back you up, and better yet find two sources at least one of which is unimpeachable, for highly damaging material which must be printed. The quality of sources is also important, which means that their reputation, background, previous dependability, likelihood to have true information, and similar factors ought to be taken into account in evaluating material which is reputation-injury.

b. Care with Headlines, Syntax and Captions. It is quite possible to have a perfectly good story turned in and then have it made libelous accidentally by a careless headline, by an editing error whereby the words are turned around or even typographically changed, or where the caption of a photograph, for example, is switched or inaccurately placed or worded. There should be extreme care used especially with headlines, because even though you are entitled to the context of the whole story, a highly libelous headline sometimes will be so damaging that even the context will not cure the problem.

c. Letters to the Editor. The publisher is liable for libel in letters to the editor, and therefore care especially must be taken with letters to the editor on emotional subjects, customer complaint or "action line" stories and the like. If highly damaging statements of fact are in a letter to the editor about some person or company, it is wise to treat it with care. Either find an independent means to verify the truth of the statement, force the writer of the letter to the editor to supply sufficient proof, or edit out the libelous material, normally after consultation with the writer of the letter.

Many newspapers use letters to the editor which were signed, but the signature was withheld. The Nebraska Shield Law permits you to withhold that name, and that law has been tested in that context. But withholding the name of the author simply means that the newspaper itself will take all the "heat" in the even there is a libel or breach of privacy case. Letters to the editors have furnished the material for numerous libel cases all around the

country and while they are an extremely important and necessary part of a newspaper, in most people's view, nevertheless they require special attention and "libel proofing."

d. Jokes and Cartoons. Sometimes the law of libel has little sense of humor. A highly satirical joke or cartoon has occasionally been made the subject of a successful libel lawsuit. There is a great deal of defense allowed to newspapers and cartoonists on the basis that they are writing only satirically and expressing an opinion, but nevertheless it is not impossible to make a libel case out of a cartoon or other humorous material, if in fact it does contain a false statement of fact injuring a reputation. A picture could imply a false statement of fact even though it be a mere cartoon. While there is a great protection for political criticism and public issue humorous comment, nevertheless this is an area where the libel-conscious editor needs to do some good preventive work. Nationally distributed cartoons are generally "libel-proofed" nationally, and are relatively safe.

e. Balancing News Stories. It is important where a reputation-damaging story is about to be run to try to obtain a comment from the subject. If the answer is no comment, print that. If the subject denies the material, print that. If the subject threatens a lawsuit, make very sure your sources are verifiable and that the truth is with you. If you can't be confident of that, either get legal help or work some more on the story before it runs. By balancing news stories, one should not necessarily attempt a balance in the terms of space given to each side. It is simply a matter of trying to get the other side of the story if there is one and giving it fair play where available.

f. Editing. On stories which appear to injure the reputation of a person or business enterprise, one extra editing even at the page proof stage may knock out a dangerous typographical error or something that simply missed being caught on the first rewrite. That extra editing also would be evidence of due care and would help avoid a claim of negligence.

g. Proper Use of Retraction Statute. Under Nebraska law, even if a publisher prints a libel, the publisher will be subject only to actual or "special" damages, if a retraction is timely printed. Do not, however, retract and admit fault if in fact you are not satisfied that there was genuine error. If the complaining party tries to prove "actual malice" against you, the retraction statute is nullified, and your having admitted fault may work against you in those cases. Nevertheless, in any case where an actual error is pointed out, whether it be for libel, or simply for newspaper integrity purposes, the retraction statute is extremely useful both in defusing the situation and in limiting damages in many cases. It is a highly valuable tool in libel prevention.

h. Settlement by Apology. Closely related to the retraction statute is a settlement done by personal apology where an error has been made. It is important in such cases to try to bring the matter to a close at the time the apology is rendered; that is, try to get an agreement by letter or by witnessed conversation at the very least, that the matter is deemed to be at a close. It is not wise, in the author's opinion, to offer "nuisance settlements" on any libel cases. Those encourage additional claims and also encourage lawyers to start filing more cases. If cash settlement is ever considered, it should only be after extremely close scrutiny of the liability and damages issues with the assistance of your insurer, if any, and counsel.

i. Libel Insurance. Despite the high cost, libel insurance may well be a wise move for most publications in view of the extremely high cost of defending a libel case even successfully. Using fairly high deductible can help keep the premium within reason.

3. Defenses After Litigation is Filed

a. The Story Was Substantially True.

b. The Publisher Used Due Care to Avoid the Error but it Inadvertently Occurred Anyway

c. The Story was Essentially Opinion, not Assertions of Fact.

d. Absolute or Qualified Privilege. There is an absolute privilege in very few cases for newspapers to print such libels. Senators have an absolute privilege when they are on the

floor of the Unicameral, and persons reporting alleged wrongs to professional supervisory bodies such as the bar association, etc., have an absolute privilege. Lawyers and witnesses have a privilege also during the course of legal proceedings to make statements that might otherwise be libelous in the absence of having actual knowledge of falsity, or having an intention to injure someone. A qualified privilege attaches to the printing of information taken accurately from any public record, at least where one does not know it to be false.

e. Retraction. This defense is a partial defense, limiting damages to special or out-of-pocket losses except where malice is proved against the publisher.

f. No Actual Damage to Reputation Proved. Plaintiffs frequently, indeed almost uniformly, exaggerate their loss of reputation for strategic, litigation-aimed reasons.

g. If the Plaintiff is a Public Figure or Public Official, the Lack of Knowledge of Falsity, or Lack of "Malice" in the Constitutional Sense, is a Defense. Burden of proving such malice is always on the plaintiff.

h. Reportorial Privilege. (Correct quotation form a reliable source). In this regard, attribution is extremely important both as a matter of preventive action and in some cases as a defense to a libel suit after filed. In other words, it may be defensible to quote a highly reputable source of information, even if later on that information turns out to be false and libelous. This defense is not commonly honored but has been used successfully on a few occasions. It is akin to a "privilege" to trust such a source. In some recent cases, the reliance on an established news wire service is deemed to be non-negligent, if an error is present in the wire services copy.

4. Closing Comment on Libel

The danger of libel is a real one, even in Nebraska where we do not allow "punitive" damages to be collected by anyone, but it is not at least as dangerous to allow concern over libel to shut off necessary news, information and opinion. The Nebraska Supreme Court has been relatively favorable to libel defendants and there are very few successful libel cases against the records of Nebraska newspapers. Attention to detail, special care for stories which obviously injure reputation, and a general sensitivity to the potential defenses and to writing courteous, prompt retractions will defuse the vast majority of all libel problems in this state. Where a particular story is troublesome but it is nevertheless highly important that it be printed, there is almost always a way. The extra work to come up with an additional source, careful use of language to create a "libel-proof" way to say the truth, and an honest attempt to balance out the story by getting the adversely affected side's viewpoint will permit the newspaper to do its job without libel jeopardy.

B. Retractions

25-208. Actions for libel, slander, malpractice, and recovery of tax. The following actions can only be brought within the periods stated in this section: Within one year, an action for libel or slander; and within two years, an action for malpractice which is not otherwise specifically limited by statute.

In the absence of any other shorter applicable statute of limitations, any action for the recovery of any excise or other tax which has been collected under any statute of the State of Nebraska and which has been finally adjudged to be unconstitutional shall be brought within one year after the final decision of the court declaring it to be unconstitutional. This section shall not apply to any action for recovery of property tax.

The changes made to this section by Laws 2000, LB 921, shall apply to causes of action accruing on and after July 13, 2000.

25-839. Libel or slander; how sufficiently pleaded; burden of proof. In an action for a libel or slander it shall be sufficient to state generally that the defamatory matter was

published or spoken of plaintiff, and if the allegation be denied, the plaintiff must prove on the trial the facts showing that the defamatory matter was published or spoken of him.

25-840. Libel or slander; truth as defense; effect of actual malice. In the actions mentioned in section 25-839, the defendant may allege the truth of the matter charged as defamatory, prove the same and any mitigating circumstances to reduce the amount of damages, or prove either. The truth in itself and alone shall be a complete defense unless it shall be proved by the plaintiff that the publication was made with actual malice. Actual malice shall not be inferred or presumed from publication.

25-840.01. Libel; invasion of privacy; damages; retraction; effect.

(1) In an action for damages for the publication of a libel or for invasion of privacy as provided by section 20-204 by any medium, the plaintiff shall recover no more than special damages, unless correction was requested, as herein provided, and was not published. Within twenty days after knowledge of the publication, plaintiff shall have given each defendant a notice by registered mail specifying the statements claimed to be libelous or to have invaded privacy as provided by section 20-204 and specifically requesting correction. Publication of a correction shall be made within three weeks after receipt of the request. It shall be made in substantially as conspicuous a manner as the original publication about which complaint was made. A correction, published prior to receipt of a request therefore, shall have the same force and effect as if published after such request. The term special damages, as used in this section, shall include only such damages as plaintiff alleges and proves were suffered in respect to his or her property, business, trade, profession or occupation as the direct and proximate result of the defendant's publication.

(2) This section shall not apply if it is alleged and proved that the publication was prompted by the actual malice, and actual malice shall not be inferred or presumed from the publication.

C. Nebraska Privacy Act

20-201. Right of Privacy; legislative intent. It is the intention of the Legislature to provide a right of privacy as described and limited by sections 20-201 to 20-211 and 25-840.01, and give to any natural person a legal remedy in the even of violation of the right.

20-202. Invasion of privacy; exploitation of a person for advertising or commercial purposes; situations; not applicable. Any person, firm, or corporation that exploits a natural person, name, picture, portrait, or personality for advertising or commercial purposes shall be liable for invasion of privacy. The provisions of this section shall not apply to:

(1) The publication, printing, display, or use of the name or likeness of any person in any printed, broadcast, telecast, or other news medium or publication as part of any bona fide new report or presentation or noncommercial advertisement having a current or historical public interest and when such name or likeness is not used for commercial advertising purposes;

(2) The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other distribution of literary, musical, or artistic productions or other articles of merchandise or property when such person has consented to the use of his or her name, portrait, photograph, or likeness on or in connection with the initial sale or distribution thereof so long as such use does not differ materially in kind, extent, or duration from that authorized by the consent as fairly construed; or

(3) Any photograph of a person solely as a member of the public when such person is not named or otherwise identified in or in connection with the use of such photograph.

20-203. Invasion of privacy; trespass or intrude upon a person's solitude. Any person, firm, or corporation that trespasses or intrudes upon any natural person in his or her place of solitude or seclusion, if the intrusion would be highly offensive to a reasonable person, shall be liable for invasion of privacy.

Also, see 28-311.08. Unlawful Intrusion

(1) It shall be unlawful for any person to knowingly intrude upon any other person without his or her consent or knowledge in a place of solitude or seclusion.

(2) For purposes of this section:

(a) Intrude means the viewing or recording, either by video, audio, or other electronic means, of a person in a state of undress; and

(b) Place of solitude or seclusion means a place where a person would intend to be in a state of undress and have a reasonable expectation of privacy, including, but not limited to, any facility, public or private, used as a restroom, tanning booth, locker room, shower room, fitting room, or dressing room.

(3) Violation of this section is a Class III misdemeanor unless the victim is under the age of eighteen in which case a violation is a Class II misdemeanor. Lack of knowledge as to the victim's age is not a defense to the enhanced penalty under this section.

20-204. Invasion of privacy; place person before public in false light. Any person, firm, or corporation which gives publicity to a matter concerning a natural person that places that person before the public in a false light is subject to liability for invasion of privacy, if:

(1) The false light in which the other was placed would be highly offensive to a reasonable person; and

(2) The actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

20-205. Publication or intrusion; not actionable; when. Any publication or nonintrusion otherwise actionable under section 20-2020, 20-203, or 20-204 shall be justified and not actionable under sections 20-201 to 20-211 and 25-840.01 if the subject of such publication or intrusion expressly or by implication consents to the publicity or intrusion so long as such publication or intrusion does not differ materially in kind, extent, or duration from that implicitly or expressly authorized by the consent as fairly construed. If such person is a minor, such consent may be given by a parent or guardian. If the subject of the alleged invasion of privacy is deceased, such consent may be given by the surviving spouse, if any, or by the personal representative.

20-206. Right of privacy; defenses and privileges. In addition to any defenses and privileges created in sections 20-201 to 20-2011 and 25-840.01, the statutory right of privacy created in sections 20-201 to 20-211 and 25-840.01 shall be subject to the following defenses and privileges;

(1) All applicable federal and Nebraska statutory and constitutional defenses;

(2) As to communications alleged to constituted an invasion of privacy, the defense that the communication was made under circumstances that would give rise to an applicable qualified or absolute privilege according to the law of defamation; and

(3) All applicable, qualified, and absolute privileges and defenses in the common law of privacy in the state and other states.

20-207. Invasion of privacy; action; nonassignable. The action for invasion of privacy created by sections 20-201 to 20-211 and 25-840.01 shall be personal to the subject of the invasion and shall in no case be assignable.

20-208. Invasion of privacy; death of subject; effect. The right of action for invasion of privacy created by sections 20-201 to 20-211 and 25-840.01, with the single exception of the action arising out of exploitation of a person's name or likeness in section 20-202, shall not be deemed to survive the death of the subject of any such invasion of privacy.

20-209. Libel, slander, invasion of privacy; one cause of action. No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication, exhibition, or utterance, such as any one issue of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition or a motion picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdiction.

20-210. Judgment; bar against other actions. A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication, exhibition, or utterance as described in section 20-209 shall bar any other action for damages by the same plaintiff against the same defendant founded upon the same publication, exhibition, or utterance.

20-211. Invasion of privacy; statute of limitations. Any action for invasion of privacy must be brought within one year of the date the cause of action arose.

D. Newsroom Search

29-813. Search warrant; issuance; limitation; purpose.
(1) A warrant may be issued under sections 29-812 to 29-821 to search for and seize any property (a) stolen, embezzled, or obtained under false pretenses in violation of the laws of the State of Nebraska, (b) designed or intended for use or which is or has been used as the means of committing a criminal offense, (c) possessed, controlled, designed, or intended for use or which is or has been possessed, controlled, designed, or used in violation of any law of the State of Nebraska making such possession, control, design, or use, or intent to use, a criminal offense, or (d) which constitutes evidence that a criminal offense has been committed or that a particular person has committed a criminal offense.
(2) Notwithstanding subsection (1) of this section, no warrant shall be issued to search any place or seize anything in the possession, custody, or control of any person engaged in procuring, gathering, writing editing, or disseminating news or other information for distribution to the public through a medium of communication unless probable cause is shown that such a person has committed or is committing a criminal offense. For purposes of this subsection, the terms person, information, and medium of communication shall be defined as provided in section 20-145.

E. Obscenity

28-807 (10). Terms, defined. Obscene shall mean (a) that an average person applying contemporary community standards would find that the work, material, conduct or live performance taken as a whole predominantly appeals to the prurient interest or a shameful or morbid interest in nudity, sex or excretion, (b) the work, material, conduct or live performance depicts or describes in a patently offensive way sexual conduct specifically set out in sections 28-807 to 28-829, and (c) the work, conduct, material or live performance taken as a whole lacks serious literary, artistic, political, or scientific value.

28-813. Obscene literature or material; prepares; distributes; promotes; penalty.
(1) It shall be unlawful for a person knowingly to (a) print, copy, manufacture, prepare, produce, or reproduce obscene material for the purpose of sale or distribution , (b) publish,

circulate, sell, rent, lend, transport in interstate commerce, distribute, or exhibit any obscene material, (c) have in his or her possession with intent to sell, rent, lend, transport, or distribute any obscene material, or (d) promote any obscene material or performance.

(2) It shall be unlawful for a person to place an order for any advertising promoting the sale or distribution of material represented or held out to be obscene, whether or not such material exists in fact or is obscene. In all cases in which a charge or violation of this section is brought against a person who cannot be found in this state, the executive authority of this state may demand extradition of such person from the executive authority of the state in which such person may be found.

(3) A person commits an offense of promoting obscene material if knowing its contents and character he or she (a) disseminates for monetary consideration any obscene material, (b) produces, presents, or directs obscene performances for monetary consideration, or (c) participates for monetary consideration in that part of a performance which makes it obscene.

(4) Any person who violates this section shall be guilty of a Class I misdemeanor.

F. Newspaper-Subscriptions and Printing

63-101. Newspapers; magazines, periodicals; recipient, when not liable for subscription price. No person in this state shall be compelled to pay for any newspaper, magazine or other publication which shall be mailed or sent to him without his having subscribed for or ordered it, or which shall be mailed or sent to him after the time of his subscription or order therefore has expired, notwithstanding that he may have received it.

63-102. Books, pamphlets; printing copies in excess of contract prohibited. It shall be unlawful for any person, firm or corporation who shall enter in to a contract for the printing, stereotyping, binding or publication of any book, pamphlet, circular or other publication or any character or description, for any author, compiler or publisher, to print any greater number of copies of such book, pamphlet, circular, or other publication, than the number designated by the contract for such publication.

63-103. Violations; penalty. Any person, firm or corporation violating any of the provisions of section 63-102 shall upon conviction thereof be guilty of a Class IV misdemeanor and in addition thereto shall be liable to the author, compiler or publisher with whom such contract was made, for all damages which may accrue by reason of such unlawful publication.

Glossary of Legal Terms

A

ab initio – From the beginning; entirely.
abet – To encourage or incite another to commit a crime.
abstract of record – A complete history in short, abbreviated form of the case as found in the record.
acquittal – The legal and formal certification of the innocence of a person who has been charged with crime, returned by a jury or judge sitting without a jury as the trier of fact.
action in personam – A suit or proceeding against' or in relation to, a specific person, founded on a personal liability.
action in rem – An action for a thing; an action for the recovery of a thing possessed by another.
ad damnum – The technical name of the clause in a complaint, usually at the end, containing a statement of the plaintiff's money loss or damages claimed.
ad litem – For the purposes of the law suit; a guardian "ad litem" is appointed to prosecute or defend a suit on behalf of an incapacitated person
additur – The power of the court to increase the amount of inadequate jury award.
adjudication – Giving or pronouncing a judgment or decree; also the judgment given.
adversary system – The system of trial practice in the U.S. and some other countries in which each of the opposing, or adversary, parties has full opportunity to present and establish its opposing contentions before the court.
affidavit – A written, sworn statement of facts, made voluntarily, usually in support of a motion or in response to a request of the court.
affirm – The assertion of an appellate court that the judgment of the lower court is correct and should stand.
aggravating circumstances – Facts that would increase moral culpability, e.g., in death penalty consideration
allegation – The assertion, declaration or statement of a party to a lawsuit often made in a pleading or legal document, setting out what the party expects to prove at the trial.
amicus curiae – A friend of the court; one who interposes and volunteers information upon some matter of law.
ancillary bill or suit – One growing out of and auxiliary to another action or suit, such as a proceeding for the enforcement of a judgment, or to set aside fraudulent transfers of property.
answer – A pleading by which defendant endeavors to resist the plaintiff's allegation of facts.
appearance- The formal proceeding by which a defendant submits himself to the jurisdiction of the court.
appellant – The party appealing a decision or judgment to a higher court.
appellate court – A court having jurisdiction of appeal and review; not a "trial court."
appellate jurisdiction – The power of a court to review a case that has already been tried by a lower court.
appellee- The party against whom an appeal is taken
arraignment – In a criminal case, the proceeding in which an accused is brought to the court to hear the charges read and to enter a plea.
arrest – To take into custody; to deprive a person of liberty by legal authority
arrest of judgment – The act of staying (postponing) the effect of a judgment already entered, or refusing to render judgment in a case.
at issue – Whenever the parties to a suit come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be "at issue."
attachment – A remedy by which plaintiff is enabled to acquire a lien upon property or effects of defendant for satisfaction of judgment which plaintiff may obtain in the future.

attorney of record – The attorney whose name appears as counsel to a party in the permanent records or files of a case.
aver – To declare, allege or assert.

B

bail – To set at liberty a person arrested or imprisoned, on security (or bail) being taken for his appearance in court on a specified day and place.
bail bond – An obligation signed by the accused, with sureties, to secure his presence in court.
bailiff – A court attendant whose duties are to keep order in the courtroom and to have custody of the jury.
banc – Bench; the place where a court permanently or regularly sits. A "sitting en banc" is a meeting of all the judges of a court, as distinguished from the sitting of a single judge.
bar – Historically, the partition separating the general public from the space occupied by the judges, attorney, jury and others during a trial. More commonly, the whole body of lawyers qualified to practice in any jurisdiction. A "case at bar" is a case now under the court's consideration.
bench – The seat occupied by the judge; more broadly, the court itself.
bench warrant – Legal papers issued by the court itself, or "from the bench" for the attachment or arrest of a person.
beneficiary – The individual or corporation who received the benefit of a transaction; e.g., beneficiary of a life insurance policy.
best evidence – Primary evidence; the best evidence which is available; any evidence falling short of this standard is secondary; i.e., an original letter is best evidence compared to a copy.
bill of particulars – A written statement by a prosecuting attorney specifying the details of a crime with which an accused is formally charged, such as the exact time, location, etc.
binding instruction – An instruction in which the jury is told that if it finds certain conditions to be true, it must find for the plaintiff, or defendant, as the case might be.
bind over – To hold on bail for trial.
brief – A written or printed document prepared by counsel to file in court, usually setting forth both facts and law in support of his case.
burden of proof – In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute.

C

call of the docket – The public calling of the docket or list of pending cases at the commencement of a court session.
capital case – A criminal case in which death sentence may be imposed.
caption – The caption of a pleading, or other papers connected with a case in court, is the heading or introductory clause which shows the name of the parties, names of the court, number or the case, etc.
cause – A suit, litigation, or action-civil or criminal
cause of action – The rights which a party has to institute a judicial proceeding.
certiorari – An original writ or court order commanding judges or officers of inferior courts to certify or return records of proceedings in a cause for judicial review.
challenge to the array – Questioning the qualifications of an entire jury panel, usually on the grounds of partiality or some fault in the process of summoning the panel.
chambers – The private office or room of a judge.
change of venue – The removal of a suit begun in one district to another district for trial, or from one court to another in the same district.

circumstantial evidence – All evidence of indirect nature; the process of decision by which court or jury may reason from circumstances known or proved to establish by inference the principal fact.
civil action – A lawsuit between or among private parties for declaration, enforcement or protection of a right, or for redress or prevention of a wrong.
code – A collection, compendium or revision of laws systematically arranged into chapters, table of contents and index, and promulgated by legislative authority.
codicil – A supplement or an addition to a will.
commit – To send a person to prison, an asylum, workhouse, or reformatory by lawful authority.
committing magistrate – A judge empowered to advise an arrested person of his rights and set bail shortly after arrest; also empowered to issue search warrants and arrest warrants and conduct preliminary hearings.
common law – Law which derives its authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of courts. Also called "case law."
commutation – The change of a punishment from a greater to a lesser.
comparative negligence – The doctrine by which acts of the opposing parties in a civil action are compared in the degrees of "slight," "ordinary" and "gross" negligence.
competency – In the law of evidence, the presence of those characteristics which render a witness legally fit and qualified to give a testimony.
complainant – Synonymous with "plaintiff."
concurrent sentence – Sentences for more than one crime in which the time of each is to be served concurrently, rather than successively.
condemnation – The legal process by which real estate of a private owner is taken for public use without his consent, but upon the award and payment of just compensation.
condition precedent – Something that must happen or be performed prior to something else occurring.
condition subsequent- Something that must happen after another thing.
consecutive sentences – Successive sentences, succeeding one another in regular order.
contempt of court – Any act calculated to embarrass, hinder, or obstruct a court in the administration of justice, or calculated to lessen its authority or dignity. Contempts are two kinds: direct and indirect. Direct contempts are those committed in the immediate presence of the court; indirect is the term chiefly used with reference to the failure or refusal to obey a lawful order.
controlling case – A prior appellate court opinion dealing with a case which, by reason of its legal point or facts, is so similar to a current case as to constitute a precedent.
conviction – The finding that a person is guilty beyond a reasonable doubt of committing a crime.
corpus delicti – The body (material substance) upon which a crime has been committed; e.g., the corpse of a murdered man, the charred remains of a burned house.
corroborating evidence – Evidence supplementary to that already given and tending to strengthen or confirm it.
costs – An allowance for expenses in prosecuting or defending a suit; ordinarily does not include attorney's fees.
counterclaim – A claim presented by a defendant against the plaintiff in a civil action.
court administrator – Manager of administrative, nonjudicial affairs of a court.
court reporter – A person who transcribes by shorthand or who stenographically takes down testimony during court proceedings.
courts of record – Those courts whose proceedings are permanently recorded, and which have the power to fine or imprison for contempt; e.g., district courts, and courts of appeals.
crime – Conduct declared unlawful by a legislative body and for which there is a punishment of a jail or prison term, a fine, or both.

criminal insanity – Lack of mental capacity to do or abstain from doing a particular act; inability to distinguish right from wrong.
cross-examination – The questioning of a witness in a trial, or in the taking of a deposition, by the party opposed to the one who produced the witness.
custody – Detaining a person by lawful process and authority to assure his or her appearance at any hearing; the jailing or imprisonment of a person convicted of a crime.

C

damages – Financial compensation that may be recovered in the courts by someone who has suffered loss, detriment, or injury to his person, property or rights, through the unlawful act or negligence of another.
de novo – Anew, afresh; a "trial de novo" is the retrial of a case.
denovo on the record – A retrial on appeal but based upon the transcript a bill of exception from the court below.
declaratory judgment – A court's judgment that declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done.
decree – A decision or order of the court. A final decree is one which fully and finally disposes of the litigation; an interlocutory decree is a provisional or preliminary decree which is not final.
default – The failure of a party to plead within the time allowed or to appear at trial.
demur – To file a pleading (called "a demurrer") admitting the truth of the facts in the complaint, or answer, but contending they are legally insufficient.
deposition – The testimony of a withess not taken in open court but in pursuance of authority given by statute or rule of court to take testimony elsewhere.
dictum – (See "obiter dictum")
direct evidence – Proof of facts by witnesses who saw acts done or heard words spoken in relation to a matter directly in issue; as distinguished from circumstantial evidence.
direct examination – The first interrogation of the witness by the party on whose behalf he is called.
direct verdict – An instruction by the judge to the jury to return a specific verdict mandated by the evidence.
discovery – A proceeding whereby one party to an action may learn of facts known by other parties or witnesses.
dismissal without prejudice – An order or judgment disposing of an action without a trial of the issues, and which permits the complainant to sue again on the same allegations; dismissal "with prejudice" bars the right to bring or maintain an action on the same claim or cause.
dissent – The explicit disagreement of one or more judges of a court with the decision of the prevailing judges.
docket – A list of cases to be tried by a court.
domicile – The place where a person has his true and permanent home; a person may have several residences, but only one domicile.
double jeopardy – More than one prosecution for the same crime, transaction or omission.
due process – Law in its regular course of administration through the courts of justice. This constitutional guarantee of due process requires that every man have the protection of a fair trial.

E

embezzlement – The fraudulent appropriation by a person to his own use or benefit of property or money entrusted to him by another.
eminent domain – The lawful power to take private property for public use by the process of condemnation.

enjoin – To require a person, by order of the court, to perform, or abstain or resist from some act.
entrapment – The act of officers or agents of a government in inducing a person to commit a crime not contemplated by him, for the purpose of instituting a criminal prosecution against him.
equitable action – An action which may be brought for the purpose of restraining the threatened infliction of wrongs or injuries, and the prevention of threatened illegal action. (Remedies not available at common law).
equity, courts of – Courts which administer remedial justice according to the system of equity, as distinguished from courts of common law. Equity courts are sometimes called courts of chancery.
escheat – The right of the state to property ot which no one is able to make a valid claim.
escrow – A writing, or deed, delivered by the grantor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition.
estoppel – A person's own act, or acceptance of facts which preclude his later making claims to the contrary.
et al. – An abbreviation of *et alii*, meaning "and others."
et seq. – An abbreviation for *et sequentes*, or *et sequential*, meaning "and the following."
ex contractu – Arising from a contract; used to describe rights and causes of action.
ex delicto – Arising from a wrong or "tort," used to describe rights and causes of action.
exparte – By or for one party; done for, in behalf of, or one the application of, one party only.
ex post facto – After the fact; by an act or fact occurring after the previous act or fact, and relating thereto.
ex rel - In behalf of.
exception – A formal objection to an action of the court, during the trial of a case, in refusing a request or overruling an objection; implying that the party excepting does not acquiesce in the decision of the court, but will seek to procure its reversal.
executor – A person appointed to carry out the directions and requests of a will and to dispose of the property according to its testamentary provisions.
exhibit – A paper, document or other article produced and exhibited to a court during a trial or hearing.
expert evidence – Testimony given in relation to some scientific, technical, or professional matter by experts, i.e., persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject.
extenuating circumstances – Circumstances which render an event less aggravated, heinous, or reprehensible than it would otherwise be. Such circumstances may ordinarily be shown in order to reduce the punishment or damages.
extradition – The surrender by one state to another of an individual accused or convicted of an offense outside its own territory, and within the territorial jurisdiction of the other.

F

fair comment – Used in the law of libel, applying to statements made by a writer in an honest belief of their truth, relating to acts of a public figure or of high public interest, even though the statements are not true in fact.
fair preponderance – Evidence sufficient to create in the minds of the triers of fact the belief that the party which bears the burden of proof has established its case.
false arrest – Any unlawful physical restraint of another's liberty, whether in prison or elsewhere.
false pretenses – Designed misrepresentation of an existing fact or condition whereby a person obtains another's money or goods.
felony – A crime of a graver nature than a misdemeanor. Generally, an offense punishable by death or imprisonment in a penitentiary. In Nebraska Class I through Class IV.

fiduciary – A term derived from the Roman law, meaning a person holding the character of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires.
forcible entry and detainer – A summary proceeding for restoring possession of land to one who has been wrongfully deprived of possession.
forgery – The false making or material altering, with intent to defraud, of any writing which, if genuine, might be the foundation of a legal liability.
fraud – An intentional perversion of truth; deceitful practice or device resorted to with intent to deprive another of property or other right, or in some manner to do him injury.

G

garnishment – A proceeding whereby property, money or credits of a debtor, in possession of another (the garnishee), are applied to the debts of the debtor.
garnishee – The person upon whom a garnishment is served, usually debtor of the defendant in the action; (verb) to institute garnishment proceedings
general assignment – The voluntary transfer, by a debtor, of all his property to a trustee for the benefit of all his creditors.
general demurrer – A demurrer which raises the question whether the pleading against which it is directed lacks the definite allegations essential to a cause of action or defense.
grand jury – A jury of inquiry whose duty is to receive complaints and accusations in criminal cases, hear the evidence and issue indictments ("true bills") in cases where they are satisfied there is probable cause that a crime was committed and that a trial ought to be held.
gratuitous guest – In automobile law, a person riding at the invitation of the owner of the vehicle, or his authorized agent without payment of a consideration of fare.
guardian ad litem – A person appointed by a court to look after the interests of an infant whose property is involved in litigation.
guest statute – A legislative enactment which may affect the rights of a passenger to recover against the driver. Nebraska has a guest statute.

H

habeas corpus – "You have the body." The name given a variety of writs whose object is to bring a person before a court or judge. In most common usage, it is directed to the official or person detaining another, commanding him to produce the body of the prisoner or person detained so the court may determine if such person has been denied his liberty without due process of law.
harmless error – In appellate practice, an error committed by a lower court during a trial, but not prejudicial to the right of the party and for which the court will not reverse the judgment.
hearing – An in-court proceeding before a judge generally open to the public.
hearsay – Testimony given by a witness who relates what he has heard said by others, not what he knows personally.
holographic will – A testamentary instrument or will entirely written, dated, and signe by the testator in his own handwriting.
hostile witness – A witness who is subject to cross-examination by the party who called him to testify, because of his evident antagonism toward that party as exhibited in his direct examination.
hypothetical question – A combination of facts and circumstances, assumed or proved, stated in such a form as to constitute a coherent state of facts upon which the opinion of an expert can be asked, by way of evidence in a trial.

I

immunity from prosecution – The waiver by a prosecutor of his right to prosecute in exchange for information or testimony.
impeachment of witness – An attack on the credibility of a witness by other evidence or the testimony of other witnesses.
implied contract – A contract in which the promise made by one party is not expressly state, but may be inferred from his conduct or implied in law.
imputed negligence – Negligence which is not directly attributable to the person himself, but which is the negligence of a person who is in privity with him, and with whose fault he is chargeable.
in banco – (or en banc) On the bench; all judges of the court sitting together to hear a cause.
in camera – In chambers; in private.
inadmissible – That which, under the established rules of evidence, cannot be admitted or received.
inadmissible evidence – Evidence which, under the established rules of evidence, cannot be admitted or received in evidence.
incompetent evidence – Evidence which is not admissible under the established rules of evidence
indeterminate sentence – An indefinite sentence of "not less than" and "not more than" so many years, then exact term to be served being afterwards determined by parole authorities within the minimum and maximum limits set by the court or by statute.
indictment – An accusation in writing found and issued by a grand jury, charging that a person named has done some act, or is guilty of some omission, which by law is a crime.
inferior court – Any court subordinate to the chief appellate tribunal in a particular judicial system.
information – An accusation of some criminal offense, in the nature of an indictment, but which is presented by a competent public officer such as a county attorney, instead of a grand jury.
infraction – An act which is prohibited by law but which is not legally defined as a crime.
injunction – A mandatory or prohibitive order issued by a court.
insanity – A complete defense to a crime; exists when at the time of the commission of the crime, the accused was not aware of the nature and quality of his criminal act or, if he did, was not aware that the act was legally wrong.
instruction – A direction given by the judge to the jury concerning the law of the case.
inter alia – Among other things or matters.
inter alios – Among other persons; between others.
interlocutory – Provisional; temporary; not final. Refers to orders and decrees of a court.
interrogatories – Written questions propounded by one party and served on an adversary, who must provide written answers under oath; discovery procedure in preparation for a trial.
intervention – A proceeding in a suit or action by which a third person is permitted by the court to make himself a party.
intestate – One who dies without leaving a will.
irrelevant – Evidence not relating or applicable to the matter in issue; not supporting the issue.

J

jeopardy – Exposure to possible conviction, such as being on trial in court.
John Doe – A fictitious name used in law to designate a person unknown.
joinder of issue – In pleading, uniting of the issues, where one party asserts a fact to be true and the other denies it.

judgment – The official decision or decree of the court upon the rights and claims of the parties.
jurisdiction – The legal power to hear and decide cases; the territorial range of such power.
jurisprudence – The philosophy of law, or the science which treats of the principles of positive law and legal relationships.
jury – A certain number of persons, selected according to law, and sworn to inquiry of certain matters of fact, and declare the truth upon evidence laid before them.
jury, grand – A jury of inquiry whose duty is to receive complaints and accusations in criminal cases, hear the evidence and find true bills on indictment in those cases where they are satisfied that there is probable cause that a crime was committed and that a criminal trial ought to be held.
jury, petit – The ordinary jury of twelve (or fewer) persons for the trial of a civil or criminal case. So called to distinguish it from the grand jury.
jury commissioner – An officer charged with the duty of selecting the names to be put into a jury wheel, or with selecting the panel of jurors for a particular term of court.

L

leading questions – One which instructs a witness how to answer or puts into his mouth words to be echoed back; one which suggests to the witness the answer desired. Prohibited on direct examination, with some exceptions.
levy – A seizure; the obtaining of money by legal process through seizure and sale of property; the raising of the money for which an execution has been issued.
libel – A method of defamation expressed by print, writing, pictures or signs. In its most general sense any publication that is injurious to the reputation of another.
lien – An encumbrance upon property, usually as security for a debt or obligation.
limitation – A certain time allowed by statute in which litigation must be brought.
lis pendens – A pending lawsuit; a notice of *lis pendens* serves as a warning to all persons that the title to certain property is disputed in a lawsuit.
litigation – A judicial controversy.
locus delicti – The place of the offense.

M

malfeasance – Evil doing, ill conduct; the commission of some act which is positively prohibited by law. (Compare "misfeasance")
malicious prosecution- An action instituted with intention of injuring defendant and without probable cause, and which terminates in favor of the person prosecuted.
mandamus – The name of a writ which issues from a court of superior jurisdiction, directed to an inferior court or a public officer, commanding the performance of a particular act.
mandate – A judicial command or precept proceeding from a court or judicial officer, directing the proper officer to enforce a judgement, sentence, or decree.
manslaughter – The unlawful killing of another without malice; may be either voluntary, upon a sudden impulse, or involuntary in the commission of some unlawful act.
material evidence – Such as is relevant and goes to the substantial issues in dispute
merit plan – Method for selection and retention of judges in Nebraska, wherein the judge is selected by the Governor upon the recommendation of a panel of lawyers and non-lawyers, rather than being elected.
mesne – Intermediate; intervening
misdemeanor – Offenses less than felonies; generally those punishable by fine or imprisonment otherwise than in penitentiaries. In Nebraska class I through class V.
malfeasance – A misdeed or trespass; the improper performance of some act which a person may lawfully do.

mistrial – An erroneous or invalid trial, a trial which cannot stand in law because of lack of jurisdiction, wrong drawing of jurors, or disregard of some other fundamental requisite.
mitigating circumstances – One which does not constitute a justification or excuse for an offense, but which may be considered as reducing the degree of moral culpability. As used in death penalty considerations.
mitigation of damages – The duty to minimize or reduce one's damages whenever possible.
moot – Unsettled; undecided; a moot point is one not settled by judicial decisions; a moot case is one that seeks to determine an abstract question which does not arise upon existing facts.
moral turpitude – Conduct contrary to honesty, modesty, or good morals.
multiplicity of actions – Numerous and unnecessary attempts to litigate the same right.
municipal courts – In the judicial organization of some states, court whose territorial authority is confined to the city or community.
murder – The unlawful killing of a human being by another with malice aforethought, either express or implied.

N

ne exeat – A writ which forbids the person to whom it is addressed to leave the country, the state, or the jurisdiction of the court.
negligence – The failure to do something which a reasonable man, guided by ordinary considerations, would do; or the doing of something which a reasonable and prudent man would not do.
next friend – One acting for the benefit of an infant or other person without being regularly appointed as guardian.
nisi prius – Courts for the initial trial of issues of fact, as distinguished from appellate courts.
no bill – This phrase, endorsed by a grand jury on the indictment, is equibalent to "not found" or "not a true bill." It means that, in the opinion of the jury, evidence was insufficient to warrant the return of a formal charge.
nolle prosequi – A formal entry upon the record by the plaintiff in a civil suit, or the prosecuting officer in a criminal case, by which he declares that he "will no further prosecute" the case.
nolo contendere – A pleading usually used by defendants in criminal cases, which literally means "I will not contest it."
nominal party – One who is joined as a party or defendant merely because the technical rules of pleading required his presence in the record.
non compos mentis – Not sound of mind, insane.
notary public – A person authorized by law and specially designated to administer oaths, certify and authenticate specific documents, and perform other prescribed acts.
notice to produce – In practice, a notice in writing requiring the opposite party to produce a certain described paper or document at the trial.
nunc pro tunc – A phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect.

O

obiter dictum – A statement in a court's opinion that is not necessary to the decision of the case, but that is included as a "by the way" remark of the court. (Commonly shortened to "dictum." Plural: "dicta.")
objection – The act of taking exception to some statement or procedure in trial. Used to call the court's attention to improper evidence or procedure.
of counsel – A phrase commonly applied to counsel employed to assist in the preparation or management of the case, or its presentation on appeal, but who is not the principal attorney of record.

opinion – A formal statement by a judge or justice of the law bearing on a case.
opinion evidence – Evidence of what the witness thinks, believes, or infers in regard to facts in dispute, as distinguished from his personal knowledge of the facts; opinions may be offered by experts. When the judge deems it helpful nonexperts may also give opinions based on the knowledge.
ordinary – A judicial officer in several of the states, clothed by statute with powers in regard to will, probate, administration, guardianship.
out of court – One who has not legal status in court is said to be "out of court," i.e., he is not before the court. For example, when a plaintiff, by some act of omission or commission, shows that he is unable to maintain his action, he is frequently said to have put himself "out of court."

P

panel – A list of jurors to serve in a particular court, or for the trial of a particular action; denotes either the whole body of persons summoned as jurors for a particular term of court or those selected by the clerk by lot.

pari materia – On the same subject; laws *pari materia* must be construed with reference to each other.

pari pasu – Equitably; ratably; without preference.

parol evidence – Oral or verbal evidence, of the type given witnesses in court. Also, evidence given about an agreement not expressly included on the written version of the agreement.

parole – The conditional release from the prison of a convict before the expiration of his sentence. If he observes the conditions, the parolee need not serve the remainder of his sentence.

parties – The persons who are actively concerned in the prosecution or defense of a legal proceeding.

per curiam – A phrase used to distinguish an opinion of the whole court from an opinion written by any one judge.

peremptory challenge – The challenge which the prosecution or defense may use to reject a certain number of prospective jurors without assigning any cause.

personal representatives – Includes executor, administrator, special administrator and persons who perform substantially the same functions in decedents' estates.

perjury – The willful assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in a judicial proceeding as part of his evidence, whether upon oath or in any for allowed by law to be substituted for an oath, and known to such witness to be false.

petit jury – The ordinary jury of twelve (or fewer) persons for the trial of a civil or criminal case. So called to distinguish it from a grand jury.

petition – Written application to a court requesting a remedy available under law.

plaintiff – The person who brings an action; the party who complains or sues in a personal action and is so named on the record.

plaintiff in error – The party who obtains a writ of error to have a judgment or other proceeding at law reviewed by an appellate court.

plea bargaining – (or negotiation) The process by which the prosecutor an the defense counsel attempt to resolve a criminal case by a guilty plea with an agreed upon sentence to be submitted to a trial judge for approval or disapproval.

pleading – The process by which the parties in a suit or action alternately present written statements of their contentions, each responsive to that which precedes, and each serving to narrow the field of controversy, until there evolves a specific point or points, affirmed on one side and denied on the other, called the "issue" upon which they then to trial.
polling the jury – A practice whereby the jurors are asked individually whether they assented, and still assent, to the verdict.

post-conviction proceedings – In criminal cases those matters occurring after conviction.
praecipe – an original writ commanding the defendant to do the thing required; also, an order addressed to the clerk of a court, requesting him to issue a particular writ.
precedent – Previously decided case which is recognized as an authority for determining future cases.
prejudicial error – Synonymous with "reversible error"; an error which warrants the appellate court to reverse the judgment before it.
preliminary hearing – The hearing given a person charged with a crime by a magistrate or judge to determine whether he should be held for trial.
preponderance of evidence – Greater weight of evidence, or evidence which is more credible and convincing to the mind, not necessarily the greater number of witnesses; the standard of proof usually required in civil actions.
presentment – An informal statement in writing by a grand jury to the court than a public offense has been committed, from their own knowledge or observation, without any bill of indictment laid before them.
presumption of fact – An inference as to the truth or falsity of any proposition of fact, drawn by a process of reasoning in the absence of actually certainty of its truth or falsity, or until such certainty can be ascertained.
presumption of law – A rule of law that courts and judges shall draw a particular inference from a particular fact, or from particular evidence.
pre-trial motion – A motion made before the trial of a case, such as a motion to suppress evidence which might be expected to be used at a later trial
prima facie – So far as can be judged from the disclosure; presumable; a fact presumed to be true unless disproved by some evidence to the contrary.
prior restraint – A phrase used in Supreme Court Cases dealing with the freedom of the press under the First Amendment. Courts have held the government cannot restrain in advance the publication of information by the press.
privity – Direct, mutual or successive legal relationship on one person to another.
probable cause – A constitutionally prescribed standard of proof; a reasonable ground for belief in the existence of certain facts.
probate – Specifically, the act or process of proving the validity of a will in court; generally, all matters handled by a probate court.
probation – In modern criminal administration, allowing a person convicted of an offense (particularly juvenile offenders) to go at large, under a suspension of sentence, during good behavior, and generally under the supervision or guardianship of a probation officer.
prosecutor – One who instigates the prosecution upon which an accused is arrested or one who brings an accusation against the party whom he suspects to be guilty; also, who takes charge of a case and performs the function of trial lawyer for the people.
prosecutrix – A female prosecutor.

Q

quaere – A query; question; doubt.
quash – To overthrow; vacate; to annul or void a summons or indictment.
quasi judicial – Of a judicial nature; used to describe the actions of public administrative officers who are required to investigate facts and draw conclusions from them as a basis for their official actions.
quid pro quo – What for what; a fair return or consideration.
quotient verdict – A money verdict determined by the following process: Each juror writes down the sum he wishes to award by the verdict. These amounts are added together, and the total is divided by twelve (the number of jurors). The quotient stands as the verdict of the jury by their agreement. Such verdicts are contrary to law in Nebraska.

quo warranto – A writ issuable by the state, through which it demands an individual show by what right he exercises authority which can only be exercised through grant or franchise emanating from the state.

R

reasonable doubt – An accused person is entitled to acquittal if in the minds of the jury, his guilt has not be proven beyond a "reasonable doubt"' that state of the minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

rebuttal – The introduction of rebutting evidence; the showing that statements of witnesses as to what occurred are not true; the state of a trial at which such evidence may be introduced.

recognizance – A recorded obligation, entered before a court, to do some act, e.g., to appear in court at a particular time or pay a specified sum in penalty for default thereof.

recuse – To disqualify oneself as a judge in a particular case.

direct examination – Follows cross-examination and is exercised by the party who first examined the witness.

referee – A person to whom a cause pending in a court is referred by the court to take testimony, hear the parties, and report thereon to the court. He is an officer exercising judicial powers and is an arm of the court for a specific purpose.

registrar – Court official designated to accept or reject applications for informal probate and informal appointment of a personal representative.

release on own recognizance – An alternative to bail. Release upon certain conditions set by the court.

removal, order of – An order by a court directing the transfer of a cause to another court.

reply – When a case is tried or argued in court, the argument of the plaintiff in answer to that of the defendant. A pleading in response to an answer.

reporter systems – Appellate, state, and federal court opinions, published by Wet Publishing Co. State court opinions are grouped geographically (Pacific Reporter and Southern Reporter), while federal opinions are grouped in the Federal Reporter and the Federal Supplement.

respondent – Party against whom an appeal is brought in an appellate court; the prevailing party in the trial court case.

rest – A party is said to "rest" or "rest his case" when he has presented all the evidence he intends to offer.

restitution – Act of giving the equivalent for any loss, damage or injury.

restraining order – An order in the nature of a injunction.

retainer – Act of the client in employing his attorney or counsel, and also denotes the fee which the client pays when he retains the attorney to act for him.

rule nisi, or rule to show cause – A court order obtained on motion by either party to show cause why the particular relief sought should not be granted.

rules of court – Regulation made by a court of competent jurisdiction governing the general practice and procedure in all matters coming before the court.

S

search and seizure, unreasonable – In general, an examination without authority of law of one's premises or person with a view to discovering stolen contraband or illicit property or some evidence of guilt to be used in prosecuting a crime.

search warrant – An order in writing, issued by a justice or magistrate, in the name of state, directing an officer to search a specified house or other premises for stolen property. Usually required as a condition precedent to a legal search and seizure.

self-defense – The protection of one's person or property against some injury attempted by another. The law of "self-defense" justifies an act done in the reasonable belief of immediate danger. When acting in justifiable self-defense, a person may not be punished criminally nor held responsible for civil damages.
sentence – Judgement formally pronounced by a judge upon a defendant after his or her conviction in a criminal or civil prosecution
separate maintenance – Allowance granted for support a married party, and any children while the party is living apart from the spouse, but without dissolution of the marriage.
separation of witnesses – An order of the court requiring all witnesses to remain outside the courtroom until each is called to testify, except the plaintiff or defendant.
sheriff – an officer of a county, chosen by popular election, whose principal duties are aid of criminal and civil courts; chief preserver of the peace. He serves processes, summons juries, executes judgments and holds judicial sales.
sine qua non – An indispensable requisite.
slander – Base and defamatory spoken words tending to harm another's reputation, business or means of livelihood. Both "libel" and "slander" are methods of defamation – the former being expressed by print, broadcast, writings, pictures, signs or other forms of side publication, the latter orally.
special appearance – An answer in a legal proceeding with the sole purpose of testing the court's jurisdiction
specific performance – A mandatory order in equity. Where damages would be inadequate compensation for the breach of a contract, the contractor will be compelled to perform specifically what he has agreed to do.
stare decisis – The doctrine that, when a court has once laid down a principle of law as applicable to a certain set of facts, it will adhere to the principle and apply it to future cases where the facts are substantially the same.
state's evidence – Testimony given by an accomplice or participant, in a crime, tending to convict others.
statute – The written law created by the legislative branch in contradistinction to be the written law.
stay – A stopping or arresting of a judicial proceeding by order of the court.
stipulation – An agreement by attorneys on opposite sides of a case as to any matter pertaining to the proceedings or trial. It is not binding unless assented to by the parties, and most stipulations must be in writing.
subpoena – A process to cause a witness to appear and give testimony before a court or magistrate
subpoena duces tecum – A process by which the court commands a witness to produce certain documents or records in a trial or for a deposition.
substantive law – The law dealing with rights, duties and the liabilities, as distinguished from adjective law, which is the law regulating procedure.
summary judgment – The termination of a lawsuit, usually before trial, upon the showing that there are no issues of fact in the case, and that one party or another is entitled to prevail as a matter of law.
summons – A writ directing the sheriff or other officer to notify the named person that an action has been commenced against him in court and that he is required to appear, on the day name, and answer the petition or complaint in such action.
supersedeas – A writ containing a command to stay proceedings at law, such as the enforcement of a judgment pending an appeal.

T

talesman – A person summoned to act as a juror from among the bystanders in a court.

testamentary trust – Trust that comes into being only as a result of the death of a person whose will provides for the creation of a trust after his or her death.

testator – One who makes or has made a will.

testimony – Evidence given by a competent witness, under oath, as distinguished from evidence derived from writings and other sources.

tort – An injury or wrong committed, either with or without force, to the person or property of another.

transcript – The official record of proceedings in a trial or hearing.

transitory – Actions are "transitory" when they might have taken place anywhere, and are "local" when they could occur only in some particular place.

traverse – In pleading, traverse signifies a denial. When a defendant denies any material allegation of fact in the plaintiff's declaration, he is said to traverse it.

treatise – A book systematically treating subject of the law.

trial de novo – A new trial or retrial held in a higher court in which the whole case is gone into as if no trial had been held in a lower court.

true bill – In criminal practice, the endorsement made by a grand jury upon a bill of indictment when they find sufficient evidence to warrant a criminal charge.

trust – A legal entity established by a trust agreement signed by a person during his or her life or arising after death from a will or testamentary trust.

trustee – A person appointed to execute a trust.

trusty – An inmate granted special privileges.

U

ultra vires – Acts beyond lawful authority.

undue influence – Whatever destroys free will and causes a person to do something he would not do if left to himself.

unlawful detainer – a detention of real estate without the consent of the owner or other person entitled to its possession.

unreasonable search and seizure – In general, an examination without authority of law of one's premises or person with a view to discovering stolen contraband or illicit property or some evidence of guilt to be used in prosecuting a crime.

usury – The taking of more for the use of money than the law allows.

V

venire – Technically, a writ summoning persons to court to act as jurors; popularly used as meaning the body of names thus summoned.

venire facias de novo – A fresh or new venire, which the court grants when there has been some impropriety or irregularity in returning the jury, or where the verdict is so imperfect or ambiguous that now judgment can be given upon it.

veniremen – Members of a panel of jurors.

venue – The particular county, city of geographical area in which a court with jurisdiction may hear and determine a case.

verdict – In practice, the formal and unanimous decision or finding made by a jury, reported to the court and accepted by it.

voir dire – To speak the truth. The phrase denotes the preliminary examination which the court may make of one presented as a witness or juror, as to his qualifications.

W

waiver of confidentiality – The relinquishment, by the involved attorney or the Bar, of the Integration Rule's requirements of secrecy on certain proceedings.

waiver of immunity from self incrimination – A means authorized by statutes by which a witness in advance of giving testimony producing evidence, may renounce the fundamental right guaranteed by the Constitution that now person shall be compelled to be witness against himself.
warrant of arrest – A writ issued by a magistrate, justice, or other competent authority, to a sheriff, or other officer, requiring him to arrest a person therein named and bring him before the magistrate or court to answer to a specified charge.
weight of evidence – The balance or preponderance of evidence; the inclination of the greater amount of credible evidence, offered by a trial, to support one side of the issue rather than the other.
willful – A "willful" act is one done intentionally, without justifiable cause, as distinguished from an act done carelessly or inadvertently.
with prejudice – The term, as applied to judgment of dismissal, is as conclusive of rights of parties as if action had been prosecuted to final adjudication adverse to the plaintiff.
without prejudice – A dismissal "without prejudice" allows a new suit to be brought on the same cause of action.
witness – One who testifies to what he has seen, heard or otherwise observed, or concluded from observations.
writ – An order issuing from a court of justice and requiring the performance of a specified act, or giving authority and commission to have it done.
writ of error coram nobis – A common-law writ, the purpose of which is to correct a judgment in the same court in which it was rendered, on the ground of error of fact.
writ of mandamus – An order which issues from a court of superior jurisdiction, which is directed to a governmental body or its officers, commanding the performance of a particular act.
writ of prohibition – Counterpart of the writ of mandamus. It stops the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

RECENT CASES

1. Nebraska Press Association v. Stuart -427 U.S. 539 (1976)

The lower courts had entered an order restraining the news media from publishing or broadcasting accounts of confessions or admissions made by the accused in a murder investigation, or any other facts strongly implicating him prior to impanelment of the jury. The United States Supreme Court, reversing, held that so far as this prior restraint prohibited reporting or commentary on judicial proceedings held in public, it was clear violation of the First Amendment protection for freedom of expression. Secondly, the Court held that the prohibiting publication, based on information about the criminal proceedings, was invalid because it failed to meet the heavy burdens of showing, beyond mere speculation:

(a) That alternatives to a prior restraint on the news media would not have sufficiently mitigated any adverse effects of pre-trial publicity so as to make the prior restraint unnecessary;

(b) That the impact of the anticipated publicity on prospective jurors would clearly affect adversely the accused's right to a fair trial; and

(c) That a prior restraint itself would effectively protect the accused's rights to a fair trial.

2. Richmond Newspapers v Commonwealth of Virginia, 448 U.S. 555 (1980)

Issue: Whether a right of access to trials, as distinguished from hearings on pre-trial motions, is constitutionally guaranteed.

Whether a criminal trial itself may be closed to the public upon the unopposed request of a defendant, without demonstration that closure is required to protect the defendant's right to a fair trial, or that some other overriding consideration requires closure.

Holding: While the First and Fourteenth Amendment rights of the public and representatives of the press to attend criminal trials are not absolute and while a trial judge, in the interest of the fair administration of justice, may impose reasonable limitations on access to a trial, yet, absent articulated findings by the trial judge that tested alternative solutions to ensure a fair trial are not manageable and that there is an overriding public interest in closure, the trial of a criminal case must be open to the public.

3. Cohen v. Cowles Media Company, 501 U.S. 663 (1991)

Issue: Whether recovery for damages under a state promissory estoppel law when a newspaper breaches its promise confidentiality in exchange for information violates the newspaper's First Amendment rights.

Holding: The Court held that general recovery laws like the Minnesota doctrine of promissory estoppel law do not offend First Amendment freedoms of the press because they have only slight effects on the press' ability to collect and convey the news. Therefore, a newspaper can not claim absolute immunity from suits fro breaches of promises for source confidentiality.

4. New-Journal Corporation v. Foxman, 939 F.2d 1499 (11th Cir. 1991)

Issue: Whether a restrictive order upon a newspaper regarding extrajudicial statements of trial participants before a high profile criminal trial commenced was violative of the First Amendment.

Holding: The Eleventh Circuit held that the restrictive order would not cause irreparable injury to the newspaper and was therefore not violative of the newspaper's First Amendment rights. The Court held when First Amendment rights clash with Sixth Amendment rights, the more fundamental right is the Sixth Amendment right to a fair trial.

5. Turner Boradcasting System v. Federal Communications Commission, 114 S.Ct. 2445 (1994)

Issue: Whether Congress may require cable companies to carry or set aside a minimum number of channels for local broadcasters or if this regulation violates the First Amendment freedom of the press.

Holding: The Court using an intermediate level of scrutiny held that by regulating the cable companies and requiring the companies to carry broadcasting stations, the Court is ensuring that part of the American public who do not have cable free access to broadcast television, preserving the variety of informational sources, and promoting a competitive market for television programming. This regulation does not violate the First Amendment.

6. Fully Informed Jury Assn. v. San Diego County, Calif. – 95 U.S.L.W. 1896 (July 2, 1996)

Issue: Whether the removal of information and news racks from the front area of a courthouse unconstitutionally restricts freedom of the press, violating the First Amendment.

Holding: San Diego Superior Court order held that banning written materials which "influence, interfere, or impede the lawful discharge duties of a trial juror" in the 50 yard space in front of a court entrance and removing news racks from the front entrance of the courthouse did not violate the First Amendment. The State has a compelling interest to uphold the principles of a fair jury system and the public has other alternative means to receive information which outweighs the First Amendment freedom of the press.