

# 2014 METRO OMAHA BENCH BAR CONFERENCE

## “What I Wish I Knew Before I Joined the Bench”

10:40 – 11:40 am

Featuring:

Hon. Jeffrey Marcuzzo

Hon. Marcela Keim

Moderating: Stu Dornan

## Discussion on General Practice Tips:

### Top 3 Favorite/Least Favorite Attorney Habits (Marcuzzo)

#### Reference Materials

“Mysterious” County Court Rules (Keim)

“Goodtime” Chart (Keim)

DUI Cheat Sheet (Marcuzzo)

Progression Standards

“Eight Traits of Great Trial Lawyers: A Federal Judge’s View on How to Shed the Moniker ‘I am a Litigator’”, authored by United States District Court Judge Mark W. Bennett of the Northern District of Iowa.

#### Worst Practices/Best Practices

Be prepared. Be prompt. Be courteous. (Marcuzzo)

Judicial Cheat Sheet: If you don’t have one – you need one! (Keim)

Proliferation of Pre-Trial Orders (Keim)

Mandatory, Necessity and Why Now?

Open it up for Questions – Speak now – Here’s Your Chance! Discussion on General Practice Tips:

# Depositions

- <http://www.youtube.com/watch?v=pocKf4-pfhM>

# “Mysterious” County Court Rules

- <http://supremecourt.ne.gov/print/book/export/html/1634>
- <http://supremecourt.ne.gov/sites/supremecourt.ne.gov/files/rules/amendments/6-1433Amds.pdf>
- <http://supremecourt.ne.gov/sites/supremecourt.ne.gov/files/rules/amendments/6-1467Amd.pdf>

# Specific County Court Rules for Douglas County

## TRIAL SETTINGS Courtroom 27 and 29

**Effective January 2, 2008**  
**Reissued February 1, 2010**

Defendants charged with misdemeanor criminal and traffic cases whose lawyers file written not guilty pleas will be set on the regular docket in either Courtroom 27 or 29. The judge scheduled to be in the courtroom on the date the trial is scheduled is the judge assigned to handle the case. The case must be tried or pled only to the assigned judge.

If a defendant appears for a scheduled arraignment in Courtroom 26, 27, 28 or 50, the defendant may plead guilty or no contest to the judge sitting in the courtroom on that date. The judge who accepts the plea will be the judge who sentences the defendant.

There will be no early arraignments unless approved by the presiding judge for good cause shown.

# Specific County Court Rules for Douglas County

If a defendant appears for a scheduled arraignment in Courtroom 26, 27, 28, or 50 and pleads not guilty, the case will be set on the regular docket in either Courtroom 27 or 29. The judge scheduled to be in the courtroom on the date the trial is scheduled is the judge assigned to handle the case. The case must be tried or pled only to the assigned judge.

If a defendant fails to appear for a scheduled arraignment, the case will be assigned to the judge scheduled in the arraignment courtroom.

When the defendant is arrested on the capias, the case must be rescheduled to the assigned judge. The only exception to this rule is if the defendant is arrested on the capias and appears in Courtroom 50. The judge in Courtroom 50 on that date may accept a guilty or no contest plea and sentence the defendant on the charge(s).

If the defendant has not been arrested on the warrant and wishes to appear and cancel the warrant at the courthouse, the defendant must appear in front of the judge assigned to the case, if available, and if not, then in Courtroom 28 at 1:30 p.m. The judge in Courtroom 28 can cancel the capias, if appropriate, and the case must then be set for trial on the assigned judge's next available trial date. The judge in Courtroom 28 cannot accept a plea of guilty or no contest unless the case is assigned to that judge.

# Specific County Court Rules for Douglas County

## CRIMINAL JURY DOCKET CASES

Cases set on the jury docket will be done on a calendar month basis.

Pre-trial dates will be set at the time the not guilty plea is entered.

The defendant will be given a card with the date and time of the pre-trial hearing.

Criminal pre-trials have always been set on the second Friday of every month. This will not change and the date cannot be moved to another date.

All hearings will be scheduled for 9:00 a.m.

As an example; all jury pre-trials for cases arraigned from January 2-31, 2010 will be scheduled for pre-trial hearing on March 12, 2010 at 9:00 a.m.

-all jury pre-trials for cases arraigned from February 1-29, 2010 will be scheduled for pre-trial hearing on April 9, 2010 at 9:00 a.m.

The judge scheduled to preside at the pre-trial hearing is the judge assigned to the case for all purposes.

If the defendant wishes to plead to the charges prior to the pre-trial hearing, the plea must be to the assigned judge.

Any request for a continuance must be heard by the assigned judge.

# Specific County Court Rules for Douglas County

If the defendant waives the right to a jury trial, the trial will be scheduled to that same assigned judge's non-jury docket in either Courtroom 27 or 29.

If a defendant fails to appear for arraignment on a Class I misdemeanor, a capias will issue and the case will not be assigned to a judge until he is picked up on the warrant or the capias is cancelled.

If a defendant has not been arrested on the warrant and wishes to appear and cancel the warrant at the courthouse, the defendant must appear in front of the judge who issued the capias, if available, and if not, then in Courtroom 28 at 1:30 p.m. The judge in Courtroom 28 can cancel the capias, if appropriate, and the case will be set for trial on the next jury panel.



# Specific County Court Rules for Douglas County

## NEW PROCEDURES – GENERAL

The new procedure with regard to the assignment of misdemeanor criminal and traffic cases to a specific judge does not affect or change any procedures presently in place with regard to the arraignment of felony cases in Courtroom 50 or Courtroom 25 or preliminary hearings scheduled in Courtroom 25.

The new procedures do not affect or change the present schedule for a judge's sentencings on Thursday morning.

The new procedures do not affect or change any procedures presently in place with regard to the scheduling of pre-trial motions in Courtroom 27 on Thursday afternoon. However, no guilty or no contest pleas can be taken by the motion judge unless the case is already assigned to that motion judge.

**PRE-TRIAL MOTIONS**

**Courtroom 27**

**Effective January 2, 2008**

**Approved as of January 28, 2010**

A judge hearing pre-trial motions on Thursday afternoons in Courtroom 27 shall not take a guilty or no contest plea on a case in that courtroom unless the case is already assigned to that motion judge.

## GOODTIME CHART

Sentenced Days	Days Served	Good Time Earned	Sentenced Days	Days Served	Good Time Earned	Sentenced Days	Days Served	Good Time Earned
0-15	Same	0	61	38	23	107	61	46
16	16	0	62	39	23	108	62	46
17	16	1	63	39	24	109	62	47
18	17	1	64	40	24	110	63	47
19	17	2	65	40	25	111	63	48
20	18	2	66	41	25	112	64	48
21	18	3	67	41	26	113	64	49
22	19	3	68	42	26	114	65	49
23	19	4	69	42	27	115	65	50
24	20	4	70	43	27	116	66	50
25	20	5	71	43	28	117	66	51
26	21	5	72	44	28	118	67	51
27	21	6	73	44	29	119	67	52
28	22	6	74	45	29	120	68	52
29	22	7	75	45	30	121	68	53
30	23	7	76	46	30	122	69	53
31	23	8	77	46	31	123	69	54
32	24	8	78	47	31	124	70	54
33	24	9	79	47	32	125	70	55
34	25	9	80	48	32	126	71	55
35	25	10	81	48	33	127	71	56
36	26	10	82	49	33	128	72	56
37	26	11	83	49	34	129	72	57
38	27	11	84	50	34	130	73	57
39	27	12	85	50	35	131	73	58
40	28	12	86	51	35	132	74	58
41	28	13	87	51	36	133	74	59
42	29	13	88	52	36	134	75	59
43	29	14	89	52	37	135	75	60
44	30	14	90	53	37	136	76	60
45	30	15	91	53	38	137	76	61
46	31	15	92	54	38	138	77	61
47	31	16	93	54	39	139	77	62
48	32	16	94	55	39	140	78	62
49	32	17	95	55	40	141	78	63
50	33	17	96	56	40	142	79	63
51	33	18	97	56	41	143	79	64
52	34	18	98	57	41	144	80	64
53	34	19	99	57	42	145	80	65
54	35	19	100	58	42	146	81	65
55	35	20	101	58	43	147	81	66
56	36	20	102	59	43	148	82	66
57	36	21	103	59	44	149	82	67
58	37	21	104	60	44	150	83	67
59	37	22	105	60	45	151	83	68
60	38	22	106	61	45	152	84	68

# **Eight Traits of Great Trial Lawyers: A Federal Judge's View on How to Shed the Moniker "I am a Litigator"**

Judge Mark W. Bennett<sup>1</sup>

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## PROBATION

1<sup>ST</sup> OFFENSE:  
OR REFUSAL  
(CLASS W MISD.)

NO JAIL  
\$500.00 FINE AND  
60 DAY LICENSE REVOCATION  
MANDATORY ii

1<sup>ST</sup> .15 OR OVER:  
(CLASS W MISD.)

2 DAYS JAIL OR 120 HRS. COMM. SER.  
\$500.00 FINE AND  
1 YEAR LICENSE REVOCATION  
MANDATORY ii

2<sup>ND</sup> OFFENSE:  
(CLASS W MISD.)

10 DAYS JAIL OR 240 HRS. COMM. SERV.  
\$500.00 FINE AND  
18 MONTH LICENSE REVOCATION  
MANDATORY ii AFTER 45 DAYS

2<sup>ND</sup> .15 OR OVER  
OR REFUSAL  
(CLASS I MISD.)

30 DAYS JAIL AND  
\$1000.00 FINE AND  
18 MONTH – 15 YR LICENSE REVOCATION  
MANDATORY ii AFTER 45 DAYS

## NO PROBATION

7 – 60 DAYS JAIL AND  
\$500.00 FINE AND  
6 MONTH LICENSE REVOCATION  
MANDATORY ii

7 – 60 DAYS JAIL AND  
\$500.00 FINE AND  
1 YEAR LICENSE REVOCATION  
MANDATORY ii

30 – 180 DAYS JAIL AND  
\$500.00 FINE AND  
18 MONTH LICENSE REVOCATION  
MANDATORY ii AFTER 45 DAYS

90 DAYS - 1 YEAR JAIL AND  
\$0.00 TO \$1000.00 FINE AND  
18 MONTH – 15 YR LICENSE REVOCATION

**2<sup>ND</sup> .15 OR OVER**  
**OR REFUSAL**  
**(CLASS I MISD.)**

30 DAYS JAIL AND  
\$1000.00 FINE AND  
18 MONTH – 15 YR LICENSE REVOCATION  
MANDATORY ii AFTER 45 DAYS

90 DAYS - 1 YEAR JAIL AND  
\$0.00 TO \$1000.00 FINE AND  
18 MONTH – 15 YR LICENSE REVOCATION

**3<sup>RD</sup> OFFENSE:**  
**(CLASS W MISD.)**

30 DAYS JAIL AND  
\$1000.00 FINE AND  
2 – 15 YEAR LICENSE REVOCATION  
MAY ORDER ii AFTER 45 DAYS

90 – 365 DAYS JAIL AND  
\$1000.00 FINE AND  
15 YEAR LICENSE REVOCATION

**DUI OR REFUSAL WITH CHILD UNDER 16 IN VEHICLE** (28-1254)

CLASS I MISD.

**DRIVING OVER .02 WITH PRIOR FELONY DUI CONVICTION** (60-696.01)

CLASS IIIA MISD.

**PRIOR CONVICTION LOOK BACK PERIOD IS 15 YEARS** (60-6,197.02 (1) (a))

**NOTE:** IF A PERSON IS ARRESTED FOR ANOTHER DUI WHILE HAVING A DUI PENDING THEY ARE  
NOT ELIGIBLE FOR PROBATION ON EITHER VIOLATION

## PROBATION

3<sup>RD</sup> .15 OR OVER  
OR REFUSAL  
(IIIA FELONY)

60 DAYS JAIL AND  
\$1000.00 FINE AND  
5 – 15 YEAR LICENSE REVOCATION  
MAY ORDER ii AFTER 45 DAYS  
MANDATORY MIN. CAM FOR 60 DAYS  
AFTER RELEASE FROM JAIL

4<sup>TH</sup> OFFENSE:  
(IIIA FELONY)

90 DAYS JAIL AND  
\$2000.00 FINE AND  
15 YEAR LICENSE REVOCATION  
MAY ORDER ii AFTER 45 DAYS  
MANDATORY MIN CAM FOR 90 DAYS  
AFTER RELEASE FROM JAIL

4<sup>TH</sup> .15 OR OVER  
OR REFUSAL  
(III FELONY)

120 DAYS JAIL AND  
\$2000.00 FINE AND  
15 YEAR LICENSE REVOCATION  
MAY ORDER ii AFTER 45 DAYS  
MANDATORY MIN. CAM FOR 120 DAYS  
AFTER RELEASE FROM JAIL

5<sup>TH</sup> OFFENSE:  
(III FELONY)

180 DAYS JAIL AND  
\$2000.00 FINE AND  
15 YEAR LICENSE REVOCATION  
MAY ORDER ii AFTER 45 DAYS  
MANDATORY MIN. CAM FOR 180 DAYS  
AFTER RELEASE FROM JAIL

## NO PROBATION

CLASS IIIA FELONY AND  
180 DAYS – 5 YEARS JAIL AND  
15 YEAR LICENSE REVOCATION

CLASS IIIA FELONY  
180 DAYS – 5 YEARS JAIL AND  
15 YEAR LICENSE REVOCATION

CLASS III FELONY AND  
15 YEAR LICENSE REVOCATION

CLASS III FELONY AND  
15 YEAR LICENSE REVOCATION  
MINIMUM 2 YEARS JAIL