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 and in all special statutory proceedings except as provided in Rule 81. They shall be construed to secure the just, speedy and inexpensive determination of every action.

(Amended December 21, 1965, effective March 21, 1966; amended October 21, 1970, effective February 11, 1971.)

Rule 2. One form of action.

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

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 the defendant or on a co-defendant who is a joint contractor or otherwise united in interest with the defendant, within 60 days after the filing of the complaint. If such service is not made within 60 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, acknowledgment or appearance is made. When service is made by publication, the action shall be deemed commenced on the date of the first publication.

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 the defendant

that in case of he defendant's failure to do so judgment by default will be rendered against the defendant 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 the undersheriff or deputy, or, at the request of the party causing same to be issued, by any other person of the age of majority, 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 the undersheriff or deputy, or by a United States marshal, or the deputy, or any other person of the age of majority, not a party to the action, appointed for such purpose by the clerk;

(3) In a foreign country, by any citizen of the United States of the age of majority appointed for such purpose by the clerk;

(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 a person under 14 years of age or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally, or by leaving copies thereof at

the individual's dwelling house or usual place of abode with some person over the age of 14 years then residing therein, or at the defendant's usual place of business with an employee of the defendant then in charge of such place of business, or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process;

(2) Upon a person under 14 years of age or an incompetent person, by serving the same upon the guardian or, if no guardian has been appointed in this state, then upon the person having 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 or certified mail and marked "restricted delivery" 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 the defendant's 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 the defendant's 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 nonresident of this state, or the defendant's place of residence cannot be ascertained, 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 the defendant from any interest therein, and such defendant is a nonresident 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 statute, 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 personal representatives, conservators, 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 nonresident of the state, or the defendant's place of residence cannot be ascertained;

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

(7) When an appellee has no attorney of record in this state, and is a nonresident of, and absent from the same, or has left the same to avoid the service of notice or process, or the appellee keeps concealed so that notice or process cannot be served;

(8) In an action or proceeding under Rule 60 hereof, to modify or vacate a judgment after term of court, or to impeach a judgment or order for fraud, or to obtain an order of satisfaction thereof, when a defendant is a nonresident of the state or the defendant's residence cannot be ascertained;

(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 nonresident of the state, or the defendant's residence cannot be ascertained, or the defendant keeps concealed in order to avoid service of process;

(10) In actions for adoption or for the termination of parental rights.

(11) 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 nonresidents of the state or the defendant's residence or their residence cannot be ascertained.

(f) Requirements for service by publication. -- Before service by publication can be made, an affidavit of the party, or the

party's 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 the defendant's address, if known, or that the defendant's address is unknown and cannot with reasonable diligence be ascertained, detailing the efforts made to obtain an address, 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 or certified mail and marked "restricted delivery" with return receipt requested, directed to the defendant's 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 the defendant by the clerk, the party who makes the service, or the party's 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 the affiant, or if unknown, that the affiant has been unable to ascertain the same with the exercise of reasonable diligence, detailing the efforts

made to obtain an address. 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 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 the person's name and address are unknown to the party making service,

proceedings against the person may be had by designating the person 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 the publisher's usual charge for a similar notice, to insert the same in the publisher's 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 or certified mail. -- In all cases where service by publication can be made under these rules, or where a statute

permits service outside this state, 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 or Certified Mail. -- Upon the request of any party the clerk shall send by registered or certified mail a copy of the complaint and summons addressed to the party to be served at the address given in the affidavit required under subdivision (f) of this rule. The mail shall be sent marked "Restricted Delivery", requesting a return receipt signed by the addressee or the addressee's agent who has been specifically authorized in writing by a form acceptable to, and deposited with, the postal authorities. When such return receipt is received signed by the addressee or the addressee's agent 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 a 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 the special deputy's affidavit containing such statement;

(ii) If by any other person, by the person's affidavit thereof with a statement as to date, place and manner of service;

(iii) If by registered or certified mail, by the certificate of the clerk showing the date of the mailing and the date the clerk 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.

(Amended November 7, 1960, effective March 21, 1961; amended October 21, 1970, effective February 11, 1971; amended July 15, 1975, effective November 13, 1975.)

Rule 5. Service and filing of pleadings and other papers.

(a) Service; when required.

(1) Except as otherwise provided in these rules, 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 paper relating to discovery required to be served upon a party unless the court otherwise orders, every

written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. 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.

(2) In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(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 is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by transmitting it to the attorney or party at the attorney's or party's last known address by mail or by other equally reliable means, including facsimile transmission, or, if no address is known, by leaving it with the clerk of the court.

Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, 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 the person's dwelling house or usual place of abode with a person over the age of 14 years then residing therein. Service by mail or transmission by other equally reliable means is complete upon mailing or dispatch; provided, however, transmission by facsimile must be received by 5:00 p.m. of the date of transmission, otherwise service is not complete until the next business day.

(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, together with a certificate of service, shall be filed with the court either before service or within a reasonable time thereafter. Depositions and exhibits thereto, interrogatories and answers thereto, and requests for production and requests for admission and responses thereto shall be served upon counsel, or upon parties if appearing pro se, but shall not be filed with the court except as otherwise provided by this rule. If relief is sought under Rules 26 or 37, or if consideration of discovery papers is necessary with respect to a proceeding before the court under Rule 56 or otherwise, a party may file relevant portions of such papers. A notice of discovery proceedings may be filed concurrently with service of discovery papers to demonstrate substantial and bona fide action of record to avoid dismissal for lack of prosecution.

(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 the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Papers may be filed by facsimile transmission if facsimile equipment is available to the clerk and prior telephonic approval has been obtained from the clerk's office. Any document filed by facsimile transmission must be followed by a signed or otherwise duly executed original mailed within 24 hours of the facsimile transmission. The clerk upon

receiving the original shall note its date of actual delivery, and shall maintain both the facsimile and the original in the court file. The clerk shall not refuse to accept for filing any instrument presented for that purpose solely because the instrument is not timely presented or in proper form as required by these rules.

(Amended July 13, 1964, effective October 11, 1964; amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981.)

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 statutes, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday"

includes any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the governor.

(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 50(b) and (c)(2), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them. Provided, however, a motion served before the expiration of the time limitations set forth by these rules for an extension of time of not more than 15 days within which to answer or move to dismiss the complaint, or answer, respond or object to discovery under Rules 33, 34, and 36, if accompanied by a statement setting forth (1) the specific reasons for the request, (2) that the motion is timely filed, (3) that the extension will not conflict with any scheduling or other order of the court and (4) that there has been no prior extension of time granted with respect to the matter in question, may be granted once by the clerk of court, ex parte and

routinely, subject to the right of the opposing party to move to set aside the order so extending time. Motions for further extensions of time with respect to matters extended by the clerk shall be presented to the court, or a commissioner thereof, for determination.

(c) Motions and motion practice. --

(1) Unless these rules or an order of the court establish time limitations other than those contained herein, all motions, except (A) motions for enlargement of time, (B) motions made during hearing or trial, (C) motions which may be heard ex parte, and (D) motions described in subdivisions (3) and (4) below, together with supporting affidavits, if any, shall be served at least 10 days before the hearing on the motion. Except as otherwise provided in Rule 59(c), or unless the court by order permits service at some other time, a party affected by the motion shall serve a response, together with affidavits, if any, at least three days prior to the hearing on the motion or within 20 days after service of the motion, whichever is earlier. Unless the court by order permits service at some other time, the moving party may serve a reply, if any, at least one day prior to the hearing on the motion or within 15 days after service of the response, whichever is earlier. Unless the court otherwise orders, any party may serve supplemental memoranda or rebuttal affidavits

at least one day prior to the hearing on the motion.

(2) Absent a request for hearing by a moving party or any party affected by the motion made within 10 days of filing of the motion, the court may, in its discretion, determine the motion without a hearing. A motion not determined within 90 days after filing shall be deemed denied. A party whose motion has been deemed denied shall have 10 days after the effective date of such denial to serve such pleadings or other papers, if any, as may be required or permitted.

(3) A party moving for a protective order under Rule 26(c) or to compel discovery under Rule 37(a) may request an immediate hearing thereon. An immediate hearing may be held if the court finds that a delay in determining the motion will cause undue prejudice, expense or inconvenience.

(4) A motion relating to the exclusion of evidence may be filed at any time. Absent a request for hearing by a moving party or any party affected by the motion, the court may, in its discretion, determine the motion without a hearing.

(d) 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 the party, and the notice or paper is served upon the party by mail or by delivery to the clerk for service, three days shall be added to the prescribed period, provided however, this rule shall not apply to service of process by registered or certified mail under Rule 4(l)(2).

(Amended July 13, 1964, effective October 11, 1964; amended December 21, 1965, effective March 21, 1966; amended July 12, 1971, effective November 18, 1971; amended March 24, 1987, effective June 16, 1987.)

III. PLEADINGS AND MOTIONS

Rule 7. Pleadings allowed; form of motions.

(a) Pleadings. -- There shall be a complaint and an answer; 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 a person who was not an original party is summoned under the provisions of Rule 14; and 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 have a title which identifies the party serving the paper and briefly describes its contents, 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. All motions filed pursuant to Rules 12 and 56 shall, and all other motions may, contain or be accompanied by a memorandum of points and authority.

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

(c) Demurrers, pleas, etc., abolished. -- Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

(Amended July 13, 1964, effective October 11, 1964.)

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 grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses; form of denials. -- A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party 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, the pleader 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 pleader may make denials as specific denials of designated averments or paragraphs or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to

controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader 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 the party 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.

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, except to the extent required to show the jurisdiction of the court. 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, the party desiring to raise the issue 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.

(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.

(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) 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 and the name of the municipality which adopted the same.

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, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address and telephone number shall be stated and who shall be a member of the Wyoming State Bar. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be

verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(b) Verification. -- When a verification is required, it shall be by affidavit of a party, or the party's 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.

(Amended January 29, 1987; effective April 21, 1987.)

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 an answer within 20 days after the service of the summons and complaint upon that defendant, 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 that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a 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 a party under Rule 19. 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, the adverse party 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, the party may move for a more definite statement before interposing a 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 the party 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 in motion. -- A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or preservation of certain defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if

omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) 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.

(Amended October 21, 1970, effective February 11, 1971.)

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, but the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this rule.

(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 a 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, the pleader 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) Joinder of additional parties. -- Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) Separate trials; separate judgments. -- If the court orders separate trials as provided in Rule 42(b), judgment on a

counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

(Amended October 21, 1970, effective February 11, 1971.)

Rule 14. Third-party practice.

(a) When defendant may bring in third-party. -- At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third party-plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any 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 any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. 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 the third-party defendant 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, the plaintiff may cause a third-party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(Amended July 13, 1964, effective October 11, 1964; amended October 21, 1970, effective February 11, 1971.)

Rule 15. Amended and supplemental pleadings.

(a) Amendments. -- A party may amend the party's 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, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's 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 the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(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. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party to be brought in by amendment, that party (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(d) Supplemental pleadings. -- Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party 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. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental

pleading, it shall so order, specifying the time therefor.

(Amended July 13, 1964, effective October 11, 1964.)

Rule 16. Pretrial conferences; scheduling; management.

(a) Pretrial conferences; objectives. -- In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as:

(1) Expediting the disposition of the action;

(2) Establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) Discouraging wasteful pretrial activities;

(4) Improving the quality of the trial through more thorough preparation; and

(5) Facilitating the settlement of the case.

(b) Scheduling and planning. -- The judge, or a court commissioner when authorized by uniform district court rule, may,

after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail or other suitable means, enter a scheduling order that limits the time:

(1) To join other parties and to amend the pleadings;

(2) To file and hear motions; and

(3) To complete discovery.

The scheduling order also may include:

(4) The date or dates for conferences before trial, a final pretrial conference, and trial;

(5) The extent of discovery to be permitted; and

(6) Any other matters appropriate in the circumstances of the case.

A schedule shall not be modified except by leave of the judge or a court commissioner upon a showing of good cause.

(c) Subjects to be discussed at pretrial conferences. -- The

participants at any conference under this rule may consider and take action with respect to:

(1) The forumlation and simplification of the issues, including the elimination of frivolous claims or defenses;

(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, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) The avoidance of unnecessary proof and of cumulative evidence;

(5) The identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(6) The advisability of referring matters to a court commissioner or master;

(7) The possibility of settlement or the use of extrajudicial procedures to resolve the dispute;

(8) The form and substance of the pretrial order;

(9) The disposition of pending motions;

(10) The need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

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

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

(d) Final pretrial conference. -- Any final pretrial conference shall be held as close to the time of trial as reasonable under the cirucumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the

trial for each of the parties and by any unrepresented parties.

(e) Pretrial orders. -- After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modififed by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) Sanctions. -- If a party or a party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to pariticpate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

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. An executor, administrator, guardian, bailee, 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 that person's own name without joining the party for whose benefit the action is brought; 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. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(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) Minors or incompetent persons. -- Whenever a minor or an incompetent person has a representative, such as a guardian,

conservator, or other like fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. If a minor or an incompetent person does not have a duly appointed representative, or such representative fails to act, the minor or the incompetent person may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for a minor or an incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or the incompetent person.

(d) Suing person by fictitious name. -- When the identity of a defendant is unknown, 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 the complaint that the plaintiff 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.

(Amended October 21, 1970, effective February 11, 1971.)

Rule 18. Joinder of claims and remedies.

(a) Joinder of claims. -- A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as

many claims, legal or equitable, as the party has against an opposing party.

(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 that plaintiff, without first having obtained a judgment establishing the claim for money.

(Amended October 21, 1970, effective February 11, 1971.)

Rule 19. Joinder of persons needed for just adjudication.

(a) Persons to be joined if feasible. -- A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or

(ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) Determination by court whenever joinder not feasible. -- If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading reasons for nonjoinder. -- A pleading asserting

a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of class actions. -- This rule is subject to the provisions of Rule 23.

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 in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons 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 in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants 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 the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

(Amended October 21, 1970, effective February 11, 1971.)

Rule 21. Misjoinder and nonjoinder 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 the plaintiff 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.

Rule 23. Class actions.

(a) Prerequisites to a class action. -- One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class actions maintainable. -- An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of

(A) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of

conduct for the party opposing the class, or

(B) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or

undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b) (3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an

appearance through counsel.

(3) The judgment in an action maintained as a class action under subdivision (b) (1) or (b) (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b) (3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c) (2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in conduct of actions. -- In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the

action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or compromise. -- A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(Amended October 21, 1970, effective February 11, 1971.)

Rule 23.1. Derivative actions by shareholders.

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint

shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

(Added October 21, 1970, effective February 11, 1971.)

Rule 23.2. Actions relating to unincorporated associations.

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the

action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

(Added October 21, 1970, effective February 11, 1971.)

Rule 24. Intervention; notification of claim of unconstitutionality.

(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 applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(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 the parties as provided in Rule 5. 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. The same procedure shall be followed when a statute gives a right to intervene.

(d) Constitutionality of state statute. -- When the constitutionality of a Wyoming statute is drawn in question in any action to which the state or an officer, agency, or employee thereof is not a party, the party raising the constitutional issue shall serve the attorney general with a copy of the pleading or motion raising the issue.

(Amended July 13, 1964, effective October 11, 1964; amended October 21, 1970, effective February 11, 1971.)

Rule 25. Substitution of parties.

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased 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. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(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 the party's 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.

(1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A public officer who sues or is sued in an

official capacity may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.

(e) Substitution at any stage. -- Substitution of parties under the provisions of this rule may be made, either before or after judgment, by the court then having jurisdiction.

(Amended October 11, 1963, effective January 9, 1964; amended July 13, 1964, effective October 11, 1964.)

V. DEPOSITIONS AND DISCOVERY

Rule 26. General provisions governing discovery.

(a) Discovery methods. -- Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Limitations on discovery. --

(1) Discovery by the methods of despositions upon oral examination or written questions, and upon written

interrogatories is limited to the following:

(a) Any party may take the deposition of any other party, the deposition of one expert witness and three other depositions upon oral examination.

(b) Any party may take three depositions upon written questions, in addition to the depositions taken upon oral examination.

(c) Any party may address not more than 30 interrogatories in the aggregate to any other party, and each subpart of any interrogatory shall be counted as a separate interrogatory.

(2) The court in any lawsuit may for good cause shown revoke or amend the limitation provided by the foregoing subsection (1) or any separate subcategory thereof.

(3) Subject to these limitations or that be provided or ordered by the court pursuant to subdivisions (c) and (d) of this rule, the frequency or extent of use of the methods of discovery is not limited.

(c) Discovery scope and limits. -- Unless otherwise limited by

order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. -- Parties may obtain discovery 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 party seeking discovery 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 any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision (a) may be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive,

taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(2) Insurance Agreements. -- A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement;

(3) Trial Preparation: Materials. -- Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's

attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim

recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts. -- Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or

specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35 (b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(d) Protective orders.

(1) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the jurisdiction where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

(2) Unless otherwise ordered, a party may not file

a motion for a protective order unless prior to such filing counsel for the moving party has conferred, in person, by telephone, or by written communication, or has made reasonable efforts to confer, with opposing counsel concerning the matters in dispute. With any such motion, counsel for the moving party shall file a certificate of compliance with this rule stating the substance of the conference.

(3) If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37 (a) (4) apply to the award of expenses incurred in relation to the motion.

(4) Pending resolution of any motion under Rule 26(c) or Rule 30(d), neither the objecting party, witness, nor any attorney is required to appear at a deposition to which the motion is directed until the motion is ruled upon. The filing of a motion under either of these rules shall stay the discovery at which the motion is directed pending further order of the court. Any motion for relief under Rule 26(c) directed to a deposition must be filed and served as soon as practicable after receipt of the discovery request, but

in no event less than three days prior to the scheduled depositions. Counsel seeking such relief shall request the court for a ruling or a hearing thereon promptly after the filing of such motion, so that discovery shall not be delayed in the event such motion is not well taken.

(e) Sequence and timing of discovery. -- Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(f) Supplementation of responses. -- A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person not theretofore identified expected to be called as an expert witness at trial, the subject matter on which the person is expected to

testify, and the substance of the person's testimony;

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment;

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) Discovery conference. -- At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any expansion or further limitations proposed to

be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the

court may combine the discovery conference with a pretrial conference authorized by Rule 16.

(g) Signing of discovery requests, responses, and objections. -- Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

(Amended July 13, 1964, effective October 11, 1964; amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981.)

Rule 27. Depositions before action or pending appeal.

(a) Before action.

(1) Petition. -- A person who desires to perpetuate testimony 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 the

petitioner's interest therein, (3) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it, (4) the names or a description of the persons the petitioner 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 the petitioner 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 32 (a).

(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 the party 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.

(Amended July 12, 1971, effective November 18, 1971.)

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 jurisdiction 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 administer oaths and take testimony. The term "officer" as used in Rules 30, 31 and 32 includes a person appointed by the court or designated by the parties under Rule 29.

(b) In foreign countries. -- In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate.

It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (here name the country)". Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

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

(Amended July 13, 1964, effective October 11, 1964; amended November 6, 1980, effective January 28, 1981.)

Rule 29. Stipulations regarding discovery procedure.

Unless the court orders otherwise, the parties may by written stipulation (1) provide that 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, and (2) modify the procedures provided by these rules for other methods of discovery.

(Amended October 21, 1970, effective February 11, 1971.)

Rule 30. Depositions upon oral examination.

(a) When depositions may be taken. -- After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) Notice of examination: general requirements; special notice; nonstenographic recording; production of documents and things; deposition of organization; deposition by telephone.

(1) 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. 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 the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the State of Wyoming and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when the party was served with notice under this subdivision (b) (2) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at the party's own expense. Any objections under subdivision (c), any changes made by the witness, the witness' signature identifying the deposition as the witness' own or the statement of the officer that is required if the witness does not sign, as provided in subdivision (e), and the certification of the officer required by subdivision (f) shall be set forth in a writing to

accompany a deposition recorded by nonstenographic means.

Any deposition may be recorded by audio-visual means. Unless otherwise stipulated or ordered, a stenographic record shall be made simultaneously. An audio-visual deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used. The notice for taking an audio-visual deposition and the subpoena for attendance at that deposition shall state that the deposition will be recorded by audio-visual means.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set

forth, for each person designated, the matters on which he will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b) (6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone. For the purposes of this rule and Rules 28(a), 37(a)(1), 37(b)(1), and 45(d), a deposition taken by telephone is deemed to be taken at the place where the deponent is to answer questions propounded to the deponent.

(c) Examination and cross-examination; record of examination; oath; objections. -- Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Wyoming Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be

transcribed. 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 may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them 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 a 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 or the court in the jurisdiction where the deposition is being taken within the state 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 Rule 26(c). 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. The

provisions of Rule 37 (a) (4) apply to the award of expenses incurred in relation to the motion.

(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 the witness, 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 within 30 days of its submission to 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)(4) 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 delivery by officer; exhibits; copies; notice of delivery.

(1) The officer shall certify on the deposition that

the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the court, the officer 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 deliver it to the person initiating the deposition or as the parties otherwise agree. The officer shall notify all parties of the delivery.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and delivered with the deposition, pending final disposition

of the case.

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

(3) The person to whom the original deposition is delivered or any person having possession of an original deposition shall retain it and shall deliver it upon request to any party for filing with the court or for use at trial or hearing.

(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 reasonable expenses incurred by that party and that party's attorney in 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 the witness and the witness because of such failure does not attend, and if another party attends in person or by

attorney because that party 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 reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(Amended October 21, 1970, effective February 11, 1971; amended July 12, 1971, effective November 18, 1971; amended January 1, 1978; amended November 6, 1980, effective January 28, 1981; amended July 20, 1984, effective October 18, 1984.)

Rule 31. Depositions upon written questions.

(a) Serving questions; notice. -- After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the

person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to take responses and prepare record. -- A copy of the notice and copies of all questions 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 questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) Notice of filing. -- When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

(Amended October 21, 1970, effective February 11, 1971.)

Rule 32. Use of depositions in court proceedings.

(a) 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 applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any 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, or for any other purpose permitted by the Wyoming Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency 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: (A) that the witness is dead; or (B) that the witness is absent from the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application 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 the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state 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. A deposition previously taken may also be used as permitted by the Wyoming Rules of Evidence.

(b) Objections to admissibility. -- Subject to the provisions of Rule 28 (b) and subdivision (d)(3) of this rule, 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.

(c) [Abrogated.]

(d) Effect of errors and irregularities in depositions.

(1) 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.

(2) 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.

(3) As to Taking of Deposition.

(A) 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.

(B) 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.

(C) Objections to the form of written questions 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 questions and within five days after

service of the last questions authorized.

(4) 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.

(Amended October 21, 1970, effective February 11, 1971; amended August 26, 1977, effective January 1, 1978; amended November 6, 1980, effective January 28, 1981.)

Rule 33. Interrogatories to parties.

(a) Availability; procedures for use. -- Any party may serve upon any other 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 governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the

summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope; use at trial. -- Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery

has been completed or until a pretrial conference or other later time.

(c) Option to produce business records. -- Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answers may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(Amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981.)

Rule 34. Production of documents and things and entry upon land for inspection and other purposes.

(a) Scope. -- Any party may serve on any other party a request

(1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. -- The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a

written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons not parties. -- This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

(Amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981.)

Rule 35. Physical and mental examination of persons.

(a) Order for examination. -- When the mental or physical condition (including the blood group) of a party, or of 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 examination by a suitably licensed or certified examiner or to produce for examination the person in the party's 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 examiner.

(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 the requesting party a copy of a detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the

case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's 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 the party 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 the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.

(Amended October 21, 1970, effective February 11, 1971.)

Rule 36. Requests for admission.

(a) Request for admission. -- A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the

matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the

motion.

(b) Effect of admission. -- Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

(Amended October 21, 1970, effective February 11, 1971.)

Rule 37. Failure to make or cooperate in discovery; sanctions.

(a) Motion for order compelling discovery. -- Subject to subdivision (a)(5) of this rule, a party, upon reasonable notice to other parties and other persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. -- An application for an order to a party may be made to the court in which the

action is pending, or, on matters relating to a deposition to be taken within the state, to the court where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court where the deposition is being taken.

(2) Motion. -- If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. -- For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. -- If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part,

the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(5) A party shall not, without authorization by court order, file a motion to compel discovery unless prior to such filing counsel for the moving party has conferred, in person, by telephone, or by written communication, or has made reasonable efforts to confer, with opposing counsel concerning the matters in dispute. With any such motion, counsel for the moving party shall file a certificate of compliance with this rule stating the substance of the conference.

(b) Failure to comply with order.

(1) Sanctions by Court in Jurisdiction Where Deposition Is Taken. -- If a deponent fails to be sworn or to answer a question after being directed to do so by a court in the jurisdiction in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) Sanctions by Court in Which Action Is Pending. -- If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or

31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made 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;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) 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;

(D) In lieu of any of the foregoing

orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on failure to admit. -- If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of

the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. -- If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b) (6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses,

including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) Failure to participate in the framing of a discovery plan. -- If a party or his attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or his attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

(Amended November 7, 1960, effective March 21, 1961; amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981.)

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) Jury Fees. -- All demands for trial by jury shall be accompanied by a deposit of $50.00. The jury fees in cases where jury trials are demanded shall be paid to the clerk of the court, and paid by the clerk into the county treasury at the close of each month, and the clerk shall tax as costs in each such case, and in all other cases in which a jury trial is had, a jury fee of $50.00, to be recovered of the unsuccessful party, as other costs, and in case the party making such deposit is successful, that party shall recover such deposit from

the opposite party, as part of the costs in the case.

(c) Same; specification of issues. -- In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party 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 the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

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) when a party to the issue fails to appear at the trial, the parties appearing consent to trial by the court sitting without a jury.

(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.

Rule 40. Assignment of cases for trial or alternative dispute resolution.

(a) Trial calendar. -- The court shall place 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 court deems expedient. Precedence shall be given to actions entitled thereto by statute.

(b) Limited assignment for alternative dispute resolution. -- The court may, or at the request of all parties shall, assign the case to another active judge or to a retired judge, retired justice, or other qualified person on limited assignment for the purpose of invoking nonbinding alternative dispute resolution methods, including settlement conference and mediation. By agreement, the parties may select the person to conduct the settlement conference or to serve as the mediator. If the parties are unable to agree, they may advise the court of their recommendations, and the court shall then appoint a person to conduct the settlement conference or to serve as the mediator. A settlement conference or mediation may be conducted in accordance with procedures prescribed by the person conducting the settlement conference or mediation. A mediation also may be conducted in accordance with the following recommended rules of procedure:

(1) Prior to the session, the mediator may require confidential ex parte written submissions from each party. Those submissions should include each party's honest assessment of the strengths and weaknesses of the case with regard to liability, damages, and other relief, a history of all settlement offers and counteroffers in the case, an honest statement from plaintiff's counsel of

the minimum settlement authority that plaintiff's counsel has or is able to obtain, and an honest statement from defense counsel of the maximum settlement authority that defense counsel has or is able to obtain.

(2) Prior to the session, a commitment must be obtained from the parties that their representatives at the session have full and complete authority to represent them and to settle the case. If any party's representative lacks settlement authority, the session should not proceed. The mediator may also require the presence at the session of the parties themselves.

(3) The mediator may begin the session by stating the objective, which is to seek a workable resolution that is in the best interests of all involved and that is fair and acceptable to the parties. The parties should be infomred of statutory provisions governing mediation, including provisions relating to confidentiality, privilege, and immunity.

(4) Each party or attorney may then make an opening statement stating the party's case in its best light, the issues involved, supporting law, prospects for success, and the party's evaluation of the case.

(5) Each party or attorney may then respond to the other's presentation. From time to time, the parties and their attorneys may confer privately. The mediator may adjourn the session for short periods of time. After a full, open discusison, the mediator may summarize, identify the strong and weak points in each case, point out the risks of trial to each party, suggest a probable verdict or judgment range, and suggest a fair settlement of the case. This may be done in the presence of all parties or separately. If settlement results, it should promptly be reduced to a writing executed by the settling parties. The mediator may suggest to the parties such reasonable additions or requirements as may be appropriate or beneficial in a particular case.

(c) Registry of names. -- The clerk of the supreme court shall maintain a registry of the names of retired judges and justices and other qualified persons who are available to accept limited assignments of cases under this rule.

(d) Fees and costs. -- For those cases filed in court and assigned for settlement conference or mediation, the parties shall pay no additional fee or costs. A person other than an active judge conducting a settlement conference or serving as a mediator shall be compensated from available public funds for services performed in a particular case at a rate of not less than $50.00

per hour. The person to be compensated shall submit to the clerk of the supreme court a statement of fees for services rendered, together with the report required by subseciton (e).

Settlement conference or mediation is available under this rule to persons regardless of whether suit has been filed. For those cases not filed in court, but having been assigned and accepted for settlement conference or mediation, a filing fee of $15.00 shall be paid to the clerk of the supreme court. Compensation for services in these cases shall be arranged by agreement between the parties and the person conducting the settlement conference or serving as the mediator, and that person's statement shall be paid within 30 days of receipt by the parties.

(4) Report of disposition of cases. -- A report as to whether a settlement conference or mediation pursuant to this rule resulted in settlement shall be submitted by the person conducting the settlement conference or serving as the mediator to the clerk of the supreme court within 15 days of final disposition.

(f) Other forms of alternative dispute resolution. -- Nothing in this rule is intended to preclude the parties from agreeing to submit their dispute to other forms of alternative dispute resolution, including arbitration and summary jury trial.

Rule 40.1. Transfer of trial and change of judge.

(a) Transfer of trial.

(1) The court upon motion of any party made within 15 days after the last pleading is filed shall transfer the action to another county for trial if the court is satisfied that there exists within the county where the action is pending such prejudice against the party or the party's cause that the party cannot obtain a fair and impartial trial, or that the convenience of witnesses would be promoted thereby. All parties shall have an opportunity to be heard at the hearing on the motion and any party may urge objections to any county. If the motion is granted the court shall order that the action be transferred to the most convenient county to which the objections of the parties do not apply or are the least applicable, whether or not such county is specified in the motion. After the first motion has been ruled upon, no party may move for transfer without permission of the court.

(2) When a transfer is ordered the clerk shall transmit to the clerk of the court to which the action has been transferred all papers in the action or duplicates thereof. The party applying for the transfer shall within 10 days pay the costs of preparing and transmitting such papers and shall pay a docket fee to

the clerk of court of the county to which the action is transferred. The action shall continue in the county to which it is transferred as though it had been originally filed therein.

(3) The presiding judge may at any time upon the judge's own motion order a transfer of trial when it appears that the ends of justice would be promoted thereby.

(b) Change of judge.

(1) Peremptory Disqualification. -- A district judge may be peremptorily disqualified from acting in a case by the filing of a motion requesting that the judge be so disqualified. The motion designating the judge to be disqualified shall be filed by the plaintiff within five days after the complaint is filed; provided, that in multi-judge districts, the plaintiff must file the motion to disqualify judge within five days after the name of the assigned judge has been provided by a representative of the court to counsel for plaintiff by personal advice at the courthouse, telephone call, or a mailed notice. The motion shall be filed by a defendant at or before the time the first responsive pleading is filed by the defendant or within 30 days after service of the

complaint on the defendant, whichever first occurs. One made a party to an action subsequent to the filing of the first responsive pleading by a defendant cannot peremptorily disqualify a judge. In any matter, a party may exercise the peremptory disqualification only one time and against only one judge.

(2) Disqualification for Cause. -- Whenever the grounds for such motion become known, any party may move for a change of district judge on the ground that the presiding judge (A) has been engaged as counsel in the action prior to being appointed as judge, (B) is interested in the action, (C) is related by consanguinity to a party, (D) is a material witness in the action, or (E) is biased or prejudiced against the party or the party's counsel. The motion shall be supported by an affidavit or affidavits of any person or persons, stating sufficient facts to show the existence of such grounds. Prior to a hearing on the motion any party may file counter-affidavits. The motion shall be heard by the presiding judge, or at the discretion of the presiding judge by another judge. If the motion is granted, the presiding judge shall immediately call in another judge to try the action.

(3) Effect of Ruling. -- A ruling on a motion for a

change of district judge shall not be an appealable order, but the ruling shall be entered on the docket and made a part of the record and may be assigned as error in an appeal of the case.

(4) Motion by Judge. -- The presiding judge may at any time on the judge's own motion order a change of judge when it appears that the ends of justice would be promoted thereby.

(5) Probate Matters. -- In any controverted matter arising in a probate proceeding, a change of judge, or in cases where a jury is demandable, a transfer of trial, or both, may be had for any cause authorizing such change in a civil action. The procedure for such change shall be in accordance with this rule. Except for the determination of such controverted matter, the judge having original jurisdiction of such probate proceeding shall retain jurisdiction in all other matters in connection with said proceeding.

(Added July 12, 1971, effective November 18, 1971; amended February 11, 1975, effective June 5, 1975; amended January 25, 1982, effective May 1, 1982; amended March 10, 1983, effective June 13, 1983; amended August 9, 1984, effective October 31, 1984.)

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

the defendant 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; effect thereof.

(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 the defendant. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of evidence, the defendant, without waiving the 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. 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. The plaintiff shall be entitled to no special inference as a consequence of the defendant's motion, and the court may weigh the evidence and resolve conflicts. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52 (a). 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, for improper venue, or for failure to join a party under Rule 19, 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.

(See Rule 203, D. Ct.)

(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.

(Amended October 21, 1970, effective February 11, 1971.)

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, or when separate trials will be conducive to expedition and economy, 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, by statute, the Wyoming Rules of Evidence,

or other rules adopted by the Supreme Court of Wyoming.

(b), (c) [Abrogated].

(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.

(f) Interpreters. -- The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

(Amended October 21, 1970, effective February 11, 1971; amended August 26, 1977, effective January 1, 1978.)

Rule 44. [Abrogated].

Rule 44.1. Determination of foreign law.

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Wyoming Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

Rule 45. Subpoena.

(a) For attendance of witnesses; form; issuance. -- Every subpoena 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 a deputy sheriff, or by any other person who is not a party and is not a minor, at any place within the State of Wyoming. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to that person the statutory witness fees for one day's attendance and the mileage allowed by law. 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). The party subpoenaing any witness residing in a county other than that in which the action is pending shall pay to such witness, after the hearing or trial, the statutory per diem allowance for state employees for each day or part thereof necessarily spent by such witness in traveling to and from the court and in attendance at the hearing or trial.

(d) Subpoena for taking depositions; place of examination.

(1) Proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) constitutes a sufficient authorization for the issuance

by the clerk of the district court for the county in which the the action is pending of subpoenas for the persons named or described therein. Proof of service may be made by filing with the clerk of the district court for the county in which the action is pending a copy of the notice together with a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain 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 Rule 26(c) and subdivision (b) of this rule.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the

subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(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 that resident resides or is employed or regularly transacts 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 that nonresident is served with a subpoena or at such other convenient place as is fixed by an order of court.

(e) Contempt. -- Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

(Amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981.)

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 the party desires the court to take or the party's objection to the action of the court and the 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 the party.

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 jurors. -- The court may direct that not more than six jurors in addition to the regular jury 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 or are found to be 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 regular jurors. An alternate juror who does not replace a regular juror shall be

discharged when the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impanelled, two peremptory challenges if three or four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

(c) Peremptory challenges. -- Each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the making of challenges or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

Rule 48. Juries; majority verdict.

The parties may stipulate 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 the right to a trial by jury of the issue so omitted unless before the jury retires the party 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 notwithstanding the verdict.

(a) Motion for directed verdict; 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. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

(b) Motion for judgment notwithstanding the verdict. -- Whenever 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 the party's 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 the party's 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 notwithstanding 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 also rule on the motion for a new trial, if any, by determining whether it should be

granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial, and if 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 serve a motion for a new trial pursuant to Rule 59 not later than 10 days after entry of the judgment notwithstanding the verdict.

(d) Same; denial of motion. -- If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the appellate court reverses the

judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

(Amended July 13, 1964, effective October 11, 1964; amended December 21, 1965, effective March 21, 1966; amended April 12, 1978, effective August 1, 1978.)

Rule 51. Instructions to jury; objections.

(a) General instructions. -- At any time the court may give to the jury such general instructions as to the duties and functions of the court and jury, and the manner of conducting the trial, as it may deem desirable to assist the jury in performing its functions. Such instructions, exclusive of rulings which are recorded by the court reporter for inclusion in any record, shall be reduced to writing, numbered and delivered to the jury with the other instructions and shall be a part of the record in the case.

(b) Further instructions; objections. -- At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. Before the argument of the case to the jury has begun, the court shall give to the jury

such instructions on the law as may be necessary and the same shall be in writing, numbered and signed by the judge, and shall be taken by the jury when it retires. No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(Amended December 21, 1965, effective March 21, 1966; amended July 20, 1984, effective October 16, 1984.)

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 requests 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 on 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. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

(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.

(Amended December 21, 1965, effective March 21, 1966; amended April 12, 1978, effective August 1, 1978.)

Rule 53. Masters.

(a) Appointment and compensation. -- The court in which any action is pending may appoint a master therein. 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 the master's report as security for the master's 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 and of difficult computation of damages, 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 the master's powers and may direct the master 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 the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production before the master of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master 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 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 the Wyoming Rules of Evidence 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 the master's report. If a party fails to appear at the time and place appointed, the master may proceed ex parte, or in the master's 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, the witness 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, the master 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 the master directs.

(e) Report.

(1) Contents and Filing. -- The master shall prepare a report upon the matters submitted to the master by the

order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master 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. The master's findings upon the issues submitted

to the master 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 of Report. -- Before filing the master's report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

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 more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, 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 fewer than all the claims or the rights and liabilities of fewer 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 the party's 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.

(Amended October 11, 1963, effective January 9, 1964.)

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 the party's 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 the defendant has been defaulted for failure to appear and is not a minor or an 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 a minor or an incompetent person unless represented in the action by a guardian, guardian ad litem, trustee, conservator, or other such representative who has appeared therein. If the party against whom a judgment by default is sought has appeared in the action the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three 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).

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 the party's 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 the party's favor as to all or any part thereof.

(c) Motion and proceedings thereon. -- Unless the court otherwise orders, the motion and any response and other papers relating thereto shall be served pursuant to Rule 6(c). The judgment sought shall be rendered forthwith if the pleadings,

depositions, answers to interrogatories, 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 actually 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, answers to interrogatories, or 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 the adverse party's pleading, but the adverse party's 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 the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When affidavits are unavailable. -- Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's 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 the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(Amended July 13, 1964, effective October 11, 1964.)

Rule 57. Declaratory judgment.

The procedure for obtaining a declaratory judgment pursuant to statute 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) Presentation. -- Subject to the provisions of Rule 55(b) and unless otherwise ordered by the court, written judgments or orders shall be presented to the court within 20 days after its decision is made known. Before submitting the judgment or order, the party drafting it shall seek to secure the written approval as to form of the other parties. If, within five days, approval as to form is not obtained, the party drafting the form of judgment or

order may forward the original to the court and serve a copy on the other parties with a notice advising objections must be made within 10 days. If no written objection is timely filed, the court may sign the judgment or order. If objection is filed, the court will resolve the matter with or without a hearing. A party objecting shall submit an alternative form of judgment or order with the objection.

(b) Form and entry. -- Subject to the provisions of Rule 54(b), 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. Every judgment shall be set forth on a separate document. The names of all parties shall be set out in the caption of all final orders, judgments and decrees. 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.

(c) 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.

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;

(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 the party 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.

(c) Time for serving affidavits. -- When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 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 10 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. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order 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.

(Amended December 21, 1965, effective March 21, 1966; amended October 21, 1970, effective February 11, 1971; amended April 12, 1978, effective August 1, 1978.)

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 a party's 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 a reasonable time, and for reasons (1), (2), and (3) not more than 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 by statute, or to grant relief to a party against whom a judgment or order has been rendered without other service than by publication as provided by statute. 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.

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 an 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. -- The appellant, when an appeal is taken, by giving a supersedeas bond may obtain a stay, subject to the exceptions contained in subdivision (a) of this rule and the limitations contained in the Wyoming Rules of Appellate Procedure. 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 as to multiple claims or multiple parties. -- When a court has ordered a final judgment 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.

(Amended November 7, 1960, effective March 21, 1961; amended October 11, 1963, effective January 9, 1964.)

Rule 63. Disability of a judge.

(a) During trial or hearing. -- If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

(b) After verdict or filing of findings of fact and conclusions of law. -- 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 any other judge sitting in or assigned to the district in which the action was tried or any active or retired district judge or supreme court justice designated by the supreme court may perform those duties; but if the successor judge cannot perform those duties because the successor judge did not preside at the trial or for any other reason, the successor judge may grant a new trial.

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.

Rule 65. Injunctions.

(a) Preliminary injunction.

(1) Notice. -- No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. -- Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary restraining order; notice; hearing; duration. -- A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) 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 the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. 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, the 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 the party does not do so, the court shall dissolve the temporary restraining order. On two 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 costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(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 divorce, alimony, separate maintenance, or custody of minors.

(Amended October 21, 1970, effective February 11, 1971.)

Rule 65.1. Security; proceedings against sureties.

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or

stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's 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 sureties if their addresses are known.

(Added October 21, 1970, effective February 11, 1971.)

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

the disposition 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, whether or not that party claims all or any part of the sum or thing. Money paid into court under this rule shall 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. The fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the court.

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 of 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. As used herein, costs does not include attorney's

fees. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

(Amended October 21, 1970, effective February 11, 1971.)

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 a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

(Amended October 21, 1970, effective February 11, 1971.)

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.

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, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

Rule 71.1. Condemnation of property.

(a) Applicability of other rules. -- The Wyoming Rules of Civil Procedure govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this rule.

(b) Joinder of properties. -- The plaintiff may join in the same action any number of separate parcels of property, rights or interests situated in the same county and the compensation for each shall be assessed separately by the same or different appraisers as the court may direct.

(c) Complaint.

(1) Contents. -- The complaint shall contain a short and plain statement of:

(i) The authority for the taking, the use for which the property is to be taken, and the necessity for the taking, a description of the property sufficient for its identification, the interests to be acquired,

(ii) The efforts made to comply with W.S. 1-26-504, 505, 509 and 510,

(iii) As to each separate piece of property, a designation of the defendants who have been joined as owners thereof of some interest therein, together with their residences, if known, and whether the plaintiff demands immediate possession or desires to continue in possession,

(iv) If plaintiff is a public entity, facts demonstrating compliance with W.S. 1-26-512, and

(v) If plaintiff seeks a court order permitting entry upon the property for any of the purposes set out in W.S. 1-26-506, plaintiff shall set forth in the complaint or in a separate application to the court a short and plain statement that it has made reasonable efforts to enter the property, that such entry has been obstructed or denied, and that a court order permitting entry is sought pursuant to W.S. 1-26-507.

(2) Joinder. -- Upon the commencement of the action the plaintiff shall join as defendants those persons having or claiming an interest in the property as owner, lessee or encumbrancer whose names are then known, but prior to any hearing involving the compensation to be

paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property as owner, lessee or encumbrancer whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. Other defendants, as described in Rule 4(i), shall be made defendants when they are necessary parties.

(3) Informal Procedure. -- If plaintiff desires that the amount of compensation be determined by informal procedure, pursuant to W.S. 1-26-601, et seq., it shall allege that the amount in dispute is less than $20,000 or that the difference between plaintiff's latest offer and the total amount demanded is less than $5,000, and shall request that the court proceed informally.

(4) Deposit at Commencement of Action. -- Condemnor shall make the deposit required by W.S. 1-26-513.

(d) Order for hearing; process; answer.

(1) Order for Hearing. -- If plaintiff seeks a court order permitting immediate entry upon the property pursuant to W.S. 1-26-507, it shall apply to the court

for an order fixing time for a hearing, and the court shall direct defendant or defendants to appear at the time and place set for the hearing to show cause why such an order should not be entered. If plaintiff does not seek such an order, it shall apply to the court for an order fixing the time and place for a hearing upon the complaint.

(2) Process. -- Summons shall be issued and served and proof of service shall be made in accordance with Rule 4. The summons and complaint shall be served together. The summons shall state the time and place of the hearing at which the defendant is to appear and defend, and shall further notify the defendant that if the defendant fails to appear at said time and place, judgment will be rendered for plaintiff condemning defendant's interest in the property therein described, appointing appraisers to ascertain the compensation to be paid therefor, and permitting plaintiff, if application therefor has been made as provided in subdivision (e) of this rule, to take possession or to continue in possession thereof upon the payment into court of such sum of money as may be required, or upon the giving of such approved security as may be determined by the court, and shall further notify the defendant that if the defendant desires to contest the plaintiff's right to

take the property, or the necessity therefor, the defendant shall, prior to the time set for hearing, file with the court an answer to the complaint.

(3) Answer.

(i) No answer is required unless defendant desires to contest the plaintiff's right to take the property or the necessity therefor, in which event the answer shall be filed five days prior to the time set for the hearing on the complaint.

(ii) If no answer is filed, defendant may file an appearance with the clerk describing the property in which the defendant claims an interest so as to facilitate prompt receipt of notices by the defendant.

(iii) If defendant desires that the amount of compensation be determined by informal procedure, the defendant shall allege that the amount in dispute is less than $20,000 or that the difference between plaintiff's latest offer and the total amount demanded is less than $5,000, and shall request that the court proceed informally.

(e) Hearings.

(1) Show Cause Hearing. -- If plaintiff has requested an order authorizing immediate entry, a show cause hearing shall be held not sooner than 15 days after service of the order to show cause upon the defendant or defendants.

(i) At the hearing, the district judge shall require evidence that notice and an order to show cause has been served upon the defendant as required, and shall hear and determine questions of plaintiff's right to enter the property, the purposes for which entry is sought, plaintiff's efforts to enter under notice to the owner and the owner's prior agreement thereto, if any; and shall require defendant or defendants to show good cause why an order authorizing entry should not be entered.

(ii) If plaintiff prevails on these points, the district judge shall enter an order permitting entry. Any order permitting immediate entry shall describe the purpose therefor, setting forth the nature and scope of activities determined to be reasonably necessary and authorized by law, and

including terms and conditions respecting time, place, and manner of entry, and authorized activities by plaintiff, all in order to facilitate the purpose of entry and to minimize damage, hardship, and burden upon the parties.

(iii) An order permitting entry where the purpose does not contemplate condemnation shall include a determination of the amount, if any, that will fairly compensate defendant or defendants or any other person in lawful possession or physical occupancy for damages for physical injury to the property or substantial interference with its possession or use, if such damage or interference are found likely to be caused by entry. The district judge will require plaintiff to deposit cash or other security with the court in any such amount.

(2) Hearing on Complaint for Condemnation. -- The hearing shall be held not sooner than 15 days after service of the complaint for condemnation upon the defendant, unless the defendant otherwise consents in writing.

(i) At the hearing, which may be adjourned

from time to time, the district judge shall require evidence that notice of hearing has been given as provided in this rule, and shall hear and determine the questions of the plaintiff's right to make the appropriation, plaintiff's inability to agree with the owner, the necessity for the appropriation, and shall hear proofs and allegations of all parties interested touching the regularity of the proceedings.

(ii) If the district judge determines these questions in favor of the plaintiff as to any or all of the property and persons interested therein, the judge shall first decide whether a request by any party to proceed informally should be granted.

(iii) If the judge decides to proceed informally, the judge shall determine compensation without jury in an informal manner on the basis of such oral and documentary evidence as the parties shall offer which the court deems sufficient.

(iv) If the judge determines not to proceed informally, the judge shall make an order appointing three disinterested appraisers, residents of the county in which the complaint is

filed, to ascertain the compensation to be made to the defendant, or defendants, for the taking or injuriously affecting the property described in the complaint, and specifying a time and place for the first meeting of such appraisers, and the time within which the said appraisers shall make such assessment.

(v) At the hearing, or at any stage of the proceedings under this rule after the questions previously mentioned have been heard and determined, the district judge may, by order in that behalf made and if demanded by plaintiff in the plaintiff's complaint or in any amendment thereto, authorize the plaintiff, if already in possession, and if not in possession, to take possession of, and use said property during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against the plaintiff on account thereof; provided,

(vi) Unless exempted by statute and subject to the deposit provision of W.S. 1-26-513, plaintiff shall pay a sufficient sum into the court, or give approved security to pay the

compensation in that behalf when ascertained; and

(vii) In every case where possession shall be so authorized, it shall be lawful for the defendant, or defendants, to conduct the proceedings to a conclusion if the same shall be delayed by the plaintiff.

(f) Amendment of pleadings. -- With the leave of court, the plaintiff may amend the complaint at any time before the award of compensation is made, and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by subdivision (k) of this rule. The plaintiff shall serve a copy of any amendment, as provided in Rule 5(b), upon any party affected thereby who has appeared. If a party has not appeared in the action and is affected by the amendment, then a notice directed to that party shall be served personally or by publication or other substituted service in the manner provided in subdivision (d).

(g) Substitution of parties. -- Substitution of parties may be made in accordance with Rule 25.

(h) Appraisers; procedure.

(1) The appraisers appointed by the court, before entering upon the duties of their office, shall take an

oath to faithfully and impartially discharge their duties as said appraisers.

(2) The court shall instruct them in writing as to their duties and as to the applicable and proper law to be followed by them in making their ascertainment.

(3) They shall carefully inspect and view the property sought to be taken or affected and shall thereupon ascertain and certify the compensation proper to be made to the defendant, or defendants, for the real or personal property to be taken or affected, according to the rule of damages as set forth in the written instructions given by the court.

(4) They shall make, subscribe and file with the clerk of the district court in which the action is pending a certificate of their said ascertainment and assessment in which the real or personal property shall be described with convenience, certainty and accuracy. In addition, supporting data for the amounts set forth in the certificate shall be included with said certificate.

(5) Fees allowed the appraisers shall be fixed by the court.

(i) Order of award.

(1) Upon proceeding informally to a determination of the amount of compensation to be paid, under subdivision (e)(2) above, and if neither party rejects the judgment of the district court, as authorized by W.S. 1-26-604, or

(2) Upon filing of the certificate of appraisers under subdivision (h) above, or

(3) Upon entry of the jury verdict under subdivision (j) below,

(i) The district judge shall upon receiving due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the county treasury, or other place for that purpose approved by the court, make and cause to be entered an order describing the real or personal property taken, the compensation ascertained, and the mode of making compensation or deposit thereof as aforesaid; and

(ii) A certified copy of said order shall be recorded and indexed in the office of the register

of deeds of the proper county; and

(iii) Upon the entry of such order, the plaintiff shall have such rights in the condemned property as are granted to the plaintiff by the statutes of this state authorizing the exercise of the power of eminent domain by plaintiff and which have been the subject matter of the action.

(j) Formal trial; jury trial. -- If a judgment has been entered on the basis of informal proceedings, any party may file, within 30 days after such entry of judgment, a written demand for a formal trial to the court or for a jury trial, whereupon the action shall proceed as though no informal proceedings had occurred. If an assessment has been made by appraisers, any party not satisfied with the award may file, within 30 days after the certificate of assessment has been filed, a written demand for a trial by jury on the issue of just compensation, whereupon the action shall proceed to a jury trial on that issue.

(1) Demand. -- The demand, whether for a formal trial to the court or for a jury trial, shall be filed with the clerk and served upon the other parties in accordance with Rule 5(b).

(2) Procedure. -- The formal trial or trial by jury

shall be conducted in the same manner as other civil actions.

(3) Decision; Verdict. -- If the action is tried without jury, the court shall determine the compensation to be made to the defendant or defendants, and shall render its decision in writing, and enter its judgment accordingly. If the action is tried with jury, the jury shall determine these matters, and shall render its verdict in writing, signed by the foreman, and the verdict shall be entered in the record.

(k) Dismissal of action.

(1) As of Right. -- If no certificate of appraisers has been filed and the plaintiff has not acquired the title or a lesser interest in or taken possession, the plaintiff may dismiss the action as to that property, without an order of the court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(2) By Stipulation. -- Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed in whole or in part without an order of the

court as to any property by filing a stipulation of dismissal by the plaintiff and defendant affected thereby; and, if the parties so stipulate, the court may vacate any judgment that has been entered.

(3) By Order of the Court. -- At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the court for good cause shown may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The court at any time may drop a defendant unnecessarily or improperly joined.

(4) Effect. -- Except as otherwise provided in the notice, or stipulation of dismissal or order of the court, any dismissal is without prejudice.

(l) Deposit and its distribution. -- The plaintiff shall deposit with the court any money or bond required by law as a condition to the exercise of the power of eminent domain, or as a condition to the right of continuing or obtaining immediate possession. In such cases the court and attorneys shall expedite

the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. Interest shall not accrue as to the sum deposited by the plaintiff from and after the time the deposit becomes available for distribution to the defendant or defendants. If the compensation finally awarded to any defendant exceeds the amount which has been paid to that defendant on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to that defendant, the court shall enter judgment against that defendant and in favor of the plaintiff for the overpayment.

(m) Costs. -- In any proceeding under this rule costs may be allowed and apportioned between the parties on the same or adverse sides in the discretion of the court as authorized by statute or by rule of this court.

(Added December 21, 1965, effective March 21, 1966; amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981; amended November 24, 1987, effective February 23, 1988.)

IX. APPEALS

Rules 72 through 76. [Superseded, effective August 1, 1978].

See, Wyoming Rules of Appellate Procedure.

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 courtroom. 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 the clerk's action may be suspended, altered or rescinded by the court upon cause shown.

(d) Service 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 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 by the Wyoming Rules of Appellate Procedure.

Rule 78. Motion day.

Each district court may 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 determined.

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, records, data and statistics as may be required from time to time by the Supreme Court or the judge of the district in which the clerk is acting.

(Amended March 24, 1980, effective July 1, 1980.)

Rule 80. 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, provided, (1) that in special statutory proceedings any rule shall not apply insofar as it is clearly inapplicable, and (2) where the statute creating a special proceeding provides the form, content, time of service or filing of any pleading, writ, notice or process, either the statutory provisions relating thereto or these rules may be followed.

(Amended December 21, 1965, effective March 21, 1966.)

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 of district courts.

The district courts, by action of a majority of the Judicial Conference and approval of the supreme court, may make and amend uniform rules governing district court practice not inconsistent with these rules. Approved uniform rules shall be published in the Wyoming Court Rules volume. A district court may not establish rules of procedure applicable only in that district.

Rule 84. Forms.

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

Form No. 22B (Motion to bring in third-party defendant) and Form No. 27 (Notice of appeal to the supreme court) are deleted.

Form No. 15 (Divorce) is revised, as attached hereto.

Form No. 29 (Summons for condemnation) shall be retained with a notation that the form should be used if there is a contest of the necessity for the taking of the property. In all other condemnation cases, the normal summons form should be used.

Rule 85. Title.

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

Rule 86. Effective date.

(a) Rules. -- These rules shall take effect 60 days after their publication in the Pacific Reporter Advance Sheets. 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. [Abrogated]

(Amended December 21, 1965, effective March 21, 1966; amended October 21, 1970, effective February 11, 1971; amended July 12, 1971, effective November 18, 1971.)

FORM 15

Complaint for divorce.

1. Plaintiff has resided in the State of Wyoming for 60 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 primary care, control and custody of said child.

4. Such irreconcilable differences now exist between the parties that there is no hope for continuing a viable marital relationship.

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 the plaintiff dissolving the marriage to defendant.

(2) That plaintiff be awarded the primary care, control and custody of the child A.B. subject to reasonable visitation rights of defendant.

(3) That defendant pay to plaintiff a reasonable sum for plaintiff's 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 the minority of A.B.

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