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NEBRASKA CIVIL PROCEDURE

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INTRODUCTION TO THE 2026 EDITION

Nebraska Civil Procedure (Nebraska Practice Series, Volume 5) contains a comprehensive analysis of a wide range of procedural topics that involve the nuts-and-bolts of civil litigation. New content and recent developments in this 2026 Edition include:

- Updating the chapters to reflect statutes enacted or amended, rules promulgated or amended, and cases decided through January 27, 2026.
- The Supreme Court's 2025 decision in *Nebraska Firearms Owners Association v. City of Lincoln* in which the court analyzed the sufficiency of allegations to establish standing in a declaratory relief action challenging criminal ordinances.
- The Supreme Court's 2025 decision in *Konecne v. Abram, LLC* in which the court held that if a party's agent is put on notice of the fraud while acting in the scope of his or her authority as the party's agent, then the statute of limitations begins to run when the agent discovered or reasonably could have discovered the fraud.
- The Supreme Court's 2025 decision in *Johnson v. Antoniutti* in which the court held that a complaint that names a decedent as the only plaintiff or defendant is a legal nullity and an amendment to such a complaint will not relate back for purposes of the statute of limitations.
- The Supreme Court's 2025 decision in *Khaitov v. Greater Omaha Packing Co., Inc.* in which the court (1) discussed when a statutory exception to a statutory prohibition should be classified as an affirmative defense and (2) held that a trial court that takes a directed verdict motion under advisement cannot rule on the motion after the jury returns a verdict.
- The Supreme Court's 2025 decision in *J.R.M.B. by and through Morgan-Baker v. Alegent Creighton Health Creighton University Medical Center, LLC* in which the court held that a written instruction that incorrectly states the evidence that the jury may consider constitutes plain error even through the incorrect statement was omitted when the judge read the instructions to the jury.
- The Supreme Court's 2025 decision in *Sherrets, Bruno & Vogt LLC v. Montoya* in which court held that if the com-

plaint provides a basis for questioning the existence of personal jurisdiction, a trial court can require the plaintiff to make a prima facie showing that jurisdiction exists before entering a default judgment.

- The Supreme Court's 2025 decision in *Beatty v. Poitier* in which the court indicated that if the action that the plaintiff seeks to voluntarily dismiss without prejudice is frivolous, the trial court should condition the dismissal on the plaintiff paying the defendant's attorney fees pursuant to Neb. Rev. Stat. §§ 25-824 or 25-824.01.
- The Supreme Court's 2025 decision in *Elbert v. Keating, O'Gara, Nedved & Peter, P.C., L.L.O.* in which the court underscored that (1) rendition of judgment is a jurisdictional prerequisite for appeal and does not occur if the court disposes of some claims in one order and the other claims in another order and (2) a party cannot create appellate jurisdiction by voluntarily dismissing its unresolved claims without prejudice.
- The Court of Appeals' 2025 decision in *WRK, LLC v. Wiegert* in which the court held that a party can create appellate jurisdiction by voluntarily dismissing its unresolved claims if the statute of limitations would bar the party from re-filing those claims. The Supreme Court subsequently granted a petition for further review of the decision, which was pending as of the date this Introduction was prepared.
- A discussion of how to challenge discovery requests on the grounds that the burden or expense of the discovery outweighs its likely benefit.

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DEDICATION

For My Students

You Made My Career Worthwhile

ABOUT THE AUTHOR

John P. Lenich is the Earl Dunlap Distinguished Professor of Law Emeritus at the University of Nebraska-Lincoln. He taught Civil Procedure at the College of Law for over 35 years before he retired in 2019. He continues to be involved in procedural matters as the Reporter for Civil Procedure for the Nebraska Supreme Court Committee on Practice & Procedure.

Professor Lenich has been an active member of the bar, having served as a member of the House of Delegates of the Nebraska State Bar Association, the Board of Trustees of the Lincoln Bar Association, and the Board of Directors of the Nebraska Lawyers Trust Account Foundation. He has also been a speaker at various education conferences for judges and lawyers and has written multiple articles on appellate and civil procedure.

Professor Lenich grew up on the South Side of Chicago where he spent many a day watching the Chicago White Sox play baseball. He received his B.A. with honors and distinction from the University of Illinois at Chicago in 1977 and received his J.D. *summa cum laude* from Northwestern University School of Law in 1980. He practiced with the Los Angeles law firm of O'Melveny & Myers until 1984 when he joined the faculty of the College of Law. He became a Husker fan shortly thereafter.

ACKNOWLEDGEMENTS

Reviewing draft chapters of a book on civil procedure is not fun. It is tedious, hard work. I am fortunate to have friends who were willing to take time out of their busy schedules to do that tedious, hard work for me: Riko Bishop, Jeff Cheuvront, the late Alan Gless, the late Richard Harnsberger, John Hendry, Roger Kirst, Daniel Klaus, Patricia Knapp, Richard Moberly, Kevin Ruser, and Timothy Thalken. The suggestions they made and the errors they corrected have made this a much better book than it otherwise would have been.

I am also fortunate to have had three capable research assistants. Luke Vavricek was my research assistant for the 2008 edition, Jared Koch was my research assistant for the 2018 edition, and Melissa Ament was my research assistant for the 2019 edition. Luke, Jared, and Melissa are currently making their marks as lawyers and I am fortunate to have had their assistance.

This book is the outgrowth of three articles that I wrote for the *Nebraska Lawyer* in 2002, when Nebraska adopted Notice Pleading and rendered my knowledge of Code Pleading obsolete. I wrote the articles in response to a request from James Bocott, a lawyer practicing in North Platte. There are so many people that James could have asked to write those articles. I am grateful that he decided to ask me.

PREFACE

I view this book as a form of service to bar and the bench. In addition to summarizing the relevant legal principles, I have provided analysis, examples, and explanations that I hope will be of use to lawyers and judges alike. As one would expect from a law professor, I have not been bashful in offering suggestions on how procedural holes should be filled, how unclear statutes should be interpreted, and how ambiguous judicial statements should be read. I recognize that people will differ on whether my suggested approaches are the best approaches. I hope that my suggestions will at least contribute to the discussion of how to resolve in practice the issues that I analyze in theory.

If you notice any typographical or substantive errors in this book, please let me know so that I can correct them in the next edition. You can contact me at jlenich2@unl.edu. Thanks for your help.

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