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WYOMING

RULES OF CIVIL PROCEDURE

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WYOMING RULES OF CIVIL PROCEDURE

GENERAL NOTE AS TO SOURCES:

The Wyoming Rules of Civil Procedure are modeled on the Federal Rules of Civil Procedure. In some instances, where the federal practice is obviously inapplicable, the state practice has been incorporated into the Rules. In some others, the state practice has been deemed more suitable to local conditions and has been retained. In a few instances, the Rules have been rounded out by the inclusion of some new provisions that have no federal or state antecedents. In all of these cases, the structure and numbering of the Federal Rules have been preserved.

In addition, there are some rules which have not been uniformly construed by the lower federal courts and have not received authoritative interpretation by the United States Supreme Court. In 1955 the Advisory Committee on Rules for Civil Procedure issued a Report of Proposed Amendments which clarify the Federal Rules in many respects. The United States Supreme Court has not yet acted upon these amendments, but some of them, which eliminate the doubt as to the proper practice, are incorporated in the Wyoming Rules, to avoid the adoption of rules subject to conflicting interpretations.

Where the Wyoming Rule is identical to the Federal Rule, no source is indicated. Minor changes such as the substitution of "state" for "United States," or "sheriff" for "marshal" are not noted. Substantial changes are identified in the source note following the rule. Where an amendment proposed in the 1955 Report of the (Federal) Advisory Committee is adopted, only that fact is noted, and reference can be made to that report for the exact change made. Where the reference is to a Wyoming statute, without comment, the rule or subdivision of a rule is the statute verbatim. Where the rule is said to "state the substance of" a statute, changes are primarily editorial to conform the statute to the form and style of the Rules. All substantial changes in statutes are noted. Where the rule has no federal or Wyoming precedents, it is identified as "new".

Source notes are for information only and are not binding in the interpretation of these rules.

IN THE SUPREME COURT, STATE OF WYOMING
APRIL TERM, A.D. 1957

In the Matter of the Adoption of Rules of Civil Procedure and Rules of the Supreme Court.

ORDER

This court on September 23, 1947, having appointed from the members of the Wyoming State Bar a committee to revise rules and forms

governing pleadings, practice and procedure in courts of this State with a view to conforming this State's rules of procedure to Federal rules of procedure insofar as the same might be deemed practicable, the members of that committee being W. J. Wehrli, Chairman, A. G. McClintock, Frank J. Trelease, R. Dwight Wallace, James Munro, E. J. Goppert, Thomas O. Miller and W. H. Brown; and

Certain members of the committee thereafter having resigned or left the State, and this court on October 9, 1956, having reactivated said committee with the following members: W. J. Wehrli, Chairman, William H. Brown, E. J. Goppert, Carleton A. Lathrop, Edward E. Murane, John F. Raper, Jr., Frank J. Trelease, Oliver W. Steadman (President of the Wyoming State Bar) and Thomas O. Miller (President-Elect of the Wyoming State Bar); and

The members of the committee having conducted research, conferred among themselves on numerous occasions and conferred with the court; having presented to the court a copy of the rules titled "Wyoming Rules of Civil Procedure," a copy of which is herewith filed with this order; the committee having recommended and the court having approved said rules; and

It appearing advisable that the rules of this court be modified and republished;

NOW, THEREFORE, IT IS ORDERED by this court that the rules titled "Wyoming Rules of Civil Procedure" filed herewith be hereby adopted; that said rules be published in the Wyoming Law Journal not later than sixty days before December 1, 1957; that when so published copies thereof be distributed to members of the Wyoming State Bar; that said rules shall become effective December 1, 1957, and thereupon shall be spread at length upon the journal of this court.

IT IS FURTHER ORDERED by this court that rules titled "Rules of the Supreme Court, December 1, 1957," a copy of which is filed with this order, be hereby adopted; that such rules be published and copies thereof be distributed to members of the Wyoming State Bar in the same manner as above provided and that such rules shall become effective on December 1, 1957, shall thereupon supersede all previous rules of this court and be spread at length upon the journal of this court.

IT IS FURTHER ORDERED that the committee be commended for the excellence of its work and that sincere thanks be extended to each member.

Dated at Cheyenne, Wyoming, this 2nd day of July, 1957.

BY THE COURT
/s/ Fred H. Blume
Chief Justice

WYOMING
RULES OF CIVIL PROCEDURE

I. SCOPE OF RULES—ONE FORM OF ACTION

RULE 1. SCOPE OF RULES.

These rules govern procedure in all courts of record in the State of Wyoming, in all actions, suits or proceedings of a civil nature, all special statutory proceedings, and the procedure for taking and perfecting all appeals in criminal cases. In all cases in which statutes of civil procedure are made applicable by statute to the trial of criminal cases, these rules shall govern insofar as they supersede or are in conflict with such statutes. They shall be construed to secure the just, speedy and inexpensive determination of every action.

Source: Federal Rule 1, modified to make it applicable to Wyoming courts, statutory proceedings and procedure for taking criminal appeals.

RULE 2. ONE FORM OF ACTION.

(a) There shall be one form of action to be known as "civil action".

(b) The party complaining shall be known as the plaintiff and the adverse party as the defendant.

Source: 2 (a) is Federal Rule 2.
2 (b) states the substance of Sec. 3-302.

II. COMMENCEMENT OF ACTION: SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

RULE 3. COMMENCEMENT OF ACTION.

(a) How Commenced. A civil action is commenced by filing a complaint with the court.

(b) When Commenced. For purposes of statutes of limitation, an action shall be deemed commenced on the date of filing the complaint as to each defendant, if service is made on him or on a co-defendant who is a joint contractor or otherwise united in interest with him, within sixty days after the filing of the complaint. If such service is not made within sixty days the action shall be deemed commenced on the date when service is made. The voluntary waiver, acceptance or acknowledgment of service, or appearance by a defendant shall be the same as personal service on the date when such waiver, acceptance, acknowledgement or appearance is made. When service is made by publication, the action shall be deemed commenced on the date of the first publication.

Source: 3 (a) is Federal Rule 3.
3 (b) states the substance of Secs. 3-517, 3-518, and 3-1011.

RULE 4. PROCESS.

(a) Summons: Issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver it for service to the sheriff or to a person specially appointed to serve it. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) Same: Form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.

(c) By Whom Served. Process may be served:

(1) Within the state, by the sheriff of the county where the service is made, or by his undersheriff or deputy, or, at the request of the party causing same to be issued, by any other person over the age of 21 years, not a party to the action, appointed for such purpose by the clerk.

(2) In another state or United States territory, by the sheriff of the county where the service is made, or by his undersheriff or deputy, or by a United States marshal, or his deputy, or any other person over the age of 21 years, not a party to the action, appointed for such purpose by the clerk.

(3) In a foreign country, by a United States consul, vice consul, or by some person over the age of 21 years appointed by such consul or vice consul.

(4) In the event service is made by a person other than an officer, the amount of costs assessed therefor, if any, against any adverse party shall be within the discretion of the court.

(d) Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than an infant under 14 years of age or an incompetent person, by delivery of a copy of the summons and of the complaint to him personally, or by leaving copies thereof at his dwelling house or usual place of abode with some member of his family or person in his employ over the age of 14 years, or at the defendant's usual place of business with any employee then in charge of such place of business, or by delivery thereof to an agent authorized by appointment or by law to receive service of process.

(2) Upon an infant under 14 years of age or an incompetent person, by serving the same upon his guardian or, if no guardian has been appointed in this state, then upon the person having his legal custody and control or upon a guardian ad litem.

(3) Upon a partnership, or other unincorporated association, by delivery of copies to one or more of the partners or associates, or a managing or general agent thereof, or by leaving same at the usual place of business of such defendant with any employee then in charge thereof.

(4) Upon a corporation, by delivery of copies to any officer, manager, general agent, or agent for process. If no such officer, manager or agent can be found in the county in which the action is brought such copies may be delivered to any agent or employee found in such county. If such delivery be to a person other than an officer, manager, general agent or agent for process, the clerk, at least 20 days before default is entered, shall mail copies to the corporation by registered mail, with return receipt requested, at its last known address.

(5) Upon a department or agency of the state, a municipal or other public corporation, by delivering a copy of the summons and of the complaint to the chief executive officer thereof, or to its secretary, clerk, person in charge of its principal office or place of business, or any member of its governing body.

(6) Upon the Secretary of State, as agent for a party, when and in the manner authorized by statute.

(e) Service by Publication. Service by publication may be had where specifically provided for by statute, and in the following cases:

(1) When the defendant resides out of the state, or his residence cannot be ascertained, and the action is:

(i) For the recovery of real property or of an estate or interest therein;

(ii) For the partition of real property;

(iii) For the sale of real property under a mortgage, lien or other encumbrance or charge;

(iv) To compel specific performance of a contract of sale of real estate;

(2) In actions to establish or set aside a will, where the defendant resides out of the state, or his residence cannot be ascertained;

(3) In actions in which it is sought by a provisional remedy to take, or appropriate in any way, the property of the defendant, when the defendant is a foreign corporation, or a non-resident of this state, or the defendant's place of residence is unknown, and in actions against a corporation incorporated under the laws of this state, which has failed to elect officers, or to appoint an agent, upon whom service of summons can be made as provided by these rules and which has no place of doing business in this state;

(4) In actions which relate to, or the subject of which is real or personal property in this state, when a defendant has or claims a lien thereon, or an actual or contingent interest therein or the relief demanded consists wholly or partly in excluding him from any interest therein, and such defendant is a non-resident of the state, or a dissolved domestic corporation which has no trustee for creditors and stockholders, who resides at a known address in Wyoming, or a domestic corporation which has failed to elect officers or appoint other representatives upon whom service of summons can be made as provided by these rules, or to appoint an agent as provided by Section 44-301, W.C.S. 1945, and which has no place of doing business in this state, or a domestic corporation, the certificate of incorporation of which has been forfeited pursuant to law and which has no trustee for creditors and stockholders who resides at a known address in Wyoming, or a foreign corporation, or defendant's place of residence cannot be ascertained;

(5) In actions against executors, administrators or guardians, when the defendant has given bond as such in this state, but at the time of the commencement of the action is a non-resident of the state, or his place of residence cannot be ascertained;

(6) In actions where the defendant, being a resident of this state, has departed from the county of his residence with the intent to delay or defraud his creditors, or to avoid the service of process, or keeps himself concealed with like intent;

(7) When an appellee has no attorney of record in this state, and is a non-resident of, and absent from the same, or has left the same to avoid the service of notice or process, or so conceals himself that notice or process cannot be served upon him;

(8) In action or proceeding under Rule 60 hereof or Article 38 of Chapter 3, W.C.S. 1945, or to impeach a judgment or order for fraud, or to obtain an order of satisfaction thereof, when a defendant is a non-resident of the state;

(9) In suits for divorce, for alimony, to affirm or declare a marriage void, or the modification of any decree therefor entered in such suit, when the defendant is a non-resident of the state or conceals himself or herself in order to avoid service of process;

(10) In all actions or proceedings which involve or relate to the waters, or right to appropriate the waters of the natural streams, springs, lakes, or other collections of still water within the boundaries of the state, or which involve or relate to the priority of appropriations of such waters, including appeals from the determination of the State Board of Control, and in all actions or proceedings which involve or relate to the ownership of means of conveying or transporting water situated wholly or partly within this state, when the defendant, or any of the defendants are non-residents of the state.

(f) Requirements for Service by Publication. Before service by publication can be made, an affidavit of the party, his agent or attorney, must be filed stating that service of a summons cannot be made within this state, on the defendant to be served by publication, and stating his address, if known, or that his address is unknown and cannot with reasonable diligence be ascertained, and that the case is one of those mentioned in paragraph (e) of this rule; and when such affidavit is filed, the party may proceed to make service by publication. In any case in which service by publication is made when the address of a defendant is known, it must be stated in the publication. Immediately after the first publication the party making the service shall deliver to the clerk copies of the publication, and the clerk shall mail a copy to each defendant whose name and address is known by registered mail with return receipt requested, directed to his address named therein, and make an entry thereof on the appearance docket.

In all cases in which a defendant is served by publication of notice and there has been no delivery of the notice mailed to him by the clerk, the party who makes the service, his agent or attorney, at the time of the hearing and prior to entry of judgment, shall make and file an affidavit stating the address of such defendant as then known to him, or if unknown, that he has been unable to ascertain the same with the exercise of reasonable diligence. Such additional notice, if any, shall then be given as may be directed by the court.

(g) Publication of Notice. The publication must be made by the clerk for four (4) consecutive weeks in a newspaper published in the county where the complaint is filed; or if there is no newspaper published in the county, then in a newspaper published in this state, and of general circulation in such county; if it be made in a daily newspaper, one insertion a week shall be sufficient; and it must contain a summary statement of the object and prayer of the complaint, mention the court wherein it is filed, and notify the person or persons thus to be served when they are required to answer, and that judgment by default may be rendered against them if they fail to appear.

(h) When Service Complete—How Proved. Service by publication shall be deemed complete at the date of the last publication, when made in the manner and for the time prescribed in the preceding sections; and such service shall be proved by affidavit.

(i) Service Upon Unknown Persons. When an heir, devisee, or legatee of a deceased person, or a bondholder, lienholder or other person claiming an interest in the subject matter of the action is a necessary party, and it appears by affidavit that his name and address are unknown to the party making service, proceedings against him may be had by designating him as an unknown heir, devisee or legatee of a named decedent or defendant, or in other cases as an unknown claimant, and service by publication may be had as provided in these rules for cases in which the names of the defendants are known.

(j) Publication May Be Made in Another County. When it is provided by rule or statute that a notice shall be published in a newspaper, and no such paper is published in the county, or if such paper is published there and the publisher refuses, on tender of his usual charge for a similar notice, to insert the same in his newspaper, then a publication in a newspaper of general circulation in the county shall be sufficient.

(k) Costs of Publication. The lawful rates for any legal notice published in any qualified newspaper in this state in connection with or incidental to any cause or proceeding in any court of record in this state shall be and become a part of the court costs in such action or proceeding, which costs shall be paid to the clerk of the court in which such action or proceeding is pending by the party causing such notice to be published and finally assessed as the court may direct.

(l) Other Service: Personal Service Outside the State; Service by Registered Mail. In all cases where service by publication can be made under these rules, the plaintiff may obtain service without publication by either of the following methods:

(1) *Personal Service Outside the State.* By delivery to the defendant of copies of the summons and complaint.

(2) *Service by Registered Mail.* Upon the request of any party the clerk shall send by registered mail a copy of the complaint and summons addressed to the party to be served at the address given in the affidavit required under Section (f) of this rule, requesting a return receipt signed by addressee only. When such return receipt is received signed by the addressee the clerk shall file the same and enter a certificate in the cause showing the making of such service.

(m) Return: Proof of Service.

(1) *Return.* The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. Failure to make proof of service does not affect the validity of the service.

(2) *Proof of Service.* Proof of service of process shall be made as follows:

(i) If served by a Wyoming sheriff, undersheriff or deputy by his certificate with a statement as to date, place and manner of service, except that a special deputy appointed for the sole purpose of making service shall make proof by his affidavit containing such statement.

(ii) If by any other person, by his affidavit thereof with a statement as to date, place and manner of service.

(iii) If by registered mail, by the certificate of the clerk showing the date of the mailing and the date he received the return receipt.

(iv) If by publication, by the affidavit of publication together with the certificate of the clerk as to the mailing of copies where required.

(v) By the written admission, acceptance or waiver of service by the person to be served, duly acknowledged.

(n) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

Source:

4 (c) is new. Parts of this rule were covered by Secs. 3-904 and 3-1008.

4 (d) (1) is the Federal Rule, modified by adding "under 14 years of age" and "member of his family or person in his employ," by substituting "over the age of 14 years" for "of suitable age and discretion" and adding "or at the defendant's usual place of business with any employee in charge of such place of business."

4 (d) (2) is new.

4 (d) (3) is new. It contains the substance of parts of Sec. 3-1009 and Federal Rule 4 (d) (3).

4 (d) (4) states the substance of Secs. 3-1012, 3-1013, and 3-1014. The last sentence is new.

4 (d) (5) is new.

4 (d) (6) is new.

4 (e) states the substance of Sec. 3-1101, omitting the last paragraph thereof.

4 (f) combines the substance of Sec. 3-1102 and the last paragraph of Sec. 3-1101, but restricts the use of the affidavit mentioned in Sec. 3-1101 to cases in which there has been no delivery of the notice mailed to the defendant by the clerk. The last sentence is new.

4 (g) states the substance of Sec. 3-1103.

4 (h) is Sec. 3-1104.

4 (i) states the substance of Sec. 3-1106, modified by the insertion of the words "or a bondholder, lienholder or other person claiming an interest in the subject matter of the action," and by adding the method of designation.

4 (j) states the substance of Sec. 3-1107.

4 (k) is the first part of Sec. 3-1108.

4 (l) (1) states the substance of Sec. 3-1105.

4 (l) (2) is new.

4 (m) (1) is Federal Rule 4 (g), omitting the second sentence thereof.

4 (m) (2) is new. It contains the substance of parts of Secs. 3-1008 and 3-1009.

4 (n) is Federal Rule 4 (h).

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.

(a) Service: When Required. Every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties affected thereby, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(b) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon the party shall be made by delivering a copy to him or by mailing it to him at his last known address, or by leaving it with the clerk of the court. Copies deposited with the clerk shall be promptly mailed or delivered by him to the attorney of the party entitled thereto, or to the party if he has no attorney of record. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or leaving it in a conspicuous place therein, or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some member of the family over the age of 14 years then residing therein. Service by mail is complete upon mailing.

(c) Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter.

(e) Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Source: 5 (a) is the Federal Rule, modified by omitting the words "designation of record on appeal."

5 (b) is the Federal Rule, modified by permitting service upon the clerk in all cases, directing the clerk to mail copies deposited with him, and substituting "member of the family over the age of 14 years" for "person of suitable age and discretion."

RULE 6. TIME.

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court, or a commissioner thereof, for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 25, 50 (b), 52 (b), 59 (b), (d) and (e), 60 (b), 73 (a) and (g), and 75 (a), except to the extent and under the conditions stated in them.

(c) Unaffected by Expiration of Term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

(d) For Motions—Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59 (c), opposing

affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him, and the notice or paper is served upon him by mail or by delivery to the clerk, 3 days shall be added to the prescribed period, provided however, this rule shall not apply to service of process by registered mail under rule 4 (1) (2).

Source: 6 (b) is the Federal Rule, modified by adding the phrase "or a commissioner thereof", and the reference to "75 (a)."

6 (e) is the Federal Rule, modified by adding the phrase "or by delivery to the clerk," and the proviso.

III. PLEADINGS AND MOTIONS

RULE 7. PLEADINGS ALLOWED; FORM OF MOTIONS.

(a) Pleadings. There shall be a complaint and an answer; and there shall be a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if leave is given under Rule 14 to summon a person who was not an original party; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules, but the names of all parties shall be set out in the caption of all orders to show cause, final orders, judgments and decrees.

(c) Demurrers, Pleas, Etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

Source: 7 (b) is the Federal Rule, modified by adding the clause "but the names of all parties shall be set out in the caption of all orders to show cause, final orders, judgments and decrees." The added words are taken from Sec. 3-1204.

RULE 8. GENERAL RULES OF PLEADING.

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, (2) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded. Where the case arises under the original jurisdiction of the supreme court, the pleading shall also contain a short and plain statement of the grounds upon which the court's jurisdiction depends.

(b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall

fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading To Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

Source: 8 (a) is the Federal Rule, modified by eliminating the requirement that a complaint filed in the District Court must show the grounds upon which the court's jurisdiction depends.

RULE 9. PLEADING SPECIAL MATTERS.

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law. When a party desires to raise an issue as to the validity of an official document or an official act, he shall do so by specific negative averment which shall include such supporting particulars as are within the pleader's knowledge.

(e) Judgment. In pleading a judgment or decision of a court, judicial or quasi judicial tribunal, or of a board or officer rendered within the United States or within a territory or insular possession subject to the dominion of the United States, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it. A denial of jurisdiction shall be made specifically and with particularity and when so made the party pleading the judgment or decision shall establish on the trial all controverted jurisdictional facts.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

(h) Private Statute. In pleading a private statute or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage.

(i) Municipal Ordinance. In pleading a municipal ordinance or a right derived therefrom, it shall be sufficient to refer to such ordinance by its title or other applicable designation, the date of its passage and the name of the municipality which adopted the same.

Source: 9 (a) is the Federal Rule, modified by deleting the words "except to the extent required to show the jurisdiction of the court" from the first sentence.

9 (d) is the Federal Rule, with the addition of the second sentence, which is new, but is taken from Rule 9 (a).

9 (e) is the Federal Rule, modified (a) by deleting the words "domestic or foreign" before the word "court" and by adding the words "rendered within the United States or within a territory or insular possession subject to the dominion of the United States," and (b) by adding the second sentence, which states the substance of Sec. 3-1412.

9 (h) is Sec. 3-1414.

9 (i) is new.

RULE 10. FORM OF PLEADINGS.

(a) Caption: Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7 (a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraphs, Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

RULE 11. SIGNING AND VERIFICATION.

(a) Signing of Pleadings. Every pleading of a party represented by an attorney shall be signed in his individual name by at least one attorney of record, licensed to practice in this state, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address. Except when otherwise specifically pro-

vided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

(b) Verification. When a verification is required, it shall be by affidavit of a party, his agent or attorney. A pleading, verified as herein required, shall not be used against a party in any criminal prosecution, or action or proceeding for a penalty or forfeiture as proof of a fact admitted or alleged in such pleading. Such verification shall not make other or greater proof necessary on the part of an adverse party.

Source: 11 (a) is Federal Rule 11, modified by adding the phrase "licensed to practice in this state," and omitting the third sentence thereof. 11 (a) also states the substance of Sec. 3-1601, as amended by Laws 1947, c. 130, Sec. 1, except that the latter did not require the address of an attorney.
11 (b) is new, but is the substance of Secs. 3-1608 and 3-1609, repealed by Laws 1947, c. 130, Sec. 2.

RULE 12. DEFENSES AND OBJECTIONS—WHEN AND HOW PRESENTED—BY PLEADING OR MOTION—MOTION FOR JUDGMENT ON PLEADINGS.

(a) When Presented. A defendant shall serve his answer within 20 days after the service of the summons and complaint upon him, or if service be made without the state, or by publication, within 30 days after such service or within 30 days after the last day of publication. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1) – (7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses. A party who makes a motion under this rule may join with it the other motions herein provided for and then available to him. If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (h) of this rule.

(h) Waiver of Defenses. A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 15 (b) in the light of any evidence that may have been received.

Source: 12 (a) is the Federal Rule, modified by substituting the words "or if service be made without the state, by registered mail, or by publication, within 30 days after such service or after the last day of publication" for the words "unless the court directs otherwise when service of process is made pursuant to Rule 4 (e);" and by deleting the sentence, "The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 60 days after the service upon the United States attorney of the pleading in which the claim is asserted."

RULE 13. COUNTERCLAIM AND CROSS-CLAIM.

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction, except that such a claim need not be so stated if at the time the action was commenced the claim was the subject of another pending action.

(b) Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Against the State. These rules shall not be construed to enlarge beyond the limits fixed by law the right to assert counterclaims or claim credits against the state or against a county, municipal corporation or other political subdivision, public corporation, or any officer or agency thereof.

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may by leave of court set up the counterclaim by amendment.

(g) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Additional Parties May Be Brought In. When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants as provided in these rules, if jurisdiction of them can be obtained.

(i) Separate Judgments. Judgment on a counterclaim or cross-claim may be rendered even if the claims of the opposing party have been dismissed or otherwise disposed of.

Source: 13 (d) is the Federal Rule, modified by substituting the words "State or against a county, municipal corporation or other political subdivision, public corporation" for the words "United States."

13 (h) is the Federal Rule, modified by striking from the last sentence thereof the words "and their joinder will not deprive the court of jurisdiction of the action."

13 (i) is new. Federal Rule 13 (i) is limited to cases in which a separate trial on the counterclaim or cross-claim has been ordered, and to cases in which a Federal Court has jurisdiction to retain a counterclaim or cross-claim when the original claim has been dismissed.

RULE 14. THIRD-PARTY PRACTICE.

(a) When Defendant May Bring in Third Party. Before the service of his answer a defendant may move *ex parte* or, after the service of his answer, on notice to the plaintiff, for leave as a third-party plaintiff to serve a summons and complaint upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. If the motion is granted and the summons and complaint are served, the person so served, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12 and his counterclaims against the third-party plaintiff and cross-claims against other third party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS.

(a) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served, or if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such amendment.

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

RULE 16. PRE-TRIAL PROCEDURE; FORMULATING ISSUES.

In any action, the court may in its discretion, and upon request of any party shall, direct the attorneys for the parties to appear before it for a conference to consider

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of

counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

Source: Federal Rule 16, modified by the addition of the words, "and upon request of any party shall."

IV. PARTIES

RULE 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought, and when a person forfeits his bond or renders his sureties liable, any person injured thereby or who is by law entitled to the benefit of the security may sue in his own name to recover the amount to which he is entitled.

(b) Capacity to Sue or be Sued. A married woman may sue or be sued in all respects as if she were single. A partnership or other unincorporated association may sue or be sued in its common name.

(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, or such representative fails to act, he may sue by his next friend or by guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person, provided, that in an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown person who might be an infant or incompetent person.

(d) Suing Person by Fictitious Name. When the plaintiff is ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name and description, and when the true name is discovered the pleading or proceeding may be amended accordingly; and the plaintiff in such case must state in his complaint that he could not discover the true name, and the summons must contain the words, "real name unknown," and a copy thereof must be served personally upon the defendant.

Source: 17 (a) is the Federal Rule, modified by substituting the words "and when a person forfeits his bond or renders his sureties liable, any person injured thereby or who is by law entitled to the benefit of the security may sue in his own name to recover the amount to which he is entitled" for the words "and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States." The substituted words state the substance of Sec. 3-602,

omitting provisions of that statute relating to procedural matters covered by other provisions of the Rules.

17 (b) is new. Federal Rule 17 (b) leaves the question of capacity to state law, except for certain cases where capacity depends upon Federal law. For the former Wyoming law, see Secs. 3-604 and 3-619.

17 (c) is the Federal Rule, modified by the addition of the words, "or such representative fails to act," and, "provided, that in an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown person who might be an infant or incompetent person."

17 (d) is Sec. 3-1708. There is no Federal Rule 17 (d).

RULE 18. JOINDER OF CLAIMS AND REMEDIES.

(a) Joinder of Claims. The plaintiff in his complaint or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. There may be a like joinder of claims when there are multiple parties if the requirements of Rules 19, 20, and 22 are satisfied. There may be a like joinder of cross-claims or third-party claims if the requirements of Rules 13 and 14 respectively are satisfied.

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

Source: Federal Rule 18, verbatim. Sec. 3-701 stated the substance of 18 (a).

RULE 19. NECESSARY JOINDER OF PARTIES.

(a) Necessary Joinder. Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, or his consent cannot be obtained, he may be made a defendant.

(b) Effect of Failure to Join. When persons who are not indispensable, but who ought to be parties if complete relief is to be accorded between those already parties, have not been made parties and are subject to the jurisdiction of the court as to service of process, the court shall order them summoned to appear in the action. The court in its discretion

may proceed in the action without making such persons parties, if its jurisdiction over them can be acquired only by their consent or voluntary appearance; but the judgment rendered therein does not affect the rights or liabilities of absent persons.

(c) Same: Names of Omitted Persons and Reasons for Non-joinder to be Pleaded. In any pleading in which relief is asked, the pleader shall set forth the names, if known to him, of persons who ought to be parties if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted.

Source: 19 (a) is the Federal Rule, modified by adding "or his consent cannot be obtained," and by deleting from the last sentence thereof the words "or, in proper cases, an involuntary plaintiff."

19 (b) is the Federal Rule, modified to eliminate provisions relating to limitations on Federal jurisdiction and venue.

RULE 20. PERMISSIVE JOINDER OF PARTIES.

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative if any substantial question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative any right to relief and if any substantial question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

Source: 20 (a) is the first paragraph of Section 3-613.

20 (b) is the second paragraph of Section 3-613, which is identical with the Federal Rule 20 (b).

RULE 21. MISJOINDER AND NON-JOINDER OF PARTIES.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

RULE 22. INTERPLEADER.

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

Source: Federal Rule 22 (1). Federal Rule 22 (2), referring to the Federal Interpleader Act, is deleted.

RULE 23. CLASS ACTIONS.

(a) Representation. If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

(1) joint, or common, or secondary in the sense that the owner of a primary right refuses to enforce that right and a member of the class thereby becomes entitled to enforce it;

(2) several, and the object of the action is the adjudication of claims which do or may affect specific property involved in the action; or

(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

(b) Secondary Action by Shareholders. In an action brought to enforce a secondary right on the part of one or more shareholders in an association, incorporated or unincorporated, because the association refuses to enforce rights which may properly be asserted by it, the complaint shall be verified by oath and shall set forth with particularity the efforts of the plaintiff to secure from the managing directors or trustees and, if necessary, from the shareholders such action as he desires, and the reasons for his failure to obtain such action or the reasons for not making such effort.

(c) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court. If the right sought to be enforced is one defined in paragraph (1) of subdivision (a) of this rule notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. If the right is one defined in paragraph (2) or (3) of subdivision (a) notice shall be given only if the court requires it.

Source: 23 (b) is the Federal Rule, modified to eliminate the requirement that the complaint shall aver (1) that the plaintiff was a shareholder at the time of the transaction of which he complains or that his shares devolved on him by operation of law and (2) that the action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction.

RULE 24. INTERVENTION.

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental official or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

Source: Federal Rule 24, except for the deletion of the last sentence of (c).

RULE 25. SUBSTITUTION OF PARTIES.

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court within 1 year after the death may order substitution of the proper parties. If substitution is not so made, the action shall be dismissed as to the deceased party, but may be revived by agreement of all parties. The

motion for substitution may be made by the successors or representatives of the deceased party or by any party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against his representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) Public Officers; Death or Separation from Office. When any public officer is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor, if within 1 year after the successor takes office it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. Substitution pursuant to this rule may be made when it is shown by supplemental pleading that the successor of an officer adopts or continues or threatens to adopt or continue the action of his predecessor. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to object.

(e) Substitution at Any Stage. Substitution of parties, under the provisions of this rule, may be made by the trial court, either before or after judgment, and by the supreme court in proceedings on appeal.

Source: 25 (a) is the Federal Rule, modified by substituting the words "1 year" for "2 years" and by adding to the second sentence the words, "but may be revived by agreement of all parties." These modifications preserve the limitations stated in Secs. 3-2313 and 3-2314. The words "and may be served in any judicial district" are omitted from the last sentence of paragraph (1).

25 (d) is the Federal Rule, modified by substituting the words "any public officer" for "an officer of the United States,

or of the District of Columbia, the Canal Zone, a territory, an insular possession, a state, county, city, or other governmental agency," by substituting the words "1 year" for "6 months," and by deleting the words "in enforcing a law averred to be in violation of the Constitution of the United States" after the word "predecessor."

25 (e) is new.

V. DEPOSITIONS AND DISCOVERY

RULE 26. DEPOSITIONS PENDING ACTION.

(a) When Depositions May Be Taken. Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. After commencement of the action the deposition may be taken without leave of court, except that leave, granted with or without notice, must be obtained if notice of the taking is served by the plaintiff within 20 days after the commencement of the action. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. Depositions shall be taken only in accordance with these rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Scope of Examination. Unless otherwise ordered by the court as provided by Rule 30 (b) or (d), the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) Examination and Cross-Examination. Examination and cross-examination of deponents may proceed as permitted at the trial under the provisions of Rule 43 (b).

(d) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership, body politic, or association which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: 1, that the witness is dead; or 2, that the witness is absent from the county where the trial or

hearing is held unless it appears that the absence of the witness was procured by the party offering the deposition; or 3, that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or 4, that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or 5, upon motion and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.

Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(e) Objections to Admissibility. Subject to the provisions of Rule 32 (c), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(f) Effect of Taking or Using Depositions. A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition as described in paragraph (2) of subdivision (d) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

Source: 26 (d) (2) is the Federal Rule, modified by adding the words "body politic".

26 (d) (3) is the Federal Rule, modified by substituting "that the witness is absent from the county where the trial or hearing is held" for "that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States."

RULE 27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL.

(a) Before Action.

(1) *Petition.* A person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in

any court of the state may file a verified petition in the district court of the district of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: 1, that the petitioner expects to be a party to an action cognizable in a court of the state but is presently unable to bring it or cause it to be brought, 2, the subject matter of the expected action and his interest therein, 3, the facts which he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it, 4, the names or a description of the persons he expects will be adverse parties and their addresses so far as known, and 5, the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) *Notice and Service.* The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served either within or without the state in the manner provided in Rule 4 (d) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4 (d), an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17 (c) apply.

(3) *Order and Examination.* If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) *Use of Deposition.* If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a district court of the state, in accordance with the provisions of Rule 26 (d).

(b) Pending Appeal. If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the district court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the district court. In such case the party who desires to perpetuate the testimony may make a motion in the district court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the district court. The motion shall show (1) the names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the district court.

(c) Perpetuation by Action. This rule does not limit the power of a court to entertain an action to perpetuate testimony.

RULE 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN.

(a) Within the United States. Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of this state or of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to adminster oaths and take testimony.

(b) In Foreign Countries. In a foreign state or country depositions shall be taken (1) on notice before a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or (2) before such person or officer as may be appointed by commission or under letters rogatory. A commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such directions as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed "To the Appropriate Judicial Authority in (here name the country)."

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative, employee, attorney or counsel of any of the parties, or is financially interested in the action.

Source: Rule 28 (c) is the Federal Rule, eliminating the disqualification of a relative or employee of an attorney.

RULE 29. STIPULATIONS REGARDING THE TAKING OF DEPOSITIONS.

If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION.

(a) Notice of Examination: Time and Place. A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action not in default, which notice shall be served personally on the party or his attorney of record. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. On motion of any party upon whom the notice is served the court may for cause shown enlarge or shorten the time.

(b) Orders for the Protection of Parties and Deponents. After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated time or place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court; or the court may make any other order which justice requires to protect the party or witness from annoyance, undue expense, embarrassment, or oppression.

(c) Record of Examination; Oath; Objections. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by some one acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed unless the parties agree otherwise; where transcription is requested by a party other than the one taking the deposition, the court may order the expense of transcription or a portion thereof paid by the party making the request. All objections made at the time of the examination to the qualifications of the officer taking the deposition or to the manner of taking it or to the evidence presented, or to the

conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties served with notice of taking deposition may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in subdivision (b). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. In granting or refusing such order the court may impose upon either party or upon the witness the requirement to pay such costs or expenses as the court may deem reasonable.

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32 (d) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Copies; Notice of Filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by him and his attorney in so attending, including reasonable attorney's fees.

Source: 30 (a) is the Federal Rule, modified by adding to the first sentence the phrase, "not in default, which notice shall be served personally on the party or his attorney of record" and by deleting from the last sentence the phrase "upon whom the notice is served."

30 (b) is the Federal Rule, amended in accordance with the 1955 Report of the (Federal) Advisory Committee on Rules for Civil Procedure, by inserting the phrases "time or" and "undue expense."

30 (c) is the Federal Rule amended in accordance with the 1955 Report of the (Federal) Advisory Committee on Rules for Civil Procedure, by inserting the clause beginning "when transcription is requested."

30 (d) is the Federal Rule, modified by eliminating from the first sentence the phrase "or the court in the district where the deposition is being taken."

30 (f) (3) of the Federal Rule is omitted.

RULE 31. DEPOSITIONS OF WITNESSES UPON WRITTEN INTERROGATORIES.

(a) Serving Interrogatories; Notice. A party desiring to take the deposition of any person upon written interrogatories shall serve them in the manner provided by Rule 30 upon every other party not in default with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter a party so served may serve cross interrogatories upon the party proposing to take the deposition. Within 5 days thereafter the latter may serve redirect interrogatories upon a party who has served cross interrogatories. Within 3

days after being served with redirect interrogatories, a party may serve recross interrogatories upon the party proposing to take the deposition.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30 (c), (e) and (f), to take the testimony of the witness in response to the interrogatories and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the interrogatories received by him.

(c) Orders for the Protection of Parties and Deponents. After the service of interrogatories and prior to the taking of the testimony of the deponent, the court in which the action is pending, on motion promptly made by a party or a deponent, upon notice and good cause shown, may make any order specified in Rule 30 which is appropriate and just or an order that the deposition shall not be taken before the officer designated in the notice or that it shall not be taken except upon oral examination.

Source: 31 (a) is the Federal Rule, modified by the addition of the phrases "in the manner provide by Rule 30" and "not in default."

31 (c) Federal Rule is omitted.

31 (c) is Federal Rule 31 (d) redesignated to be 31 (c).

RULE 32. EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS.

(a) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(b) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) As to Taking of Deposition.

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form of written interrogatories submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other interrogatories and within 3 days after service of the last interrogatories authorized.

(d) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

RULE 33. INTERROGATORIES TO PARTIES.

Any party may serve upon any adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, or body politic, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may be served after commencement of the action and without leave of court, except that, if service is made by the plaintiff within 10 days after such commencement, leave of court granted with or without notice must first be obtained. The interrogatories shall be answered separately and fully in writing under oath. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served shall serve a copy of the answers on the party submitting the interrogatories within 15 days after the service of the interrogatories, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Within 10 days after service of interrogatories a party may serve written objections thereto together with a notice of hearing the objections at the earliest practicable time. Answers to interrogatories to which objection is made shall be deferred until the objections are determined.

Interrogatories may relate to any matters which can be inquired into under Rule 26 (b), and the answers may be used to the same extent as provided in Rule 26 (d) for the use of the deposition of a party. Interrogatories may be served after deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court, on motion of the deponent or the party interrogated, may make such protective order as justice may require. The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. The provisions of Rule 30 (b) are applicable for the protection of the party from whom answers to interrogatories are sought under this rule.

Source: Federal Rule 33, modified by the addition of the words "body politic."

RULE 34. DISCOVERY AND PRODUCTION OF DOCUMENTS AND THINGS FOR INSPECTION, COPYING, OR PHOTOGRAPHING.

(a) Discovery on Court Order. Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to the provisions of Rule 30 (b), the court in which an action is pending may (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26 (b) and which are in his possession, custody, or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, sampling, or photographing the property or any designated object or operation thereon within the scope of the examination permitted by Rule 26 (b). The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

(b) Discovery without Court Order. Copies of such designated documents or other things listed in (1) of subdivision (a) of this rule as are subject to discovery without a showing of necessity or justification may be obtained without a court order by requiring such copies to be attached to the answers to interrogatories under Rule 33 or produced in response to a subpoena under Rule 45 (d). In lieu of furnishing copies of such documents or other things, the party against whom discovery is sought may afford an opportunity for their examination and copying. Copies of statements concerning the action or its subject-matter previously given by the party seeking such statement shall be obtainable without court order in accord with the procedures of this subdivision.

Source: 34 (a) is Federal Rule 34, with the addition of the word "sampling."

34 (b) is a new subdivision recommended in the 1955 Report of the (Federal) Advisory Committee on Rules for Civil Procedure.

RULE 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS.

(a) Order for Examination. In an action in which the mental or physical condition or the blood relationship of a party, or of an agent or a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental or blood examination by a physician or to produce for such examination his agent or the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Findings.

(1) If requested by the party against whom an order is made under Rule 35 (a) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings and conclusions, together with like reports of all earlier examinations of the same condition. After such request and delivery the party causing the examination to be made shall be entitled upon request to receive from the party or person examined a like report of any examination, previously or thereafter made, of the same condition. If the party or person examined refuses to deliver such report the court on motion and notice may make an order requiring delivery on such terms as are just, and if a physician fails or refuses to make such a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

Source: Federal Rule 35, modified in accordance with the recommendations in the 1955 Report of the (Federal) Advisory Committee on Rules for Civil Procedure to include blood examinations and examinations of agents or persons in the custody or under the control of a party.

RULE 36. ADMISSION OF FACTS AND OF GENUINENESS OF DOCUMENTS.

(a) Request for Admission. After commencement of an action a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described and exhibited with the request or of the truth of any relevant matters of fact set forth in the request. If a plaintiff desires to serve a request within 10 days after commencement of the action leave of court, granted with or without notice, must be obtained. Copies of the documents shall be served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof or within such shorter or longer time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise

improper in whole or in part, together with a notice of hearing the objections at the earliest practicable time. If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in the request. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder.

(b) Effect of Admission. Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

RULE 37. REFUSAL TO MAKE DISCOVERY: CONSEQUENCES.

(a) Refusal to Answer. If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court in which the action is pending for an order compelling an answer. Upon the refusal of a deponent to answer any interrogatory submitted under Rule 31 or upon the refusal of a party to answer any interrogatory submitted under Rule 33, the proponent of the question may on like notice make like application for such an order. If the motion is granted and if the court finds that the refusal was without substantial justification the court shall require the refusing party or deponent and the party or attorney advising the refusal or either of them to pay to the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees. If the motion is denied and if the court finds that the motion was made without substantial justification, the court shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

(b) Failure to Comply with Order.

(1) *Contempt.* If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court in which the action is pending, the refusal may be considered a contempt of that court.

(2) *Other Consequences.* If any party or an officer or managing agent of a party refuses to obey an order made under subdivision (a) of this rule requiring him to answer designated questions, or an order made under Rule 34 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property, or an order made under Rule 35 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(iv) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental or blood examination;

(v) Where a party has failed to comply with an order under Rule 35 (a) requiring him to produce another for examination, such orders as are listed in subdivisions (i), (ii) and (iii) of this subdivision of this rule, unless the party failing to comply shows that he is unable to produce such person for examination.

(c) Expenses on Refusal to Admit. If a party, after being served with a request under Rule 36 to admit the genuineness of any documents or the truth of any matters of fact, serves a sworn denial thereof and if the party requesting the admissions thereafter proves the genuineness of any such document, or the truth of any such matter of fact, he may apply to the court for an order requiring the other party to pay to him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or that the admissions sought were of no substantial importance, the order shall be made.

(d) Failure of Party to Attend or Serve Answers. If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 33, after proper service of such interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party.

Source: 37 (b) is the Federal Rule, modified by substituting "court in which the action is pending" for "court in the district in which the depostion is being taken."

37 (b) (2) (v) is an addition to the Federal Rule recommended in the 1955 Report of the (Federal) Advisory Committee on Rules for Civil Procedure.

VI. TRIALS

RULE 38. JURY TRIAL OF RIGHT.

(a) Right Preserved. Issues of law must be tried by the court, unless referred as hereinafter provided; and issues of fact arising in actions for the recovery of money only, or specific real or personal property, shall be tried by a jury unless a jury trial be waived, or a reference be ordered. All other issues of fact shall be tried by the court, subject to its power to order any issue to be tried by a jury, or referred.

(b) Demand.

(1) By Whom. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

(2) When—On Appeals. In cases of appeals to the district court or other proceedings therein where no pleadings are required, such demand shall be served within 45 days after docketing of the case in the district court.

(3) Jury Fees. All demands for trial by jury shall be accompanied by a deposit of Twelve Dollars. The jury fees in cases where jury trials are demanded shall be paid to the clerk of the court, and by him paid into the county treasury at the close of each week, and he shall tax as costs in each such case, and in all other cases in which a jury trial is had, a jury fee of Twelve Dollars, to be recovered of the unsuccessful party, as other costs, and in case the party making such deposit is successful, he shall recover such deposit from the opposite party, as part of his costs in the case.

(c) Same: Specification of Issues. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury for all the issues so triable. If he has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5 (d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

Source: 38 (a) is Sec. 3-2104 and Sec. 3-2105, combined.
38 (b) (1) is Federal Rule 38 (b).
38 (b) (2) and (3) are derived from Sec. 3-2422.

RULE 39. TRIAL BY JURY OR BY THE COURT.

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury, or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist, or (3) by consent of the party appearing when the other party to the issue fails to appear at the trial.

(b) By the Court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(c) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury, or, except in actions against the State of Wyoming when a statute provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Source: 39 (a) (3) states the substance of Sec. 3-2422, par. 1.

RULE 40. ASSIGNMENT OF CASES FOR TRIAL.

The district courts shall provide by rule for the placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the courts deem expedient. Precedence shall be given to actions entitled thereto by any statute.

RULE 41. DISMISSAL OF ACTIONS.

(a) Voluntary Dismissal: Effect thereof.

(1) *By Plaintiff; By Stipulation.* Subject to the provisions of Rule 23 (c), of Rule 66, and of any statute, an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court an action in which service was obtained based on or including the same claim.

(2) *By Order of Court*: Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the counterclaim shall remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal:

(1) *By Defendant.* For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. In an action tried by the court without a jury the court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, or for lack of an indispensable party, operates as an adjudication upon the merits.

(2) *By the Court.* Upon its own motion the court may dismiss without prejudice any action not prosecuted or brought to trial with due diligence.

(c) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served, or, if there is none, before the introduction of evidence at the trial, or hearing.

(d) Costs of Previously-Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

Source: 41 (a) (1) is the Federal Rule, modified by adding the words "in which service was obtained."

41 (a) (2) is the Federal Rule modified by eliminating references to federal jurisdictional requirements.

41 (b) (1) is Federal Rule 41 (b), modified by omitting the fourth sentence thereof, which required findings by the court.

41 (b) (2) is new.

RULE 42. CONSOLIDATION: SEPARATE TRIALS.

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

RULE 43. EVIDENCE.

(a) Form and Admissibility. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules. All evidence shall be admitted which is admissible under the statutes of this state, or under the rules of evidence heretofore applied in the courts of this state. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

(b) Scope of Examination and Cross-Examination. A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party, his assignor or any person for whose benefit the action or proceeding is prosecuted or defended, or an officer, director, agent or employee of a public or private corporation, partnership, association or body politic which is an adverse party, or a person who was such officer, director, agent or employee at the time of the occurrence of the fact made the subject of the examination, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject matter of his examination in chief.

(c) Record of Excluded Evidence. In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific offer of what he expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(d) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

Source: 43 (a) is the Federal Rule, modified by eliminating references to federal courts and statutes.

43 (b) is the Federal Rule, modified by adding the phrases "his assignor or any person for whose benefit the action or proceeding is prosecuted or defended," "body politic," and "or a person who was such officer, director, agent or employee at the time of the occurrence of the fact made the subject of the examination." The added phrases are from Sec. 3-2604.

RULE 44. PROOF OF OFFICIAL RECORD.

(a) Authentication of Copy. An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a certified copy attested by the officer having the legal custody of the record, or by his deputy. If the office in which the record is kept is outside of the State of Wyoming but within the United States or within a territory or insular possession subject to the dominion of the United States, a certificate that such officer has the custody of the record shall be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, such certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul or consular agent or by any officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept and authenticated by the seal of his office.

(b) Proof of Lack of Record. A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by any applicable statute or by the rules of evidence at common law.

(d) Seal Dispensed With. In the event any office or officer, authenticating any documents under the provisions of this rule, has no official seal, and so certifies, then authentication by seal is dispensed with.

Source: 44 (a) is the Federal Rule modified so as to require a certificate of the custody of the record only where the record is kept outside the State of Wyoming.

44 (d) is new.

RULE 45. SUBPOENA.

(a) For Attendance of Witnesses; Form; Issuance. Every subpoena, except for the taking of depositions as provided in subdivision (d) of this rule, shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Service. A subpoena may be served by the sheriff, by his deputy, or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made either by reading or by delivering a copy to such person. Proof of such service shall be made as provided in Rule 4 (m), and costs shall be taxed as provided in Rule 4 (c) (4).

(d) Subpoena for Taking Depositions; Place of Examination.

(1) Proof of service of a notice to take a deposition as provided in Rules 30 (a) and 31 (a), or a stipulation for the taking thereof, constitutes a sufficient authorization for the issuance by the clerk of the district court for the county in which the deposition is to be taken or by the notary public or other officer authorized to take the deposition of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce designated books, papers, documents, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26 (b), but in that event the subpoena will be subject to the provisions of subdivision (b) of Rule 30 and subdivision (b) of this Rule 45.

(2) A resident of the state in which the deposition is to be taken may

be required to attend an examination only in the county wherein he resides or is employed or regularly transacts his business in person, or at such other convenient place as is fixed by an order of court. A nonresident of the state may be required to attend only in the county wherein he is served with a subpoena or at such other convenient place as is fixed by an order of court.

(e) Subpoena for a Hearing or Trial. A subpoena issued by any court or other competent authority in this state, in any civil action, may be served upon a witness in any county of the state, and such witness is thereupon bound to obey the same: provided, however, that such witness may demand from the officer or other person serving such subpoena, upon service thereof, that he be paid, in advance, his lawful mileage fees and his witness fees for a sufficient number of days for him to travel, by the shortest feasible route, from his home to the place where he is to appear, and to return therefrom, with one day's attendance at such place. If he is not paid such fees at least one day before he must leave his home to obey such subpoena, he may disregard the same and need not comply therewith. Provided, that the party subpoenaing any witness in a county other than that in which the action is pending shall pay to such witness a per diem fee of $15.00 per day for each day or a part thereof necessarily spent by such witness in traveling to and from the court and in attendance at the hearing or trial.

Source: 45 (a) is the Federal Rule, modified by the addition of the words "except for the taking of depositions as provided in subdivision (d) of this rule."

45 (c) is the Federal Rule modified by permitting service by reading and by adding the last sentence. Provision for tender of fees and mileage is made in Rule 45 (e).

45 (d) (1) is the Federal Rule, modified by the addition of the phrase "or by the notary public or other officer authorized to take the deposition."

45 (d) (2) is the Federal Rule, modified by eliminating a provision permitting taking of a deposition within 40 miles of the place of service.

45 (e) is Sec. 3-2611.

45 (f) Federal Rule, is omitted.

RULE 46. EXCEPTIONS UNNECESSARY.

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

RULE 47. JURORS.

(a) Examination of Jurors. The parties, or their attorneys, may conduct the examination of prospective jurors, but such examination shall be under the supervision and control of the court, and the court may itself conduct such further examination as it deems proper.

(b) Alternate Juror. Immediately prior to the selection of the jury, the court may direct that one or two jurors in addition to the regular panel be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the principal jurors. An alternate juror who does not replace a principal juror shall be discharged when the jury retires to consider its verdict. If either one or two alternate jurors are called each party is entitled to one peremptory challenge in addition to those otherwise allowed by law. The additional peremptory challenge may be used only against an alternate juror, and the other peremptory challenges allowed by law shall not be used against the alternates.

Source: 47 (a) is new.

RULE 48. JURIES OF LESS THAN TWELVE—MAJORITY VERDICT.

The parties may stipulate that the jury shall consist of any number less than twelve or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

RULE 49. SPECIAL VERDICTS AND INTERROGATORIES.

(a) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial.

RULE 50. MOTIONS FOR A DIRECTED VERDICT AND FOR JUDGMENT.

(a) When Made: Effect. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor.

(b) Motion for Judgment Notwithstanding the Verdict. When a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the moving party may move not later than 10 days after the entry of judgment to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative; and a motion to set aside or otherwise nullify a verdict or for a new trial shall be deemed to include a motion for judgment nothwithstanding the verdict as an alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

(c) Same; Conditional Rulings on Grant of Motion.

(1) If the motion for judgment notwithstanding the verdict, provided for in subdivision (b) of this rule, is granted, the court shall rule on the motion for new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed. If the motion for new trial is thus conditionally granted, the court shall specify the grounds therefor, and such an order does not affect the finality of the judgment. In case the motion for new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court shall have otherwise ordered. In case the motion for new trial has been conditionally denied and the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may, not later than 10 days after entry of judgment, serve a motion for a new trial, which shall be granted or denied, conditionally or otherwise, and if conditionally, with the consequences stated in paragraph (1) of this subdivision.

(3) Any party who fails to make a motion for new trial as provided in this rule shall be deemed to have waived the right to move for a new trial.

Source: 50 (b) is amended, and 50 (c) is added, in accordance with the recommendations in the 1955 Report of the (Federal) Advisory Committee on Rules for Civil Procedure, to clarify the federal practice.

RULE 51. INSTRUCTIONS TO JURY: OBJECTION.

When any party desires special instructions he shall tender same to the court in writing. All instructions given by the court shall be in writing, numbered and signed by the judge and then submitted to the parties, who may make objections thereto before they are given to the jury stating distinctly the grounds of objection. Only the grounds so specified shall be entitled to consideration on motion for a new trial or on appeal. Before argument of the cause is begun the court shall give to the jury such instructions on the law as may be necessary. Such written instructions shall be taken by the jury when it retires. All instructions offered by the parties, or given by the court, shall be filed with the clerk and, with the indorsements thereon indicating the action of the court, shall be a part of the record of the cause.

Source: Rule 51 states the substance of Sec. 3-2408 pars. 5, 6, and 7, adding the requirement that the grounds of objection must be stated and only such grounds will be considered on motion for a new trial or on appeal.

RULE 52. FINDINGS BY THE COURT.

(a) General and Special Findings by Court. Upon the trial of questions of fact by the court, or with an advisory jury, it shall not be necessary for the court to state its findings, except generally for the plaintiff or defendant, unless one of the parties request it before the introduction of any evidence, with the view of excepting to the decision of the court upon the questions of law involved in the trial, in which case the court shall state in writing its special findings of fact separately from its conclusions of law; provided, that without such request the court may make such special findings of fact and conclusions of law as it deems proper and if the same are preserved in the record either by stenographic report or by the court's written memorandum, the same may be considered an appeal. Requests for findings are not necessary for purposes of review. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court.

(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend special findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When special findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

(c) Reserved Questions. In all cases in which a district court reserves an important and difficult constitutional question arising in an action or proceeding pending before it, the district court, before sending the question to the supreme court for decision, shall (1) dispose of all necessary and controlling questions of fact and make special findings of fact thereon, and (2) state its conclusions of law on all points of common law and of construction, interpretation and meaning of statutes and of all instruments necessary for a complete decision of the case. No constitutional question shall be deemed to arise in an action unless, after all necessary special findings of fact and conclusions of law have been made by the district court, a decision on the constitutional question is necessary to the rendition of final judgment. The question reserved shall be specific, and shall identify the constitutional provision to be interpreted. The special findings of fact and conclusions of law required by this subdivision of this rule shall be deemed to be a final order from which either party may appeal, and such appeal may be considered by the supreme court simultaneously with the reserved question.

Source: 52 (a) is Sec. 3-2423, modified by adding the phrase "before the introduction of any evidence," and the last two sentences, which are from Federal Rule 52 (a).

52 (c) is new.

RULE 53. MASTERS.

(a) Appointment and Compensation. The court in which any action is pending may appoint a master therein. The court shall administer a proper oath and shall provide for the furnishing by the master of such bond as the court may deem proper, the expense of which shall be assessed as costs in the case. As used in these rules the word "master" includes a referee, an auditor, or an examiner. The compensation to be allowed to a master shall be fixed by the court, and may be charged against such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers. The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence received, offered and excluded in the same manner and subject to the same limitations as provided in Rule 43 (c) for a court sitting without a jury.

(d) Proceedings.

(1) *Meetings.* When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master

to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte, or in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) *Witnesses.* The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) *Statement of Accounts.* When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

(e) Report.

(1) *Contents and Filing.* The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(2) *In Non-Jury Actions.* In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6 (d). The court, after hearing, may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) *In Jury Actions.* In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) *Stipulation as to Findings.* The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) *Draft Report.* Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

Source: 53 (a) is the Federal Rule, modified by the omission of provision for "standing masters."

53 (c) is the Federal Rule, modified by the addition of the word "received" in the last sentence.

VII. JUDGMENT

RULE 54. JUDGMENT; COSTS.

(a) Definition: Form. A judgment is the final determination of the rights of the parties in action. "Judgment" as used in these rules includes a decree. A judgment need not contain a recital of pleadings, the report of a master, or the record of prior proceedings. A direction of a court or judge, made or entered in writing, and not included in a judgment, is an order.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When multiple claims for relief or multiple parties are involved in an action, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

(d) Costs. Except when express provision therefor is made either in a statute or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the State of Wyoming, its officers or agencies, shall be imposed only to the extent permitted by law.

Source: 54 (a) is the Federal Rule, modified (1) by adding the definition of a judgment from Sec. 3-3501, (2) by omitting from the Federal Rule the phrase "and any order from which an appeal lies," and (3) by changing the word "shall" to "need" in the last sentence.

54 (b) is the Federal Rule, modified as recommended in the 1955 Report of the (Federal) Advisory Committee on Rules of Civil Procedure.

54 (d) is the Federal Rule, modified by changing references to the United States to Wyoming, and by omitting the last two sentences.

RULE 55. DEFAULT.

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) Judgment. Judgment by default may be entered as follows:

(1) *By the Clerk.* When the plaintiff's claim against a defendant is for a sum certain, or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) *By the Court.* In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, guardian ad litem, trustee, or other such representative who has appeared therein. If the party against whom a judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper, and shall accord a right of trial by jury to the parties when and as required by any statute.

(c) Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered may likewise set it aside in accordance with Rule 60 (b).

(d) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54 (c).

Source: 55 (b) (2) is the Federal Rule, modified by subsituting "guardian ad litem" for "committee, conservator."
55 (e) Federal Rule 55 (e) is omitted.

RULE 56. SUMMARY JUDGMENT.

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or

after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are acutally and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons

stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Source: 56 (e) is the Federal Rule, modified by the addition of the last two sentences, in accordance with the recommendations in the 1955 Report of the (Federal) Advisory Committee on Rules of Civil Procedure.

RULE 57. DECLARATORY JUDGMENT.

The procedure for obtaining a declaratory judgment pursuant to Sections 3-5801 to 3-5816 inclusive of W. C. S. 1945, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

RULE 58. ENTRY OF JUDGMENT OR ORDER.

(a) Form and Entry. In all cases, the judge shall promptly settle or approve the form of the judgment or order and direct that it be entered by the clerk. All judgments and orders must be entered on the journal of the court and specify clearly the relief granted or order made in the action.

(b) Time of Entry. A judgment or final order in any case shall be deemed to be entered whenever a form of such judgment or final order, signed by the trial judge, is filed in the office of the clerk of the court in which the case is pending. If no such form of judgment or final order is signed by such trial judge in any case, then the actual entry of the judgment or final order on the journal of the proper court shall govern.

Source: The first sentence of 58 (a) is a part of Federal Rule 58. The second sentence is Sec. 3-3608.
58 (b) is Sec. 1-443, omitting the final sentence.

RULE 59. NEW TRIALS, AMENDMENT OF JUDGMENTS.

(a) Grounds. A new trial may be granted to all or any of the parties, and on all or part of the issues. On a motion for a new trial in an action tried without a jury, the court may open the judgment, if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment. Subject to the provisions of Rule 61, a new trial may be granted for any of the following causes:

(1) Irregularity in the proceedings of the court, jury, referee, master or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial;

(2) Misconduct of the jury or prevailing party;

(3) Accident or surprise, which ordinary prudence could not have guarded against;

(4) Excessive damages appearing to have been given under the influence of passion or prejudice;

(5) Error in the assessment of the amount of recovery, whether too large or too small, when the action is upon a contract or for the injury to or detention of property;

(6) That the verdict, report or decision is not sustained by sufficient evidence or is contrary to law;

(7) Newly discovered evidence, material for the party applying, which he could not, with reasonable diligence, have discovered and produced at the trial;

(8) Error of law occurring at the trial.

(b) Time for Motion. A motion for a new trial shall be served not later than 10 days after the entry of the judgment. A supplemental motion may be filed and presented at any time before the trial court passes upon the motion for a new trial.

(c) Time for Serving Affidavits. When a motion or supplemental motion for new trial is based upon affidavits they shall be served with the motion or supplemental motion. The opposing party has ten days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than ten days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

(f) Motion for New Trial; Time Limit. Motions for new trial shall be determined within sixty days after the entry of the judgment, and if not so determined shall be deemed denied, unless within such sixty days the determination is continued by order of the court or by stipulation.

Source: 59 (a) is the Federal Rule, modified by substituting the substance of Sec. 3-3401 for the federal grounds for new trial.

59 (b) is the Federal Rule, with the addition of the second sentence, which is new.

59 (e) is the Federal Rule, modified by substituting the term limitation for the federal 10 day limitation.

59 (f) states the substance of Sec. 3-3404. There is no Federal Rule 59 (f).

RULE 60. RELIEF FROM JUDGMENT OR ORDER.

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the supreme court, and thereafter while the appeal is pending may be so corrected with leave of the supreme court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion, and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59 (b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding as provided in Sections 3-3801, 3-3805, and 3-3810, W. C. S. 1945, or to grant relief to a party against whom a judgment or order has been rendered without other service than by publication as provided in Section 3-3802, as amended. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the

nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Source: 60 (b) is the Federal Rule, through the sixth ground for the motion. The rest of this rule is new.

RULE 61. HARMLESS ERROR.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

RULE 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT.

(a) Injunctions, Receiverships. Unless otherwise ordered by the court, a judgment or final order in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of a appeal.

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52 (b).

(c) Injunction Pending Appeal. When an appeal is taken from a judgment or final order granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay upon Appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Power of Supreme Court Not Limited. The provisions in this rule do not limit any power of the supreme court or of a justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(f) Stay of Judgment upon Multiple Claims. When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 54 (b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Source: 62 (a) is the Federal Rule, modified by omitting the first sentence thereof and omitting references to patent actions.
62 (c) is the Federal Rule, modified by omitting references to interlocutory judgments and to special Federal courts.
62 (e) is Federal Rule 62 (g).
62 (f) is Federal Rule 62 (h).
Federal Rules 62 (e) and 62 (f) are omitted.

RULE 63. DISABILITY OF A JUDGE.

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then his successor or any district judge designed by the supreme court may perform those duties; but if his successor or other judge so designated is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

Source: Federal Rule 63, modified by substituting "his successor or any district judge designated by the supreme court" for "any other judge regularly sitting in or assigned to the court in which the action was tried."

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

RULE 64. SEIZURE OF PERSON OR PROPERTY.

At the commencement of and during the course of an action, all remedies provided by statute for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under these rules.

Source: Federal Rule 64, modified by substituting "under these rules" for provisions incorporating the law of the state where the Federal court is sitting.

RULE 65. INJUNCTIONS.

(a) Preliminary; Notice. No preliminary injunction shall be issued without notice to the adverse party.

(b) Temporary Restraining Order; Notice, Hearing, Duration. No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, a motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such cost and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) When Inapplicable. This rule shall not apply to suits for divorse, alimony, separate maintenance, or custody of infants.

Source: 65 (c) is the same as Federal Rule 65 (c), deleting reference to the United States.
65 (e) is new.

RULE 66. RECEIVERS.

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers shall be in accordance with the practice heretofore followed in the courts of Wyoming. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

RULE 67. DEPOSIT IN COURT.

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, to be held by the clerk of the court subject to withdrawal in whole or in part at any time thereafter upon order of the court or written stipulation of the parties.

Source: Federal Rule 67, modified by substituting the clause beginning "to be held by" for provisions referring to Federal statutes.

RULE 68. OFFER OF JUDGMENT.

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days

after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof or service thereof and thereupon the court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

Source: Federal Rule 68, modified by substituting "court" for "clerk".

RULE 69. EXECUTION.

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. In aid of the judgment or execution, and in addition to the proceedings provided by statute, the judgment creditor or his successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions.

Source: This rule is from the first and third sentences of Federal Rule 69 (a).

RULE 70. JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE.

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution upon application to the clerk.

Source: Federal Rule 70, modified by omitting references to writs of sequestration and assistance.

RULE 71. PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES.

When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party.

IX. APPEALS

RULE 72. GENERAL PROVISIONS.

(a) "Final Order" Defined. An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right, made in a special proceeding, or upon a summary application in an action, after judgment, is a final order which may be vacated, modified or reversed, as provided in these rules.

(b) Review by District Court. A judgment rendered or final order made by a justice of the peace, or any other tribunal, board or officer, exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated or modified by the district court.

(c) Review by Supreme Court. A judgment rendered or final order made by the district court may be reversed in whole or in part, vacated or modified by the supreme court for errors appearing on the record.

(d) Proceedings in Error Abolished. Proceedings in error are hereby abolished and any judgment or final order reviewable by the district court or supreme court may be reviewed only by appeal in accordance with the rules herein provided, relating to appeals from the district court to the supreme court, and the words "proceeding in error" where used in the laws of this state shall be held to mean "appeal." Writs of error are abolished. In any case in which a writ of certiorari is available an appeal may be taken under these rules.

(e) When Rules Shall Govern. All appeals to the district court and supreme court shall be governed by these rules, except appeals to the district court from justice of the peace and police courts and administrative officers and boards, for trial de novo in the district court. The provisions of Rules 73 to 76, inclusive, which cover the procedure on appeals from the district courts to the supreme court, shall be followed in appeals governed by these rules from inferior tribunals to the district court unless in the particular case the procedure is specifically provided by statute.

(f) Designation of Parties. In all appeals governed by these rules, the party taking the appeal shall be known as the appellant and the adverse party as the appellee, and in the caption of the cause in the appellate court appellant's name shall first appear.

(g) Immaterial Errors Disregarded. No judgment or final order shall be reversed or affected by reason of any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party.

(h) Reversal in Part. Where a judgment is reversed in part for error relating only to an issue which is in no way dependent for its proper trial on any other issue or issues found to have been properly tried, and a

partial new trial may be had without prejudice or injustice to any of the parties concerned, the cause may be remanded for the trial of the issue alone upon which the error was committed.

(i) Proceedings After Reversal. When a judgment or final order is reversed, either in whole or in part, in the district court, or the supreme court, the court reversing the same shall proceed to render such judgment as the court below should have rendered, or remand the cause to the court below for such judgment or such proceedings as the appellate court may direct. The district court so reversing a judgment shall, upon the request of either party, specify in writing the ground or grounds of such reversal, which shall be filed and kept with the papers in the case. The court reversing or affirming such judgment or final order shall not issue execution in causes that are so brought before it, on which it pronounces judgment as aforesaid, except on judgments or orders entered on trial de novo or on appeal from justice court, but shall send a special mandate to the court below, as the case may require, for execution thereon, and the court to which such special mandate is sent, shall proceed in the same manner as if such judgment or final order had been rendered therein.

(j) Costs on Reversal. When a judgment or final order is reversed, the appellant shall recover his costs, and when reversed in part and affirmed in part, the court may apportion the costs between the parties in such manner as it deems equitable; and there shall be taxed as a part of such costs the cost of making the transcript of the evidence in the case, and such costs shall be computed at the rate allowed by law for making the transcript of such evidence, and for typewriting or printing of briefs; provided, however, that the supreme court may, by order entered of record, refuse to allow as part of such costs, such costs as may result from the insertion in the transcript of the evidence or in the briefs such parts as may clearly appear to have been unnecessary.

(k) Penalties on Affirmance. When, in any case, the judgment or final order is affirmed, there shall be taxed as part of the costs in the case, a reasonable fee, to be fixed by the court, not less than twenty-five dollars ($25.00) nor more than three hundred dollars ($300.00), to the counsel of the appellee; and the court shall adjudge to the appellee damages in such sum as may be reasonable, not exceeding five hundred dollars ($500.00), unless the judgment or final order directs the payment of money, and execution thereof was stayed, when in lieu of such penalty, it shall bear additional interest at a rate not exceeding five (5) per centum per annum, for the time for which it was stayed, to be ascertained and awarded by the court; but if the court certify in its judgment that there was reasonable cause for the appeal, neither such fee, nor additional interest, nor penalty, shall be taxed, adjudged or awarded.

Source: 72 (a) is Sec. 3-5301.
72 (b) is Sec. 3-5302.
72 (c) is the first sentence of Sec. 3-5303.

72 (d) is new.
72 (e) is new.
72 (f) is new.
72 (g) states the substance of Sec. 3-1705.
72 (h) is the second sentence of Sec. 3-5303.
72 (i) is Sec. 3-5318, modified by the addition of the phrases "or such proceedings as the appellate court may direct," "except on judgments or orders entered on trial de novo or on appeal from justice court," and by deleting the last portion permitting the appellate court to suspend execution.
72 (j) is Sec. 3-5319.
72 (k) is Sec. 3-5304, modified to make it applicable also to the district court when acting as an appellate court.

RULE 73. APPEAL TO THE SUPREME COURT.

(a) When and How Taken. When an appeal is permitted by law from a district court to the supreme court, the time within which an appeal may be taken shall be thirty days from the entry of the judgment or final order appealed from unless a different time is provided by law, except that upon a showing of excusable neglect based on a failure of a party to learn of the entry of the judgment, the district court in any action may extend the time for appeal not exceeding thirty days from the expiration of the original time herein prescribed. The running of the time for appeal is terminated by a timely motion made pursuant to any of the rules hereinafter enumerated, and the full time for appeal fixed in this subdivision commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: granting or denying a motion for judgment under Rule 50 (b); or granting or denying a motion under Rule 52 (b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; or granting or denying a motion under Rule 59 to alter or amend the judgment; or denying a motion for a new trial under Rule 59.

A party may appeal from a judgment or final order by filing with the district court a notice of appeal, and serving the same in accordance with the provisions of Rule 5. Failure of the appellant to take any of the further steps to secure the review of the judgment appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in this rule or, when no remedy is specified, for such action as the appellate court deems appropriate, which may include dismissal of the appeal. If an appeal has not been docketed, the parties, with the approval of the district court, may dismiss the appeal by stipulation filed in that court, or that court may dismiss the appeal upon motion and notice by the appellant.

(b) Notice of Appeal. The notice of appeal shall specify the parties taking the appeal; shall designate the judgment or final order or part thereof appealed from; and shall name the court to which the appeal is taken.

(c) Bond on Appeal. Whenever a bond for costs on appeal is required by law, the bond shall be filed with the notice of appeal. The bond shall be in the sum of one hundred dollars ($100.00), unless the court fixes a different amount or unless a supersedeas bond is filed, in which event no separate bond on appeal is required. The bond on appeal shall have sufficient surety and shall be conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed, or of such costs as the appellate court may award if the judgment is modified. If a bond on appeal in the sum of one hundred dollars ($100.00) is given, no approval thereof is necessary. After a bond on appeal is filed an appellee may raise objections as to the form of the bond or to the sufficiency of the surety for determination by the clerk.

(d) Supersedeas Bond; Restitution Undertaking.

(1) *Supersedeas Bond.* Whenever an appellant entitled thereto desires a stay of execution on appeal, he may present to the court at or before the time of filing his notice of appeal, a supersedeas bond in such amount as shall be fixed by the district court and with surety or sureties to be approved by the court or by the clerk thereof. The bond shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is not perfected or is dismissed, or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as the supreme court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining and unsatisfied, costs on the appeal, and interest, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay.

When the judgment directs the execution, assignment or delivery of a conveyance or other instrument, appellant may execute, assign or deliver the conveyance or other instrument, leaving same in the custody of the clerk of the district court in which the judgment was rendered, there to remain and abide the judgment of the supreme court, and in such case appellant shall give bond only for costs on appeal and damages for delay.

Executors, administrators and guardians who have given bond in this state, with surety according to law, shall not be required to give a supersedeas bond.

(2) *Bond in Criminal Cases.* The judge of the trial court, or any justice of the supreme court in any criminal case, shall, on an appeal being perfected, admit the defendant to bail in such sum as shall be deemed proper in all bailable cases, and the district court, after conviction, shall also stay the execution of the judgment or sentence pending the taking of the appeal, and in bailable cases, admit the defendant to bail.

(3) *Restitution Undertaking.* In an action on a contract for the payment of money only, or in an action for injuries to the person, if the appellee gives adequate security to make restitution in case the judgment be reversed or modified, he may, on leave obtained from the trial court, proceed to enforce the judgment notwithstanding the execution of a supersedeas bond. Such security must be an undertaking executed to the appellant, with sufficient surety, to the effect that if the judgment be reversed or modified he will make full restitution to the appellant of the money by him received under the judgment; but the provisions of this paragraph shall not apply to judgments recovered in actions for libel, slander, malicious prosecution, false imprisonment or assault and battery.

(e) Failure to File or Insufficiency of Bond. If a bond on appeal or a supersedeas bond is not filed within the time specified, or if the bond filed is found insufficient, and if the action is not yet docketed with the supreme court, a bond may be filed at such time before the action is so docketed as may be fixed by the district court. After the action is so docketed, application for leave to file a bond may be made only in the supreme court.

(f) Judgment Against Surety. By entering into an appeal or supersedeas bond given pursuant to subdivision (c) and (d) of this rule, the surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the surety if his address is known.

(g) Docketing and Record on Appeal. The record on appeal as provided for in Rules 75 and 76 shall be filed with the supreme court and the appeal there docketed within sixty days from the date of filing the notice of appeal; except that, when more than one appeal is taken from the same judgment, the district court may prescribe the time for filing and docketing, which in no event shall be less than sixty days from the date of filing the first notice of appeal. In all cases the district court for good cause shown may extend the time for filing the record on appeal and

docketing the appeal, if its order for extension is made before the expiration of the period for filing and docketing as originally prescribed or as extended by a previous order, but the district court shall not extend the time to a day more than ninety days from the date of filing the notice of the first appeal; provided that if an appeal is filed later than such day the supreme court may accept the appeal in extraordinary cases upon a showing that diligence was used by counsel and that for causes beyond his control the appeal could not be docketed within the 90 day period."

Source: 73 (a) is the Federal Rule, modified by eliminating provisions for extension when the United States is a party, by adding "or final order" and "and serving the same in accordance with the provisions of Rule 5" to the first sentence of the second paragraph.

73 (b) is the first sentence of the Federal Rule. The remainder, providing for notice by the clerk, is omitted.

73 (c) is the Federal Rule, modified by substituting "Whenever a bond for costs on appeal is required" for "Unless a party is exempted," and by substituting "one hundred dollars" for "two hundred and fifty dollars."

73 (d) (1) is Federal Rule 73 (d), with the addition of the second and third paragraphs, which state the substance of Secs. 3-5310 (4), 3-5312, and 3-5313.

73 (d) (2) is Sec. 3-5414.

73 (d) (3) is Sec. 3-5314.

73 (g) is the Federal Rule, modified by adding the proviso allowing the supreme court to accept a late appeal.

RULE 74. JOINT OR SEVERAL APPEALS.

Parties interested jointly, severally, or otherwise in a judgment may join in an appeal therefrom; or any one or more of them may appeal separately or any two or more of them may join in an appeal.

RULE 75. RECORD ON APPEAL TO THE SUPREME COURT.

(a) Designation of Contents of Record On Appeal. Within thirty days after filing the notice of appeal the appellant shall serve upon the appellee and file with the district court a designation of the portions of the record, proceedings, and evidence to be contained in the record on appeal, unless the appellee has already served and filed a designation. In all cases, the district court for good cause shown may extend the time for serving and filing the designation as originally prescribed or as extended by a previous order; but the district court shall not extend the time to a day more than four months from the date of filing the notice of appeal except for good cause shown at a hearing upon appellant's application therefor held within four months from the date of filing the notice of appeal, after notice served upon appellee; or by stipulation of the parties. Within

ten days after the service and filing of such a designation, any other party to the appeal may serve and file a designation of additional portions of the record, proceedings, and evidence to be included. If the appellee files the original designation, the parties shall proceed under subdivision (b) of this rule as if the appellee were the appellant.

(b) Transcript. If there be designated for inclusion any evidence or proceeding at a trial or hearing which was stenographically reported, the appellant shall file with his designation a copy of the reporter's transcript of the evidence or proceedings included in his designation. If the designation includes only part of the reporter's transcript, the appellant shall file a copy of such additional parts thereof as the appellee may need to enable him to designate and file the parts he desires to have added, and if the appellant fails to do so the court on motion may require him to furnish the additional parts needed. The copy so filed by the appellant shall be available for the use of the other parties. In the event that a copy of the reporter's transcript or of the necessary portions thereof is already on file, the appellant shall not be required to file an additional copy.

(c) Form of Testimony. Testimony of witnesses designated for inclusion need not be in narrative form, but may be in question and answer form. A party may prepare and file with his designation a condensed statement in narrative form of all or part of the testimony, and any other party to the appeal, if dissatisfied with the narrative statement, may require testimony in question and answer form to be substituted for all or part thereof.

(d) Statement of Points. No assignment of errors is necessary. If the appellant does not designate for inclusion the complete record and all the proceedings and evidence in the action, he shall serve with his designation a concise statement of the points on which he intends to rely on the appeal.

(e) Record to be Abbreviated. All matters not essential to the decision of the questions presented by the appeal shall be omitted. Formal parts of all exhibits and more than one copy of any document shall be excluded. Documents shall be abridged by omitting all irrelevant and formal portions thereof. For any infraction of this rule or for the unnecessary substitution by one party of evidence in question and answer form for a fair narrative statement proposed by another, the supreme court may withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require; and costs may be imposed upon offending attorneys or parties.

(f) Stipulation as to Record. Instead of serving designations as above provided, the parties by written stipulation filed with the clerk of the district court may designate the parts of the record, proceedings and evidence to be included in the record on appeal.

(g) Preparation of Record on Appeal.

(1) *Record to be Prepared by Clerk—Necessary Parts.* The clerk of the district court, under his hand and the seal of the court, shall transmit to the supreme court a true copy of the matter designated by the parties, but shall always include, whether or not designated, copies of the following: The material pleadings without unnecessary duplication; the verdict; the master's report, if any; the judgment or final order appealed from, including all findings of fact and conclusions of law made by the district court and preserved in the record as provided in Rule 52 (a); the notice of appeal with date of filing; the designations or stipulations of the parties as to matter to be included in the record; and any statement by the appellant of the points on which he intends to rely. The matter so certified and transmitted constitutes the record on appeal. The copy of the transcript filed as provided in subdivision (b) of this rule shall be certified by the clerk as a part of the record on appeal.

(2) *Record in Criminal Case.* In criminal cases appealed to the supreme court the record on appeal shall be prepared in the same manner except that in lieu of the pleadings the record shall include the indictment or information, motions or demurrers addressed thereto, and any special plea, and shall also include the verdict and the judgment and sentence of the court or final order from which the appeal is prosecuted.

(h) Power of Court to Correct or Modify Record. It is not necessary for the record on appeal to be approved by the district court or judge thereof except as provided in Rule 76, but, if any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the supreme court, or the supreme court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary that a supplemental record shall be certified and transmitted by the clerk of the district court. All other questions as to the content and form of the record shall be presented to the supreme court.

(i) Order as to Original Papers or Exhibits. Whenever the district court is of opinion that original papers or exhibits should be inspected by the supreme court or sent to the supreme court in lieu of copies, it may make such order therefor and for the safekeeping, transportation, and return thereof as it deems proper.

(j) Record for Preliminary Hearing in Supreme Court. If, prior to the time the complete record on appeal is settled and certified as herein provided, a party desires to docket the appeal in order to make in the

supreme court a motion for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on the supersedeas bond, or for any intermediate order, the clerk of the district court at his request shall certify and transmit to the supreme court a copy of such portion of the record or proceedings below as is needed for that purpose.

(k) Several Appeals. When more than one appeal is taken to the supreme court from the same judgement or order, a single record on appeal shall be prepared containing all the matter designated or agreed upon by the parties, without duplication.

(1) Rule For Transmission of Original Papers. Whenever the supreme court provides by order or rule for the hearing of any appeal or appeals on the original papers, the clerk of the district court shall transmit them to the supreme court in lieu of the copies provided by this Rule 75. The transmittal shall be within such time or extended time as is provided in Rule 73 (g), except that the district court by order may fix a shorter time. The clerk shall transmit all the original papers in the file dealing with the action or the proceeding in which the appeal is taken, with the exception of such omissions as are agreed upon by written stipulation of the parties on file, and shall append his certificate identifying the papers with reasonable definiteness. If a transcript of the testimony is on file the clerk shall transmit that also; otherwise the appellant shall file with the clerk for transmission such transcript of the testimony as he deems necessary for his appeal subject to the right of an appellee either to file additional portions or to procure an order from the district court requiring the appellant to do so. After the appeal has been disposed of, the papers shall be returned to the custody of the district court. The provisions of subdivision (h), (j) and (k) shall be applicable; but with reference to the original papers as herein provided rather than to a copy or copies.

Source: 75 (b) is the Federal Rule, omitting the last sentence relating to a second copy of the transcript.

75 (g) (1) is Federal Rule 75 (g), modified by omitting certain federal requirements and by adding "and preserved in the record as provided in Rule 52 (a)."

75 (g) (2) is Sec. 3-5407, modified by omitting "and all other motions or orders of the court affecting any substantial right of the party appealing, together with the instructions given and refused."

75 (h) is the Federal Rule, modified by omitting references to Rule 75 (m) and 75 (n).

75 (1) is Federal Rule 75 (o), modified by inserting the words "order or" and by eliminating references to Rules 75 (m) and 75 (n), which are omitted.

RULE 76. RECORD ON APPEAL TO THE SUPREME COURT; AGREED STATEMENT.

When the questions presented by an appeal to the supreme court can be determined without an examination of all the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by the supreme court. The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the points to be relied on by the appellant. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the questions raised by the appeal, shall be approved by the district court and shall then be certified to the supreme court as the record on appeal. Four copies of the agreed statement shall be filed in the supreme court.

Source: The last sentence is new.

X. DISTRICT COURTS AND CLERKS

RULE 77. DISTRICT COURTS AND CLERKS.

(a) District Courts Always Open. The district courts shall be deemed always open for the purpose of filing any pleading or other paper, of issuing and returning any mesne or final process, and of making and directing all interlocutory motions, orders and rules. Each term shall be deemed open and continuous until the commencement of the next succeeding term.

(b) Trials and Hearings; Orders in Chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted in chambers without the attendance of the clerk or other court officials and at any place within the state; but no hearing, other than one ex parte, shall be conducted outside of the county in which the action is pending without the consent of all parties affected thereby who are not in default.

(c) The Clerk's Office. The clerk's office with the clerk or a deputy in attendance shall be open during all business hours. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended, altered or rescinded by the court upon cause shown.

(d) Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall mail a copy thereof in the manner provided in Rule 5 to every adverse party who is not in default for failure to appear, and who has not in person or by attorney acknowledged receipt of a copy thereof. The copies necessary for such mailing shall be furnished to the clerk by the prevailing party, and the clerk shall make a note of the mailing on the docket. Such mailing is sufficient notice for all purposes for which notice of the entry of an order or judgment is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 73 (a).

Source: 77 (a) is the Federal Rule, with the addition of the second sentence, which is new.

77 (b) is the Federal Rule, modified by substituting "within the State" for "within or without the district," and "outside of the county in which the action is pending" for "outside the district," and by adding the words "who who are not in default."

77 (c) is the Federal Rule, modified by substituting "all business hours" for "business hours on all days except Sundays and legal holidays."

77 (d) is the Federal Rule, with the addition of the requirement that the copies be furnished by the pievailing party.

RULE 78. MOTION DAY.

Unless local conditions make it impractical, each district court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as he considers reasonable may make orders for the advancement, conduct and hearing of actions.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

RULE 79. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN.

(a) Books and Records. Except as herein otherwise specifically provided, the clerk of court shall keep books and records as provided by statute.

(b) Other Books and Records. The clerk of court shall also keep such other books and records as may be required from time to time by the supreme court or the judge of the district in which such clerk is acting.

Source: This rule is new.

RULE 80. STENOGRAPHER: STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE.

Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial it may be proved by the transcript thereof duly certified by the person who reported the testimony.

XI. GENERAL PROVISIONS

RULE 81. APPLICABILITY IN GENERAL.

Statutory provisions shall not apply whenever inconsistent with these rules.

Source: This rule is new.

RULE 82. JURISDICTION AND VENUE UNAFFECTED.

These rules shall not be construed to extend or limit the jurisdiction of any court or the venue of actions therein.

RULE 83. RULES BY DISTRICT COURTS.

Each district court may from time to time make and amend rules governing its practice not inconsistent with these rules or applicable statutes. Copies of rules and amendments so made by any court shall upon their promulgation be furnished to the supreme court. In all cases not provided for by rule or statute, the district courts may regulate their practice in any manner not inconsistent with these rules or applicable statutes.

Source: Federal Rule 83, modified by omitting "by action of a majority of the judges therof" and by adding references to applicable statutes.

RULE 84. FORMS.

The forms contained in the appeidix of forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

RULE 85. TITLE.

These rules may be known and cited as Wyoming Rules of Civil Procedure.

RULE 86. EFFECTIVE DATE.

(a) Rules. These rules will take effect and be in force from and after the 1st day of December, A.D. 1957. They shall govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(b) Amendments and Additions. Amendments or additions to these rules shall take effect on dates to be fixed by the supreme court subject to the exception above set out as to pending actions.

RULE 87. LAWS SUPERSEDED.

From and after the effective date of these rules, the sections of the Wyoming Compiled Statutes, 1945, as amended, hereinafter enumerated, shall be superseded, and such statutes and all other laws in conflict with these rules shall be of no further force or effect:

Sec. 1-442
Sec. 1-443
Sec. 1-502
Secs. 1-509 to 1-519
Sec. 1-626
Sec. 3-104
Secs. 3-107 to 3-110
Sec. 3-211
Article 3, Chapter 3
Sec. 3-517
Sec. 3-518
Articles 6 and 7, Chapter 3
Secs. 3-1001 to 3-1009
Secs. 3-1011 to 3-1016
Articles 11 and 12, Chapter 3
Secs. 3-1301 to 3-1315
Secs. 3-1317, 3-1318
Articles 14 to 18, inclusive, Chapter 3
Secs. 3-2101 to 3-2105
Sec. 3-2107
Sec. 3-2204
Secs. 3-2302 to 3-2317
Secs. 3-2418 to 3-2427
Secs. 3-2501 to 3-2515
Secs. 3-2607 to 3-2611
Secs. 3-2901 to 3-2927
Article 30, Chapter 3
Secs. 3-3116 to 3-3121
Articles 32, 33 and 34, Chapter 3
Secs. 3-3501 to 3-3506
Secs. 3-3509, 3-3511
Secs. 3-3601 to 3-3606
Secs. 3-3804, 3-3811
Secs. 3-5301 to 3-5308
Secs. 3-5310 to 3-5315
Secs. 3-5318, 3-5319
Secs. 3-5322, 3-5323
Article 54, Chapter 3
Sec. 12-145

APPENDIX OF FORMS

INTRODUCTORY STATEMENT

(See Rule 84)

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms. While these forms list allegations considered to be sufficient in a typical case, other proper allegations may be added or substituted as conditions may require. Each form assumes the action to be brought in the First Judicial District, Laramie County.

2. Except where otherwise indicated each pleading, motion, and other paper should have a caption similar to that of the summons, with the designation of the particular paper substituted for the word "Summons." In the caption of the summons, of the complaint, and of orders to show cause, final orders, judgments or decrees, all parties must be named but in other pleadings and papers, it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules 4 (b), 7 (b) (2), and 10 (a).

3. Each pleading, motion, and other paper is to be signed in his individual name by at least one attorney of record (Rule 11). The attorney's name is to be followed by his address as indicated in Form 3. In forms following Form 3 the signature is not indicated.

4. If a party is not represented by an attorney, the signature and address of the party are required in place of the name of the attorney.

FORM 1.

SUMMONS

STATE OF WYOMING)
COUNTY OF LARAMIE) ss.

IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT

A.B.
Plaintiff,
vs.
C.D.
Defendant.

Civil Action No.....

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to file with the clerk and serve upon the plaintiff's attorney an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. (If service upon you is made outside the State of Wyoming, you are required to file and serve your answer to the complaint within 30 days after service of this summons upon you, exclusive of the day of service.) If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated....., 19.....

(Seal of the District Court)

.....
Clerk of Court

.....
Attorney for Plaintiff

.....
Address

FORM 2.

(Number Reserved)

FORM 3.

COMPLAINT ON A PROMISSORY NOTE

1. Defendant on or about June 1, 1945, executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on June 1, 1946 the sum of ten thousand dollars with interest thereon at the rate of six per cent per annum].

2. Defendant owes to plaintiff the amount of said note and interest. Wherefore plaintiff demands judgment against defendant for the sum of ten thousand dollars, interest, and costs.

Signed: .....
Attorney for Plaintiff

Address: .....

NOTES

1. The pleader may use the material in one of the three sets of brackets. His choice will depend upon whether he desires to plead the document verbatim, or by exhibit, or according to its legal effect.

2. Under the rules free joinder of claims is permitted. See Rules 8 (e) and 18. Consequently the claims set forth in each and all of the following forms may be joined with this complaint or with each other. Ordinarily each claim should be stated in a separate division of the complaint, and the divisions should be designated as counts successively numbered. In particular the rules permit alternative and inconsistent pleading. See Form 10.

FORM 4.

COMPLAINT ON AN ACCOUNT

1. Defendant owes plaintiff ten thousand dollars according to the account hereto annexed as Exhibit A.
Wherefore (etc. as in Form 3).

FORM 5.

COMPLAINT FOR GOODS SOLD AND DELIVERED

1. Defendant owes plaintiff ten thousand dollars for goods sold and delivered by plaintiff to defendant between June 1, 1946 and December 1, 1946.
Wherefore (etc. as in Form 3).
Note: This form may be used where the action is for an agreed price or for the reasonable value of the goods.

FORM 6.

COMPLAINT FOR MONEY LENT

1. Defendant owes plaintiff ten thousand dollars for money lent by plaintiff to defendant on June 1, 1946.
Wherefore (etc. as in Form 3).

FORM 7.

COMPLAINT FOR MONEY PAID BY MISTAKE

1. Defendant owes plaintiff ten thousand dollars for money paid by plaintiff to defendant by mistake on June 1, 1946, under the following circumstances: (here state the circumstances with particularity—see Rule 9 (b)).
Wherefore (etc. as in Form 3).

FORM 8.

COMPLAINT FOR MONEY HAD AND RECEIVED

1. Defendant owes plaintiff ten thousand dollars for money had and received from one G. H. on June 1, 1946, to be paid by defendant to plaintiff.
Wherefore (etc. as in Form 3).

FORM 9.

COMPLAINT FOR NEGLIGENCE

1. On June 1, 1946, in a public highway called Capitol Avenue in Cheyenne, Wyoming, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of ten thousand dollars and costs.

Note: Since contributory negligence is an affirmative defense, the complaint need contain no allegation of due care of plaintiff.

FORM 10.

COMPLAINT FOR NEGLIGENCE WHERE PLAINTIFF IS UNABLE TO DETERMINE DEFINITELY WHETHER THE PERSON RESPONSIBLE IS IS C. D. OR E. F. OR WHETHER BOTH ARE RESPONSIBLE AND WHERE HIS EVIDENCE MAY JUSTIFY A FINDING OF WILFULNESS OR OF RECKLESSNESS OR OF NEGLIGENCE

A. B., Plaintiff v. C. D. and E. F., Defendants	COMPLAINT

1. On June 1, 1946, in a public highway called Capitol Avenue in Cheyenne, Wyoming, defendant C. D. or defendant E. F., or both defendants C. D. and E. F. wilfully or recklessy or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against C. D. or against E. F. or against both in the sum of ten thousand dollars and costs.

FORM 11.

COMPLAINT FOR CONVERSION

1. On or about December 1, 1946, defendant converted to his own use ten bonds of the _____ Company (here insert brief identification as by number and issue) of the value of ten thousand dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of ten thousand dollars, interest, and costs.

FORM 12.

COMPLAINT FOR SPECIFIC PERFORMANCE OF CONTRACT TO CONVEY LAND

1. On or about December 1, 1946, plaintiff and defendant entered into an agreement in writing a copy of which is hereto annexed as Exhibit A.

2. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

3. Plaintiff now offers to pay the purchase price.
Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of one thousand dollars, and (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of ten thousand dollars.

Note: Here, as in Form 3, plaintiff may set forth the contract verbatim in the complaint or plead it, as indicated, by exhibit, or plead it according to its legal effect. Furthermore, plaintiff may seek legal or equitable relief or both.

FORM 13.

COMPLAINT ON CLAIM FOR DEBT AND TO SET ASIDE FRAUDULENT CONVEYANCE UNDER RULE 18(b)

A. B., Plaintiff
v.
C. D. and E. F., Defendants

COMPLAINT

1. Defendant C. D. on or about _____ executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant C. D. promised to pay to plaintiff or order on _____ the sum of five thosand dollars with interest thereon at the rate of _____ per cent, per annum].

2. Defendant C. D. owes to plaintiff the amount of said note and interest.

3. Defendant C. D. on or about _____ conveyed all his property, real and personal (or specify and describe) to defendant E. F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands:

(1) That plaintiff have judgment against defendant C. D. for ten thousand dollars and interest; (2) that the aforesaid conveyance to defendant E. F. be declared void and the judgment herein be declared a lien on said property; (3) that plaintiff have judgment against the defendants for costs.

FORM 14.

COMPLAINT FOR NEGLIGENCE UNDER FEDERAL EMPLOYER'S LIABILITY ACT

1. During all the times herein mentioned defendant owned and operated in interstate commerce a railroad which passed through a tunnel located at ..... and known as Tunnel No. .....

2. On or about June 1, 1946, defendant was repairing and enlarging the tunnel in order to protect interstate trains and passengers and freight from injury and in order to make the tunnel more conveniently usable for interstate commerce.

3. In the course of thus repairing and enlarging the tunnel on said day defendant employed plaintiff as one of its workmen, and negligently put plaintiff to work in a portion of the tunnel which defendant had left unprotected and unsupported.

4. By reason of defendant's negligence in thus putting plaintiff to work in that portion of the tunnel, plaintiff was, while so working pursuant to defendant's order, struck and crushed by a rock, which fell from the unsupported portion of the tunnel, and was (here describe plaintiff's injuries).

5. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning ..... dollars per day. By these injuries he has been made incapable of any gainful activity, has suffered great physical and mental pain, and has incurred expense in the amount of ..... dollars for medicine, medical attendance, and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of ..... dollars and costs.

FORM 15.

COMPLAINT FOR DIVORCE

1. Plaintiff has resided in the State of Wyoming for sixty days immediately preceding the time of filing this complaint. Plaintiff is a resident of the County of Laramie, State of Wyoming.

2. Plaintiff and defendant were married to each other on June 1, 1950, at Cheyenne, Wyoming.

3. One child, A. B., was born on June 1, 1951, as issue of said marriage. Plaintiff is a fit and proper person to have custody of said child.

4. Defendant has offered such indignities to plaintiff as to render plaintiff's condition intolerable.

5. The parties own real and personal property as follows: (here describe)

6. The defendant has and is capable of earning an income sufficient to pay for the support of plaintiff and A. B., and to pay the plaintiff's attorney's fee in this matter.

Wherefore plaintiff demands:

(1) That a decree of divorce be granted to her dissolving her marriage to defendant.

(2) That plaintiff be awarded the sole custody of the child A. B.

(3) That defendant pay to plaintiff a reasonable sum for her support and the support of A. B. during the pendency of this action, a reasonable attorney's fee, and costs.

(4) That defendant pay to plaintiff a reasonable sum as alimony and a reasonable sum for the support of A. B. during his minority.

(5) That the court decree a just and equitable division of the property of the parties.

FORM 16.

COMPLAINT IN ACTION TO QUIET TITLE

1. Plaintiff is the owner in fee simple and is in possession of a tract of land in Laramie County, State of Wyoming, described as follows: (insert description).
2. Defendant claims an estate or interest therein adverse to the plaintiff. Wherefore plaintiff demands that his title to said tract of land be quieted against the defendant, that defendant be adjudged to have no right, title or interest therein, that defendant pay to plaintiff the costs of this action, and that plaintiff have such other and further relief as is just.

FORM 17.

COMPLAINT ON INSURANCE POLICY

1. On or about June 1, 1935, defendant, for a valuable consideration, issued to G. H. a policy of life insurance whereby defendant promised to pay to plaintiff as beneficiary the sum of ten thousand dollars upon the death of G. H.
2. On September 1, 1956, G. H. died.
3. All conditions precedent to liability under said policy have been performed or have occurred.
4. Defendant has not paid plaintiff the sum of ten thousand dollars or any part thereof.

   Wherefore plaintiff demands judgment against defendant for the sum of ten thousand dollars, interest, and costs.

FORM 18.

COMPLAINT FOR INTERPLEADER AND DECLARATORY RELIEF

1. On or about June 1, 1945, plaintiff issued to G. H. a policy of life insurance whereby plaintiff promised to pay to K. L. as beneficiary the sum of ten thousand dollars upon the death of G. H. The policy required the payment by G. H. of a stipulated premium on June 1, 1946, and annually thereafter as a condition precedent to its continuance in force.
2. No part of the premium due June 1, 1946, was ever paid and the policy ceased to have any force or effect on July 1, 1946.
3. Thereafter, on September 1, 1946, G. H. and K. L. died as the result of a collision between a locomotive and the automobile in which G. H. and K. L. were riding.
4. Defendant C. D. is the duly appointed and acting executor of the will of G. H.; defendant E. F. is the duly appointed and acting executor of the will of K. L.; defendant X. Y. claims to have been duly designated as beneficiary of said policy in place of K. L.

5. Each of defendants, C. D., E. F., and X. Y. is claming that the above-mentioned policy was in full force and effect at the time of the death of G. H.; each of them is claming to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.
6. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G. H.

Wherefore plaintiff demands that the court adjudge:

(1) That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

(2) That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

(3) That, if the court shall determine that said policy was in force at the death of G. H., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

(4) That plaintiff recover its costs.

FORM 19.

MOTION TO DISMISS, PRESENTING DEFENSES OF FAILURE TO STATE A CLAIM, OF LACK OF SERVICE OF PROCESS, OF IMPROPER VENUE, AND OF LACK OF JURISDICTION UNDER RULE 12(b)

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.
2. To dimiss the action or in lieu thereof to quash the return of service of summons on the grounds that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M. N. and X. Y. hereto annexed as Exhibit A and Exhibit B respectively.
3. To dismiss the action on the ground that the court lacks jurisdiction because (here state grounds).

Signed: .....
Attorney for Defendant

Address: .....

NOTICE OF MOTION

To: .....
Attorney for Plaintiff

Please take notice, that that the undersigned will bring the above motion on for hearing before this Court on the ..... day of ....., 19....., at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Signed: .....
Attorney for Defendant

Note: The above motion and notice of motion may be combined and denominated Notice of Motion. See Rule 7 (b).

FORM 20.

ANSWER PRESENTING DEFENSES UNDER RULE 12(b)

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he is indebted to them jointly with G. H. G. H. is alive; is a citizen and a resident of this State, is subject to the jurisdiction of this court; can be made a party without depriving this court of jurisdiction of the present parties, and has not been made a party.

Third Defense

Defendant admits the allegation contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

Fourth Defense

The right of action set forth in the complaint did not accrue within ten years next before the commencement of this action.

Counterclaim

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint).

Cross-Claim Against Defendant M. N.

(Here set forth the claim constituting a cross-claim against defendant M. N. in the manner in which a claim is pleaded in a complaint).

Note: The above form contains examples of certain defenses provided for in Rule 12(b). The first defense challenges the legal sufficiency of the complaint. It is a substitute for a general demurrer or a motion to dismiss.

The second defense embodies the old plea in abatement; the decision thereon, however, may well provide under Rules 19 and 21 for the citing in of the party rather than an abatement of the action.

The third defense is an answer on the merits.

The fourth defense is one of the affirmative defenses provided for in Rule 8(c).

The answer also includes a counterclaim and a cross-claim.

FORM 21.

ANSWER TO COMPLAINT SET FORTH IN FORM 8, WITH COUNTERCLAIM FOR INTERPLEADER

Defense

Defendant denies the allegations stated in paragraph 2 of the complaint to the extent set forth in the counterclaim herein.

Counterclaim for Interpleader

1. Defendant received the sum of ten thousand dollars as a deposit from E. F.
2. Plaintiff has demanded the payment of such deposit to him by virtue of and assignment of it which he claims to have received from E. F.

3. E. F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:

(1) That the court order E. F. to be made a party defendant to respond to the complaint and to this counterclaim.

(2) That the court order the plaintiff and E. F. to interplead their respective claims.

(3) That the court adjudge whether the plaintiff or E. F. is entitled to the sum of money.

(4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.

(5) That the court award to the defendant its costs and attorney's fees.

Note: Rule 13 (h) provides for the court ordering parties to a counterclaim, but who are not parties to the original action, to be brought in as defendants.

FORM 22.

MOTION TO BRING IN THIRD-PARTY DEFENDANT

Defendant moves for leave to make E. F. a party to this action and that there be served upon him summons and third-party complaint as set forth in Exhibit A hereto attached.

Signed: _____
Attorney for Defendant C. D.

Address: _____

Notice of Motion

(Contents the same as in Form 19. No notice is necessary if the motion is made before the moving defendant has served his answer).

Exhibit A

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT

Civil Action No. _____

A. B.,)
Plaintiff)
v.)
C. D.,)
Defendant and third-party plaintiff)
v.)
E. F.,)
Third-party defendant)

SUMMONS

To the above-named Third-Party Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney whose address is _____, and upon _____, who is attorney for C. D., defendant and third-party plaintiff, and whose address is _____, an answer to the third-party complaint which is herewith served upon you and an answer to the complaint of the plaintiff, a copy of which is herewith served upon you, within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint.

Dated ....., 19....

.....
Clerk of Court

(Seal of District Court)

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT

Civil Action No. .....

A. B.,
Plaintiff
v.
C. D.,
Defendant and third-party plaintiff
v.
E. F.,
Third-party defendant

THIRD-PARTY COMPLAINT

1. Plaintiff A. B. has filed against defendant C. D. a complaint, a copy of which is hereto attached as "Exhibit C".
2. (Here state the grounds upon which C. D. is entitled to recover from E. F., all or part of what A. B. may recover from C. D. The statement should be framed as in an original complaint). Wherefore C. D. demands judgment against third-party defendant E. F. for all sums that may be adjudged against defendant C. D. in favor of plaintiff A. B.

Signed: .....
Attorney for C. D.,
Third-Party Plaintiff

Address: .....

FORM 23.

MOTION TO INTERVENE AS A DEFENDANT

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT

Civil Action No. .....

A. B.,
Plaintiff
v.
C. D.,
Defendant
E. F.,
Applicant for intervention

MOTION TO INTERVENE AS A DEFENDANT

E. F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in his proposed answer, of which a copy is hereto attached, on the grounds (here state them) and as such has a defense to plaintiff's claim presenting both questions of law and of fact which are common to the main action.

Signed: .....
Attorney for E. F.,
Applicant for intervention

Address: .....

Note: For grounds of intervention, either of right or in the discretion of the court, see Rule 24 (a) and (b).

Notice of Motion

(Contents the Same as in Form 19)

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT

Civil Action No. _____

A. B.,
Plaintiff
v.
C. D.,
Defendant
E. F.
Intervener

INTERVENER'S ANSWER

First Defense

Intervener admits the allegations stated in paragraphs _____ and _____ of the complaint; denies the allegations in paragraphs _____ and _____.

Second Defense

(Set forth any defenses).

Signed: _____
Attorney for E. F., Intervener

Address: _____

FORM 24.
MOTION FOR PRODUCTION OF DOCUMENTS, ETC., UNDER RULE 34

Plaintiff A. B. moves the court for an order requiring defendant C. D.

(1) To produce and to permit plaintiff to inspect and to copy each of the following documents:
(Here list the documents and describe each of them).

(2) To produce and permit plaintiff to inspect and to photograph each of the following objects:
(Here list the objects and describe each of them).

(3) To permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph (here describe the portion of the real property and the objects to be inspected and photographed).

Defendant C. D. has the possession, custody, or control of each of the foregoing documents and objects and of the above mentioned real estate. Each of them constitutes or contains evidence relevant and material to a matter involved in this action, as is more fully shown in Exhibit A hereto attached.

Signed: _____
Attorney for Plaintiff.

Address: _____

Notice of Motion

(Contents the same as in Form 19)

Exhibit A

State of _____
County of _____

A. B., first being duly sworn says:

(1) (Here set forth all that plaintiff knows which shows that defendant has the papers or objects in his possession or control).

(2) (Here set forth all that plaintiff knows which shows that each of the above mentioned items is relevant to some issue in the action).

(Jurat) Signed: A. B.

FORM 25.
REQUEST FOR ADMISSION UNDER RULE 36

Plaintiff A. B. requests defendant C. D. within _____ days after service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

(1) That each of the following documents, exhibited with this request is genuine.
(Here list the documents and describe each document).

(2) That each of the following statements is true.
(Here list the statements).

Signed: _____
Attorney for Plaintiff

Address: _____

FORM 26.
ALLEGATION OF REASON FOR OMITTING PARTY

When it is necessary, under Rule 19(c), for the pleader to set forth in his pleading the names of persons who ought to be made parties, but who are not so made, there should be an allegation such as the one set out below:

John Doe named in this complaint is not made a party to this action, because he is not subject to the jurisdiction of this court.

FORM 27.
NOTICE OF APPEAL TO THE SUPREME COURT

NOTICE IS HEREBY GIVEN that C. D. and E. F., defendants above named, hereby appeal to the Supreme Court of the State of Wyoming [from the order (describing it)] [from the final judgment] entered on _____, 19____.

Signed: _____
Attorney for Appellants, C.D. and E. F.

Address: _____

Note: Use either the material in the first set of brackets or that in the second, as the case requires. If the appeal is from a part only of an order or judgment that part must be specified.
Rule 73(b) does not require the appellee to be named. It does require the clerk to notify all other parties than appellant.

RULES
of the
SUPREME COURT OF WYOMING

December 1, 1957

RULE 1. SESSIONS OF COURT.

Public sessions of the court during each regular term shall be held at the Supreme Court and Library Building at the capital of Wyoming, commencing at 10 a.m., unless otherwise specially ordered in stated cases.

Each term shall be deemed open and continue until the commencement of the next succeeding term.

The court shall be open during all business hours for the filing of papers and documents, the hearing of cases, the rendering of decisions and the making of orders and rules; provided that unless the court shall order otherwise, all hearings shall be held in open court after such notice to the parties or their counsel as the court shall deem reasonable.

RULE 2. CLERK OF THE COURT.

The clerk of the court shall reside at the capital of Wyoming and keep his office at the Supreme Court and Library Building and shall not practice as an attorney or counselor in this or any other court while he continues in such position. He shall have the custody of the seal and all records, books and papers appertaining to the court and the proceedings therein. He shall keep a record of all proceedings of the court, and for this purpose shall keep a journal, an appearance docket and trial docket, a roll of the attorneys admitted to practice in the court showing the date of their admission, and a book for noting the filing of applications for admission to the bar and the proceedings thereon. He shall record in the journal as they occur the orders, judgments and other proceedings of the court which are proper to be recorded therein. He shall enter each case upon the appearance docket in the order in which it is commenced or filed, numbering the cases consecutively. At the time of the commencement or filing of a case he shall enter on the appearance docket the full names of the parties, with the names of counsel then appearing, or shown by the papers on file, and thereafter, whenever they appear, the name or names of other counsel, and shall note under the case so docketed at the time the same occurs the filing of the various papers, the issuance of any process, the orders made in the case, the fees and taxation of costs, and whenever any fees are paid or advanced the amount and date thereof and the party paying or advancing the same, and such other proceedings, if any, as may be necessary from time to time to show the condition of the case. Whenever a decision is rendered the clerk shall promptly give notice thereof by mail to an attorney on each side, unless such attorneys are in attendance at the time the decision is announced.

RULE 3. TERM DOCKET.

Ten days before each term, the clerk shall prepare a hearing or term docket, wherein shall be entered in the order of their number all cases which have matured prior thereto under these rules and remain undisposed of, or stand under advisement on a motion. On the first day of the term and before the opening of the court he shall without further order enter at the foot of the docket in their order as to number all other cases which have matured in the meantime, or been taken under advisement, or which by statute, rule or order stand for hearing at that term. Other cases maturing after the completion of the docket by the clerk and before the final adjournment of the term, except civil cases on appeal, may, in the discretion of the court, be ordered upon the term docket at any time after the same have matured. Civil cases on appeal maturing within thirty days after the commencement of the term, including the first day thereof, may, in the same manner, be ordered upon the term docket, and all other cases of that class thereafter maturing and before the final adjournment of the term may be ordered upon the term docket by consent of the parties, or, for sufficient reason, upon motion of either party. A case shall be considered "matured" when the briefs of both parties have been filed and served or when the time limited therefor has expired. Any case may be ordered placed upon the term docket at any time for hearing upon a pending motion.

RULE 4. HEARINGS.

At the beginning of each term, and from time to time thereafter during the term, cases upon the term docket which are in condition to be heard will be assigned for hearing, and counsel if not present notified thereof by mail from the clerk's office. Counsel for either or all of the parties, when wishing to submit a case upon briefs, may avoid the inconvenience of personal attendance at court by filing a written direction to the clerk to so submit upon their briefs. A motion to postpone a hearing beyond the time assigned may be heard without argument in the discretion of the court, but a reasonable time may be allowed upon request for a showing by a party for or against the motion. At the time assigned for hearing, if neither party appears, and no motion to postpone or continue is pending, the case will be deemed submitted upon the briefs on file, if any.

RULE 5. ORAL ARGUMENT.

In oral argument, counsel for the party holding the affirmative, shall be entitled to the opening and closing, and in the opening he shall present all points and authorities upon which he relies; counsel opposed shall then be heard and shall present all points and authorities upon which he relies, and counsel for the party holding the affirmative shall then conclude. Counsel on each side may occupy not exceeding sixty minutes in the argument. If more time is desired, the request therefor must be made at

the time of filing the brief in the case, whereupon the court may make such order as deemed proper.

RULE 6. MOTIONS.

All motions submitted to the court shall be in writing, and notice thereof shall be served on the adverse party or his attorney of record before it is filed. The court may set a motion for hearing upon the application of either party in the case, or their attorney of record, or upon its own motion. If not previously heard, all motions shall stand for hearing or submission at the time regularly assigned for the hearing of the case.

RULE 7. COST OF RECORD AND DOCKET FEE.

The appellant, or plaintiff, at the time of filing the record on appeal or commencing the case in this court shall file with the clerk of the court a statement of the cost of the original transcript of the evidence together with information regarding the payment thereof, and deposit with the clerk the sum of fifteen dollars as costs. The fees charged for the services of the clerk in this court for criminal cases, where there is no statute to the contrary, shall be the same as those prescribed by law in civil cases; provided that a convict in a criminal case may be excused from the payment of any costs upon a showing satisfactory to the court that he is unable to pay the same on account of his poverty.

RULE 8. COSTS IN RESERVED CASES.

In each civil case sent to this court for its decision upon reserved questions the usual docket fee required by law to be advanced in other cases shall be paid upon the filing of the papers in this court. Such docket fee shall be advanced by the party or parties designated by the district court or judge, but in the absence of any such designation, then by the plaintiff in such action. Such fee shall be paid to the clerk of the district court and by him transmitted to the clerk of this court with papers in the case. Costs in such reserved cases accruing in this court shall be taxed and abide the suit as in other cases.

RULE 9. COSTS IN OTHER CASES.

No supreme court fees shall be collected in criminal cases properly coming to this court on reserved questions or by bill of exceptions of a prosecuting attorney unless otherwise provided by statute.

In all other cases when a judgment or final order is reversed, the appellant shall recover his costs, and when reversed in part and affirmed in part, the court may apportion the costs between the parties in such manner as it deems equitable; and there shall be taxed as part of such costs the cost of making the transcript of the evidence in the case, and such costs shall be computed at the rate allowed by law for making the transcript of such evidence, and for typewriting or printing briefs; provided, however, that the court may, by order entered of record, refuse to allow as part of such costs, the costs as may result from the insertion in the transcript of

the evidence or in the briefs such parts as may clearly appear to have been unnecessary.

RULE 10. WITHDRAWING RECORDS.

Either party may withdraw the record in a case from the clerk's office during the time allowed for the filing of his brief; provided that he shall be responsible for its safekeeping and shall return it promptly. No other paper pertaining to a pending case shall be taken from the clerk's office without an order of the court or one of the justices thereof.

RULE 11. CORRECTION OF ERRORS OR OMISSIONS IN RECORD.

Either party may suggest in writing a diminution of record. If the attorney of the adverse party be absent, or the fact of the alleged error or defect be disputed, the suggestion must be accompanied by an affidavit showing the existence of the error or defect alleged or a certified copy of the part or parts of the record alleged to have been omitted or incorrectly transmitted, and the party making the suggestion may, upon good cause shown, obtain an order that the proper clerk certify to the whole or part of the record, as may be required, or granting leave to file the certified copy produced at the time. Notice must be given as in the case of other motions, unless otherwise ordered, except that where the suggestion is by the appellant to the effect that his original application for papers and transcript, or the order issued thereon by the clerk, has not been complied with, an order may be made without notice requiring the proper clerk to certify and transmit any paper or transcript called for by such application or order.

RULE 12. BRIEFS.

(a) General Provisions. Briefs shall be filed and served in all cases and all briefs shall be printed or typewritten. All briefs, original as well as copies, must be clear, legible, and easily readable. Noncompliance with this requirement will be cause for rendition of summary decision against the offender.

(b) Statement of Case. No abstract of the record is required. Appellant shall set forth in his brief a concise statement of the case outlining the substance of the pleadings, the facts based upon the evidence material to the decision of the case, rulings of the trial court on the admissibility of evidence if objections were made and are relied upon, instructions given if essential to a determination of the case, instructions refused if objections to such refusals were made and are relied upon, any final opinion of the trial court, any preliminary opinion of the trial court which is material to the disposition of the case, the verdict or the findings of fact and conclusions of law, the master's report if any, and the rulings, orders and judgment sought to be reviewed. Such statement shall be supported by specific references to page numbers of the record. It shall consist only of the essential facts and shall not contain any argument relative to the evidence or law; provided that in the interest of brevity an appel-

lant may, if he elects, cause any part or parts of the foregoing material to be placed in an appendix to be filed as a part of, or separately from but simultaneously with, his brief, in which event references thereto in his brief shall be to both the page numbers of the record and the pages of the appendix. If the appellee disagrees with the statement of the case by appellant, he shall set forth in his brief in a supplemental statement each correction or addition which he desires to make or considers material; and if he seeks a reversal or modification of a judgment, or the correction of findings, orders, or rulings of the trial court, he shall set forth such thereof as are not contained in the brief or appendix of appellant. Appellee may file an appendix if he so elects. The requirements of reference to page numbers of the record, pages of the appendix, if any, and the forbiddance against argument shall be observed in any supplemental statement of the case.

(c) Contents of Briefs. Every brief filed in this court except one filed in support of or in opposition to a motion or an application for supersedeas shall contain:

(1) A subject index of the entire brief.

(2) A concise summary of the argument setting forth clearly and succinctly the grounds relied on by the parties presenting the brief in seeking reversal or modification of the judgment or the correction of adverse findings, orders, or rulings of the trial court.

(3) The statement of the case as required by subdivision (b) of this rule.

(4) A table of all cases and statutes cited. Cases shall be stated in alphabetical order giving title, volume and page. Each case or statute shall be indexed to every page on which it is cited.

(d) Time for Filing and Serving Briefs—Cases on Appeal. Except as otherwise provided in subdivision (h) of this rule, appellant, within sixty days after the filing in this court of the record on appeal, in both civil and criminal cases shall file with the clerk five copies of his brief, and shall also within that period serve upon or mail to the opposite party, or his attorney of record, one other copy of such brief; and within forty-five days after the expiration of said sixty days the appellee shall file with the clerk five copies of his brief, and shall also within that period serve upon or mail to the opposite party, or his attorney of record, one other copy of such brief. The court, upon finding that an emergency exists sufficient to justify an earlier maturing of the case for hearing may, by order, upon application and notice, fix a shorter time for the filing and serving of briefs.

In workmen's compensation cases brought to this court by appeal, the appellant, within fifteen days after the filing of the record on appeal in this court, shall file with the clerk five copies of his brief, and shall also within that period serve upon or mail to the opposite party or his attorney of record, and, unless it be the Attorney General's brief, also serve

upon or mail to the Attorney General one other copy of such brief; within fifteen days after the expiration of said fifteen days, the appellee shall file with the clerk five copies of his brief, and shall also within that period serve upon or mail to the opposite party or his attorney of record one other copy of such brief. Immediately upon receipt of a record on appeal, the clerk shall by letter notify the appellant or his attorney of record, and also the Attorney General, of that fact.

(e) Service of Briefs upon Attorney General. In all cases both criminal and civil, in which the State is a party, or in which any of its property is involved, including criminal cases upon reserved questions, and cases arising upon exceptions taken in a criminal case by the prosecuting attorney, counsel shall also serve a copy of their brief upon the Attorney General.

(f) Briefs in Criminal Cases upon Exceptions of Prosecuting Attorney. In criminal cases arising upon the filing of a bill of exceptions by the prosecuting attorney, the time for filing and serving briefs shall be governed by subdivision (d) of this rule, computed from the time the bill is filed with this court; provided that in case of delay in the appointment of counsel to argue the case against the exceptions beyond the time allowed for the briefs on behalf of the State, such counsel shall have the full time allowed his side after his appointment and service upon him of the opposing brief.

(g) Briefs in Reserved Cases. In cases reserved in the district court and certified to this court for decision, briefs shall be filed and served by the party holding the affirmative within twenty days after the papers are filed in this court, and by the other party within twenty days thereafter.

(h) Briefs in Original Cases. In all cases originally begun in this court, not otherwise provided for as to briefs, the matter of requiring briefs and the time for filing the same shall be fixed by the court or a justice thereof.

(i) Briefs—Extension of Time. By consent of parties, or for good cause shown before the expiration of the time allowed, the court or a justice thereof may extend the time for filing briefs.

(j) Failure to File Briefs. When the party holding the affirmative has failed to file and serve his brief as required by these rules, the party holding the negative may have the case dismissed, or may submit it, with or without oral argument. When the party holding the negative has failed to file and serve his brief as is required by these rules, and the brief of the party holding the affirmative has been duly filed and served within the time required, the party holding the affirmative may submit the case, with or without oral argument, and the other party shall not be heard. A case may be placed on the term docket at any time for the purpose of enforcing this rule.

If in any case in this court, the appellant, or plaintiff, fails to file his briefs in said court within the time fixed by law or the rules of said court, the case may be dismissed on the ground of want of prosecution.

RULE 13. DECISIONS.

No cause shall be considered decided until the written opinion of the court is filed with the clerk.

RULE 14. APPLICATION FOR REHEARING.

(a) Rehearing. An application for rehearing of a case in this court shall be by petition to the court, signed by counsel, briefly stating the points wherein it is alleged that the court has erred. Such petition and four copies thereof shall be filed within thirty days after the decision is rendered and shall be accompanied by five copies of a brief covering the points and authorities upon which he relies. A copy of his petition and the brief shall within the time above specified be served upon the opposing party. There shall be no oral argument on petitions for rehearings unless argument is requested by the court.

(b) Suspension of Proceedings. The filing of the petition for rehearing within the time aforesaid shall suspend proceedings under the decision until the petition is disposed of unless the court or one of the justices thereof shall otherwise order.

(c) Hearing. When a rehearing is granted, the other party shall file with the court an answer and five copies of supporting brief and serve a copy of the answer and supporting brief on petitioner. The case shall thereupon stand for hearing and oral arguments will be permitted as in other cases.

RULE 15. MANDATE.

Upon the denial of a petition for rehearing, or if within thirty days after the decision no petition for rehearing is filed, a mandate shall issue to the court below, as the case may require, for execution therein.

RULE 16. HABEAS CORPUS AND PREROGATIVE WRITS.

In any application made to the court for a writ of habeas corpus, mandamus, quo warranto, or for any prerogative writ to be issued in the exercise of its original jurisdiction and for which an application might have been lawfully made to some other court in the first instance, the petition shall, in addition to the necessary matter requisite by the rules of law to support the application also set forth the circumstances which, in the opinion of the applicant, render it necessary or proper that the writ should issue originally from this court, and not from such other court, and the sufficiency or insufficiency of such circumstances so set forth in that behalf will be determined by the court in awarding or refusing the application. In case any court, justice, or other officer, or any board or other tribunal, in the discharge of duties of a public character, be named in the application as defendant, the petition shall also disclose the name or names of the real party or parties, if any, in interest, or whose interest would be directly affected by the proceedings; and in such case it shall be the duty of the applicant obtaining an order for any such writ to serve

or cause to be served upon such party or parties in interest a true copy of the petition and of the writ issued thereupon, and to file in the office of the clerk of this court evidence of such service.

RULE 17. WRITS OF PROHIBITION.

(a) Petition—Writ. Writs of prohibition in this court shall be applied for upon petition, duly verified in manner required for the verification of petitions in other cases; such petition shall state in concise form the grounds upon which the application is made and shall be presented to this court, or a justice thereof. If the cause shown appears to this court, or a justice, to be sufficient, a writ shall thereupon issue, which shall command the court or judge thereof, and the party in whose favor the proceedings to be restrained were taken or are about to be taken, to desist and refrain from further proceedings in the action or matter specified therein until the next regular term of this court, or the further order of the court thereon, and to show cause at the next term of this court why they should not be absolutely restrained from any further proceedings in such action or matter.

(b) Answer—Service. The court or justice shall in said writ designate the answer day and direct the manner of service thereof; provided, however, the day fixed for the answer of the court or judge thereof and party to whom it is directed shall not be less than twenty days after service shall be made; and provided, further, such service shall be by copy of the writ.

(c) Answer by Judge. To the writ issued in accordance with this rule, an answer shall be made by the court or judge thereof; provided, however, in lieu of such answer the court or judge thereof may by demurrer or motion question the sufficiency of the petition filed, subject to the rules of pleading governing other proceedings under the civil code.

(d) Contents of Answer. If the party in whose favor the proceedings were taken, or are about to be taken, shall by an instrument in writing, to be signed by him or his attorney, and annexed to such answer or other pleading, adopt the same answer or pleading and rely upon the matters therein contained as sufficient cause why such court or judge thereof should not be restrained as mentioned in said writ, such party shall thenceforth be deemed a defendant in such proceedings; and the person prosecuting such writ may take issue by reply or demurrer to the matters so relied upon by such defendant, or set up in the answer of the court or judge thereof.

(e) Hearings. Upon the filing of the answer of the court or judge thereof, this court shall set a day for the hearing of the application for a writ of absolute prohibition, and also fix a day for pleading to such answer, if such pleading is not already filed. Upon such hearing all parties may introduce such evidence, by affidavits, original files of the trial court or otherwise, as they may desire or as may be required by this court.

(f) Finding of Court. This court, after hearing the proofs, and allegations of the parties, shall render judgment, either that a writ of prohibition absolute restraining the court or judge and party from proceeding in such action or matter do issue, or that such writ be denied, and may make and enforce such order in relation to costs and charges as may be deemed just.

RULE 18. FAILURE TO FILE PAPERS IN TIME.

An appeal pending in this court shall be subject to dismissal if there has been a failure to make prescribed filings within the time allowed.

RULE 19. PETITION FOR REINSTATEMENT.

An application for reinstatement of a case in this court, after dismissal thereof, shall be by petition to the court, signed by counsel, stating the reasons therefor, and supported by such showing, in writing, as may be necessary. Such petition and four copies thereof shall be filed within thirty days after the order of dismissal has been made, and shall be accompanied by five copies of a brief containing the points and authorities upon which petitioner relies. A copy of such petition, as well as of the brief, shall also within the time above specified be served on the counsel for the opposing party who may have appeared in this court in the case. Counsel for such opposing party shall have thirty days after such service within which to file with the court his objections to such petition together with five copies of a brief covering the points and authorities upon which he relies and serve upon counsel for the petitioner a copy of said objections and brief. There shall be no oral argument on such petition and the objections thereto, unless requested by the court.

RULE 20. FILINGS.

Papers and documents delivered to the clerk via mail or express Monday forenoon shall be considered filed as of the previous Saturday.

RULE 21. ADMISSION OF ATTORNEYS TO THE WYOMING STATE BAR.

(a) Application for Admission—General Provisions. All applications for admission to the Wyoming State Bar shall be made to this court. An application shall be verified by the oath of the applicant and shall state:

(1) In all cases the following particulars:

a. The full name of the applicant, place and date of birth, and, if foreign born, the facts showing that he is a citizen of the United States.

b. Places and periods of residence and occupation during the last preceding five years.

c. Names and addresses of five persons acquainted with the applicant during said period. If the applicant applies for admission as a member of the bar of another state or territory, said

references or a majority of them shall preferably be judges, or members of the bar of such state or territory.

(2) In cases where an applicant applies for admission on the ground of having been permitted to practice in the highest court of some other state or territory, the following additional particulars:

a. The places and periods of practice in such other state or territory.

b. If the applicant has been regularly admitted in more than one state or territory, the dates and periods of such admissions and practice.

(3) In cases where an applicant applies for admission upon examination, the following additional particulars:

a. General educational advantages exclusive of legal studies.

b. Details of periods and places of legal studies.

c. The works read in the course of such legal studies.

d. Place at which examination is preferred, and if at some place other than the capital, the reasons therefor.

(b) Applications Referred to Board. The clerk shall promptly advise the justices of the filing of each application and shall within ten days forward same together with all papers filed therewith to the secretary of the State Board of Law Examiners, herein designated as the board, who shall promptly inform each member of the board.

(c) Requirements. Every applicant for admission to the Wyoming State Bar must have been an actual bona fide resident of this State for a period of not less than six months before the application for admission will be considered, and all applicants shall file with their applications the certificates of two members of the Wyoming State Bar and a certificate of a judge of a court of record of this State. Such certificates shall set forth the maker's acquaintance with the applicant, the facts and circumstances of such acquaintance and contain a positive and unqualified statement that the applicant is of good moral character, that the applicant has an adequate knowledge of the standards and ideals of the profession and is a worthy, fit and proper person to perform and accept the obligations and responsibilities of a member of the Wyoming State Bar. The board shall in each case give consideration to such certificates, shall make independent inquiry and investigation as to applicant's moral character and fitness to be a member of the Wyoming State Bar and shall thereafter report to this court the results of its findings, together with its recommendation. The court may on its own motion make such further inquiry and investigation as is deemed proper.

(d) Attorneys Admitted to Practice Elsewhere—Additional Requirements. An applicant for admission to the Wyoming State Bar who has been admitted to practice as an attorney in the highest court of another state or territory shall, in addition to other requirements of these rules, file with his application (1) the certificate or license showing such

admission (or certified copy of the record of admission under the seal of the court), and (2) a certificate by a judge of a court of record of such other state or territory stating the applicant is of good standing in the courts of such other state or territory and has been actively engaged in the practice of law in such other state for at least five of the eight years preceding the date of application. The board shall in each case give consideration to such certificates, shall make independent inquiry and investigation as to applicant's qualifications, standing and fitness and shall thereafter report to this court the results of its findings together with its recommendation. The court may on its own motion make such further inquiry and investigation as is deemed proper.

(e) Qualifications of Applicant for Examination. The board shall, before admitting an applicant to an examination, be satisfied that he possesses the qualifications as to the periods of study prescribed by law; and the following information shall be submitted by an applicant:

(1) The time of study in a law school, or under the supervision thereof, by the certificate of the president, dean or secretary of the faculty under whose instruction the person has studied, under the seal of the school, if such there be.

(2) The time of study in the office of a member of the Wyoming State Bar or a judge of this State by a certificate of such member of the Wyoming State Bar or judge, showing the actual period of such study.

Attendance at a law school during a school year of not less than eight months in a year shall be deemed a year's attendance in a law school; and in computing the period of study in an office, a vacation actually taken, not exceeding three months in each year, shall be allowed as part of each year.

(f) Members of the Wyoming State Bar to Aid in Investigations. It shall be the duty of every member of the Wyoming State Bar to actively aid the court and the board in all investigations concerning the character and standing of applicants and to communicate to the board any information of a material nature known to them affecting such character and standing. Such information shall be deemed to be confidential.

(g) Board May Prescribe Rules. The board may prescribe rules for the consideration of applications and the conduct of examinations, not inconsistent with the statutes or rules of court, and shall require each applicant examined to make a statement under oath to the effect that he had no information or knowledge in advance as to what questions would be submitted to him and received no information or advice during the examination from any person or by reference to book or memorandum.

(h) Report of Examinations. As soon as practicable after each examination, the board shall report to the court all their proceedings in connection with such examination, with their conclusions and recommendations in the premises. If requested by the court or the applicant, the questions and replies, or a copy thereof, shall be filed with the report.

(i) Applications for Withdrawal. Any person having been admitted to the Wyoming State Bar who desires to withdraw therefrom shall file a written application with this court praying termination of his status as a member of the Wyoming State Bar; such application shall be referred to the board which shall return same with its recommendations to this court; and such order may be then entered thereon as to the court seems proper.

RULE 22. PROCEEDINGS FOR THE SUSPENSION, REVOCATION OF LICENSE AND DISBARMENT OF ATTORNEYS AT LAW.

(a) Definitions. In this rule "district court" shall mean the district court of a county wherein a formal complaint against an attorney at law is filed and "clerk of court" shall mean the clerk of the district court in which such complaint has been filed.

(b) Designation of Parties. In all proceedings governed by these rules the board shall be known as complainant and the accused attorney as respondent.

(c) Complaints. Complaint of unprofessional conduct of any attorney shall be filed with the secretary of the board, who shall immediately, after receiving such complaint, notify each member of the board of the substance thereof. At a meeting of the board held after the filing of the complaint, the board shall make preliminary investigation of the charges; and if it believes probable cause exists for the complaint, a formal accusation or complaint shall be ordered drawn and served upon the accused attorney. Such formal complaint shall state the acts or omissions of the accused attorney, with sufficient particularity to advise him of the charges against him; and if more than one transaction is complained of, the charges shall be separately stated and numbered in the formal complaint.

All formal complaints shall, when requested by the board, be prepared by the Attorney General or the county and prosecuting attorney of the county in which the complaint is filed; and a copy of the complaint shall be delivered to the judge of the court having jurisdiction of the proceeding by the secretary of the board.

Formal complaints shall be signed on behalf of the board by the president and attested by the secretary and may be in substantially the following form:

IN THE DISTRICT COURT OF THE COUNTY OF

STATE OF WYOMING

STATE BOARD OF LAW EXAMINER,
Complainant,

vs. COMPLIANT

---,
Respondent.

Comes now the State Board of Law Examiners and respectfully makes

and presents this accusation and complaint against_____, the above named respondent.

1. That the respondent is, and at all times herein mentioned continuously has been, an attorney at law duly admitted to practice before all the courts of the State of Wyoming.

2. That the respondent is hereby accused of unprofessional conduct constituting legal cause for his suspension, revocation of his license, disbarment or subjection to such other discipline as the court may deem proper, upon the following facts, which facts are hereby made the basis of this accusation, to-wit:

(Here set forth charges separately.)

WHEREFORE, the complainant prays that a hearing be had upon this complaint and if upon investigation thereof he be found guilty of the matters herein charged, that he be dealt with as the law directs.

STATE BOARD OF LAW EXAMINERS

By_____

President

Attest:

_____

Secretary

(d) Notice of Filing Complaints. A copy of the complaint and a notice to appear before the district court and answer the complaint shall be served upon the accused attorney by the sheriff of the county in which the complaint is filed, and the sheriff shall make return of service as and within the time provided for service of summons in civil actions.

The notice shall require the accused attorney to answer the complaint and file his answer with three copies thereof with the clerk of the district court wherein the complaint is filed and shall also sate the date of hearing on the complaint. If personal service of the notice and copy of complaint is had within the county where the complaint is filed, the answer of the accused attorney must be filed on or before twenty days after the date of service and the hearing on the complaint shall be had on the third Monday after the time for filing the answer at the hour of 10 a.m.; but if, for any reason, personal service cannot be had upon the accused attorney in the county wherein the complaint is filed—of which fact the return of the sheriff shall be sufficient proof—service of the notice and copy of the complaint shall be had by the secretary of the board mailing the accused attorney the notice and a copy of the complaint by registered mail directed to him at his last place of residence known to the secretary; and in such case the answer day shall be thirty days after the date of mailing the notice and copy of the complaint; and the hearing on the complaint shall be on the third Monday after the time for filing the answer; provided, however, the district court, or a judge thereof, may fix a different time for the hearing. Proof of mailing the notice shall be by affidavit of the secretary of the board, filed with the clerk of court in which the complaint is filed.

The notice referred to in this rule shall be signed on behalf of the board by the president and attested by the secretary and shall be in substantially the following form:

IN THE DISTRICT COURT OF THE COUNTY OF

_____

STATE OF WYOMING

STATE BOARD OF LAW EXAMINERS,
Complainant,
vs. NOTICE
_____,
Respondent.

To _____, Attorney at Law.

You are hereby notified that a complaint against you has been filed by the above named complainant, a copy of which is attached hereto and served herewith.

You are further notified to answer said complaint on or before twenty days from the date of service of this notice upon you and to file your answer, together with three copies thereof, with the clerk of the above entitled court, and said complaint will be heard before the above entitled court on the third Monday after the time for filing your answer, at the hour of 10 a.m., unless the court or a judge thereof shall fix a different date, and you may then and there appear and be heard.

(Should service be made by mailing, the notice should require the accused to answer the complaint "on or before thirty days after the _____day of _____, 19_____" [the date of mailing notice].)

In case of your default in answering said complaint, or appearing at the above time and place, the complaint will be heard and such further proceedings be had as the law and the facts shall warrant.

Dated this _____day of _____, 19_____.

STATE BOARD OF EXAMINERS

By_____
President

Attest:

_____
Secretary

(e) Plea of the Accused Attorney. The accused attorney may demur to or answer the complaint. If he demurs, the district court shall determine the demurrer; and if it is overruled, he may answer within such time as may be fixed by the court. Amendments to complaint or answer may be made in the discretion of the district court.

The accused attorney shall file three copies of all pleadings filed by him and immediately upon the filing of the same the clerk of court shall deliver a copy to the presiding judge of the court wherein the complaint is filed, a copy to the secretary of the board, and a copy to the attorney for the board whose name appears on the complaint.

(f) Evidence. Evidence may be taken as in civil actions.

Depositions may be taken either within or without the State in the same manner, with the same notice and before the same officers as depositions in civil actions are taken. All depositions shall be transmitted to and filed with the clerk of the court wherein the proceedings are pending.

(g) Trial. Trial of the accused attorney shall be conducted in the manner prescribed by statute.

Should the accused attorney fail to answer or demur to the complaint, or shall admit the allegations of the complaint, the three-judge court designated to hear the complaint may at any time thereafter without notice to the accused attorney hear the evidence and make recommendations to this court as may be proper.

(h) Preparation and Filing of Record. In all proceedings for the suspension, revocation of license, disbarment or other punishment of an attorney of the Wyoming State Bar, the clerk of the district court wherein the hearing was had shall prepare a record consisting of the pleadings, evidence, findings and recommendations of the presiding judges at such hearing, certify to the correctness of the same, and file the record with the clerk of this court, for which no docket fee shall be collected.

(i) Notice to Accused Attorney. Upon the filing of the record, the clerk of this court shall immediately notify the accused attorney by notice in writing, mailed to him at his last known address, of the filing of the record and shall also mail him a copy of the findings and recommendations of the judges presiding at the hearing.

(j) Filing of Objections and Briefs. Within thirty days after the mailing of the notice, the accused attorney may file with the clerk of this court five copies of his objections to the findings and recommendations of the judges presiding at the hearing; and such objections shall be accompanied by five copies of his brief, containing arguments and citations of authorities. The accused attorney shall also, within said thirty day period, serve a copy of the brief and a copy of the objections upon the attorney who prosecuted for the board or upon the secretary of the board, if no attorney represented it. The board shall then have twenty days in which to file five copies of an answer brief and to serve upon the accused attorney, or his attorney, a copy thereof. At the expiration of the time for filing briefs, the proceeding shall be considered upon the record the same as cases upon appeal.

(k) Failure to File Objections and Briefs. Should the accused attorney fail to file objections and brief as above provided, the case may be considered by the court and its final order entered without further notice to either party to the proceeding.

(l) Proceedings in This Court. All procedure in this court on matters relating to suspension, revocation of license and disbarment of attorneys at law shall be governed by the rules applicable in civil cases.

NOTE: These rules shall be in force and effect on December 1, 1957, and shall then supersede the rules of this court theretofore in force.