

# **Table of Contents**

## **PART I. PRINCIPLES OF APPELLATE PRACTICE GENERALLY**

### **CHAPTER 1. FUNDAMENTALS OF APPELLATE PROCESS—REQUIRED ACTION IN THE LOWER COURT**

- § 1:1 Chapter focus and cross-references
- § 1:2 Generally
- § 1:3 Preservation of record for appeal
- § 1:4 Rulings on evidence
- § 1:5 Rulings on Jury Instructions
- § 1:6 Plain error—Exception to preservation rule
- § 1:7 Notice of appeal

## **PART II. APPEALS IN STATE COURT IN NEBRASKA**

### **CHAPTER 2. OVERVIEW OF APPELLATE COURT SYSTEM IN NEBRASKA**

- § 2:1 Chapter focus and cross-references
- § 2:2 Appellate process in Nebraska in general
- § 2:3 Nebraska Court Rules of appellate practice
- § 2:4 Nebraska Supreme Court
- § 2:5 Nebraska Court of Appeals
- § 2:6 Appellate jurisdiction of Nebraska district courts
- § 2:7 Nebraska appellate court system

### **CHAPTER 3. GENERAL PROCESS FROM TRIAL COURT TO APPELLATE COURTS IN NEBRASKA**

- § 3:1 Chapter focus and cross-references
- § 3:2 Appeals from county court to district court
- § 3:3 Process of appeal from county Court to district court in  
civil or criminal proceedings
- § 3:4 Process of appeal from county court to district court in  
eminent domain / condemnation proceedings

- § 3:5 Appeals from County Court in Probate Code, Uniform Trust Code, Health Care Surrogacy Act, Adoption, Inheritance Tax, and Domestic Relations Proceedings
- § 3:6 Appeals from trial court to Supreme Court or Court of Appeals: Docketing the Appeal
- § 3:7 Appeals from trial court to Supreme Court or Court of Appeals: Attorneys of record, withdrawal of attorneys of record, and *Pro Se* Litigants
- § 3:8 Appeals from trial court to Supreme Court or Court of Appeals: Bypass of Court of Appeals or removal of case from Court of Appeals
- § 3:9 Petition to bypass Nebraska Court of Appeals
- § 3:10 Removal of case from Court of Appeals
- § 3:11 Appeals from Court of Appeals to Supreme Court (Further Review)

## **CHAPTER 4. STAYING PROCEEDINGS TO ENFORCE JUDGMENT**

- § 4:1 Chapter focus and cross-references
- § 4:2 General rule and statutory requirements for staying enforcement
- § 4:3 Exception to statutory requirements: exempt parties and waiver
- § 4:4 Exception to statutory requirements: judicially granted supersedeas
- § 4:5 Effect of supersedeas bond
- § 4:6 Defective supersedeas bond and correction thereof
- § 4:7 Modification of supersedeas bond
- § 4:8 Special situation: foreign judgments

## **CHAPTER 5. FINAL APPEALABLE ORDERS AND JUDGMENTS**

- § 5:1 Chapter focus and cross-references
- § 5:2 Jurisdictional requirements, generally
- § 5:3 Final appealable order determination
- § 5:4 Determining the action and preventing judgment
- § 5:5 Special proceedings
- § 5:6 Summary application after judgment
- § 5:7 Assertions of immunity
- § 5:8 Exception: statutorily authorized interlocutory appeals
- § 5:9 Exception: collateral order doctrine
- § 5:10 Special situations: summary judgment
- § 5:11 Special situations: multiple parties or causes of action
- § 5:12 Special situations: administrative orders

## TABLE OF CONTENTS

- § 5:13 Special situations: probate decrees
- § 5:14 Special situations: reservation of issues
- § 5:15 Special situations: pending motion for new trial
- § 5:16 Special situations: joinder of parties
- § 5:17 Special situations: compelled arbitration
- § 5:18 Related matter: mootness and public interest doctrine

## CHAPTER 6. INTERLOCUTORY APPEALS

- § 6:1 Chapter focus and cross-references
- § 6:2 Interlocutory appeals, generally
- § 6:3 Authorized interlocutory appeals in civil cases
- § 6:4 Authorized interlocutory appeals in criminal cases

## CHAPTER 7. TIMETABLE AND SEQUENCE OF EVENTS ON APPEAL

- § 7:1 Chapter focus and cross-references
- § 7:2 Generally
- § 7:3 Computation of time
- § 7:4 Time for appeal fixed by statute
- § 7:5 Appeals from district court
- § 7:6 Appeals from county court
- § 7:7 Cross-Appeal
- § 7:8 Time when appellate court jurisdiction attaches
- § 7:9 Notice of appeal and deposit of docket fee
- § 7:10 Transcript
- § 7:11 Bill of exceptions
- § 7:12 Briefing
- § 7:13 Oral argument
- § 7:14 Order and mandate
- § 7:15 Rehearing and further review

## CHAPTER 8. PARTIES ON APPEAL

- § 8:1 Chapter focus and cross-references
- § 8:2 Who may appeal
- § 8:3 Who must be a party
- § 8:4 Description and naming of parties
- § 8:5 Effect of defects in naming parties
- § 8:6 Amendments to add or remove parties
- § 8:7 Transfer of interest
- § 8:8 Representative parties
- § 8:9 Class actions
- § 8:10 Disclaiming parties
- § 8:11 Effect of death of party on appeal

§ 8:12 Effect of insolvency and parties in default

## **CHAPTER 9. RECORD ON APPEAL**

### **I. GENERALLY**

§ 9:1 Chapter focus and cross-references

§ 9:2 Generally

§ 9:3 Duties of parties and court clerks

### **II. TRANSCRIPT**

§ 9:4 Process and timing for requesting transcript

§ 9:5 Contents of transcript

§ 9:6 Creation of transcript

§ 9:7 Supplementing transcript

### **III. BILL OF EXCEPTIONS**

§ 9:8 Process and timing for requesting bill of exceptions

§ 9:9 Contents of bill of exceptions

§ 9:10 Cost and creation of bill of exceptions

§ 9:11 Exhibits and physical evidence

§ 9:12 Amending or Supplementing Bill of Exceptions

## **CHAPTER 10. BRIEFS**

§ 10:1 Chapter Focus and cross-references

§ 10:2 Generally

§ 10:3 Form and content requirements—Formatting of briefs

§ 10:4 —Contents of briefs: initial briefs of appellant and appellee

§ 10:5 —Briefs on cross-appeal

§ 10:6 —Reply briefs

§ 10:7 Filing and service of briefs

§ 10:8 Default in filing briefs

§ 10:9 Cases involving constitutionality of statute questions

## **CHAPTER 11. ORAL ARGUMENT**

§ 11:1 Chapter focus and cross-references

§ 11:2 Generally

§ 11:3 Scheduling oral argument: the proposed call and call

§ 11:4 Rules regarding time allotted for oral argument

§ 11:5 Courtroom decorum

## **CHAPTER 12. CROSS-APPEALS**

§ 12:1 Chapter focus and cross-references

## TABLE OF CONTENTS

- § 12:2 Generally
- § 12:3 Briefs on cross-appeal
- § 12:4 Specification of errors on cross-appeal
- § 12:5 Strict rules regarding cross-appeal

## **CHAPTER 13. MOTIONS IN THE APPELLATE COURT, GENERALLY**

- § 13:1 Chapter focus and cross-references
- § 13:2 Generally
- § 13:3 Form and content requirements—Form of motions and responses
- § 13:4 —Content of motions and responses
- § 13:5 Filing and service requirements
- § 13:6 Briefs on motions
- § 13:7 Decision on Motions

## **CHAPTER 14. SPECIFIC MOTIONS: MOTIONS TO ADVANCE CASE / MOTIONS FOR EXTENSION OF BRIEF DATE / MOTIONS FOR WITHDRAWAL / MOTIONS FOR ATTORNEY’S FEES / MOTIONS TO RECALL MANDATE**

- § 14:1 Chapter focus and cross-references
- § 14:2 Motions to advance case
- § 14:3 Motions for extension of brief date or continuance of oral argument
- § 14:4 Motions for withdrawal
- § 14:5 Motions for attorney’s fees
- § 14:6 Motions to recall mandate

## **CHAPTER 15. SUMMARY DISPOSITION: MOTIONS TO DISMISS OR AFFIRM AND STIPULATIONS FOR REVERSAL**

- § 15:1 Chapter focus and cross-references
- § 15:2 Generally
- § 15:3 Grounds for motions to dismiss or affirm or stipulations for reversal—Dismissal
- § 15:4 —Affirmance
- § 15:5 —Reversal
- § 15:6 Form and Content Requirements—Form
- § 15:7 —Content
- § 15:8 Filing and service requirements

- § 15:9 Effect on time for filing briefs
- § 15:10 Determination and effect of ruling

## **CHAPTER 16. DISPOSITION OF CASES**

- § 16:1 Chapter focus and cross-references
- § 16:2 Generally
- § 16:3 Affirmance, reversal, and remand—Affirmance
- § 16:4 —Reversal
- § 16:5 —Remand
- § 16:6 Mandate to lower court
- § 16:7 Opinions of appellate court
- § 16:8 Law of the case
- § 16:9 Costs on appeal
- § 16:10 Damages for frivolous appeals

## **CHAPTER 17. MOTIONS FOR REHEARING OR RECONSIDERATION**

- § 17:1 Chapter focus and cross-references
- § 17:2 Generally
- § 17:3 Grounds
- § 17:4 Form and content requirements—Form of motion
- § 17:5 —Contents of motion
- § 17:6 —Form of brief
- § 17:7 —Contents of brief
- § 17:8 Response to motion for rehearing
- § 17:9 Filing and service requirements
- § 17:10 Oral argument on motion
- § 17:11 Effect of filing and grant or denial
- § 17:12 Effect of delay or failure to seek rehearing

## **CHAPTER 18. PETITIONS FOR FURTHER REVIEW**

- § 18:1 Chapter focus and cross-references
- § 18:2 Generally
- § 18:3 Time for filing
- § 18:4 Form and content requirements—Form
- § 18:5 —Contents
- § 18:6 Response to petition
- § 18:7 Filing and Service Requirements
- § 18:8 Oral argument on petition
- § 18:9 Scope of review
- § 18:10 Briefs and oral argument on further review

TABLE OF CONTENTS

**CHAPTER 19. SPECIAL SITUATIONS:  
REVIEW OF ADMINISTRATIVE AGENCY  
DECISIONS**

- § 19:1 Chapter focus and cross-references
- § 19:2 Generally
- § 19:3 Appeal from agencies under Administrative Procedure Act
- § 19:4 Appeal from agencies not under Administrative Procedure Act
- § 19:5 Review in district court
- § 19:6 Review in court of appeals and supreme court
- § 19:7 Review on petition in error

**CHAPTER 20. SPECIAL SITUATIONS:  
REVIEW OF POST-CONVICTION  
PROCEEDINGS**

- § 20:1 Chapter focus and cross-references
- § 20:2 Generally
- § 20:3 Nebraska Post-Conviction Act
- § 20:4 Appointment of counsel
- § 20:5 Evidentiary hearing
- § 20:6 Ineffective assistance of counsel claims
- § 20:7 Claims related to sentencing
- § 20:8 Successive motions

**CHAPTER 21. SPECIAL SITUATIONS:  
REVIEW OF JUVENILE COURT CASES**

- § 21:1 Chapter focus and cross-references
- § 21:2 Generally
- § 21:3 Appeals from separate juvenile court
- § 21:4 Appeals from county court sitting as juvenile court
- § 21:5 Juvenile review panel

**CHAPTER 22. SPECIAL SITUATIONS:  
REVIEW OF WORKERS' COMPENSATION  
COURT CASES**

- § 22:1 Chapter focus and cross-references
- § 22:2 Generally
- § 22:3 Appeals from Nebraska Workers' Compensation Court
- § 22:4 Review panel

## **CHAPTER 23. SPECIAL SITUATIONS: PROSECUTOR APPEALS IN CRIMINAL CASES**

- § 23:1 Chapter focus and cross-references
- § 23:2 Generally
- § 23:3 Error proceedings
- § 23:4 Appeal of allegedly excessively lenient sentence

## **PART III. APPEALS IN FEDERAL COURT IN NEBRASKA**

### **CHAPTER 24. EIGHTH CIRCUIT COURT OF APPEALS**

- § 24:1 Chapter focus and cross-references
- § 24:2 Generally
- § 24:3 Organization of court
- § 24:4 Jurisdiction
- § 24:5 Admission to practice before court
- § 24:6 Chronology of typical civil appeal
- § 24:7 Chronology of typical criminal appeal
- § 24:8 Timetable and process for appeals
- § 24:9 Docketing and appearances
- § 24:10 Record on appeal
- § 24:11 Agreed Statement in Lieu of Record
- § 24:12 Appendix
- § 24:13 Addendum
- § 24:14 *Pro Se* Appeals
- § 24:15 Costs of Record
- § 24:16 Briefs
- § 24:17 General Requirements
- § 24:18 Technical Requirements
- § 24:19 Filing and service
- § 24:20 Expedited appeals—Expedited appeals in criminal  
appeals
- § 24:21 —Expedited appeals in civil appeals
- § 24:22 Cross-appeals and joint appeals—Cross-appeals
- § 24:23 —Joint Appeals
- § 24:24 Appeals *In forma pauperis*
- § 24:25 Oral argument
- § 24:26 Motions and dockets
- § 24:27 Temporary relief pending appeal
- § 24:28 Special situation: review and enforcement of  
administrative agency orders

## TABLE OF CONTENTS

- § 24:29 Special situation: bankruptcy court appeals
- § 24:30 Special situation: tax court appeals
- § 24:31 Decisions of court and mandate
- § 24:32 Costs
- § 24:33 Petition for rehearing and *en banc*
- § 24:34 Further review by United States Supreme Court

## CHAPTER 25. UNITED STATES SUPREME COURT

- § 25:1 Chapter focus and cross-references
- § 25:2 Generally
- § 25:3 Timing and Process for Petitioning for Certiorari
- § 25:4 Considerations governing granting or denying certiorari
- § 25:5 Briefs
- § 25:6 Oral argument
- § 25:7 Disposition

## APPENDICES

### Part I. Statutes and Rules

- Appendix A. Nebraska Statutes on Trial and Appellate Procedure
- Appendix B. Nebraska Court Rules of Appellate Practice
- Appendix C. Eighth Circuit Court of Appeals Rules of Appellate Procedure
- Appendix D. United States Supreme Court Rules

### Part II. Sample Documents

- Appendix E. Notice of Appeal
- Appendix F. Request for Bill of Exceptions
- Appendix G. Praecipe for Transcript
- Appendix H. Summary to Accompany Application for Leave to File by County Attorney
- Appendix I. Motion for Extension of Brief Date: Non-Advanced Cases
- Appendix J. Motion for Extension of Brief Date: Advanced Cases
- Appendix K. Stipulation of Parties for Extension of Brief Date
- Appendix L. Motion to Dismiss by Appellee
- Appendix M. Petition for Further Review
- Appendix N. Appellant's Brief

NEBRASKA APPELLATE PRACTICE AND PROCEDURE

Appendix O. Appellee's Brief

**Table of Laws and Rules**

**Table of Cases**

**Index**