

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1992

In the Matter of the Amendments of
Rules 5(d), 6(c)(1)(2), 15(c), 34(c),
40.1(b), 41(b)(1), 45, 50 and 52(a)(c)(d),
Wyoming Rules of Civil Procedure.

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IN THE SUPREME COURT
STATE OF WYOMING
FILED

OCT 22 1992

JERRILL D. CARTER, CLERK

**ORDER AMENDING RULES 5(d), 6(c)(1)(2), 15(c), 34(c), 40.1(b), 41(b)(1),
45, 50 and 52(a)(c)(d), WYOMING RULES OF CIVIL PROCEDURE**

The Permanent Rules Advisory Committee--Civil Division having recommended to the court the amendments of Rules 5(d), 6(c)(1)(2), 15(c), 34(c), 40.1(b), 41(b)(1), 45, 50 and 52(a)(c)(d), Wyoming Rules of Civil Procedure, as attached hereto, and the court having reviewed the proposed amendments and deeming it advisable and proper to adopt the amendments; it is therefore

ORDERED that Rules 5(d), 6(c)(1)(2), 15(c), 34(c), 40.1(b), 41(b)(1), 45, 50 and 52(a)(c)(d), Wyoming Rules of Civil Procedure, as amended and attached hereto shall be, and they are hereby, adopted; and it is further

ORDERED that the amended rules, as attached hereto, be published in the advance sheets of the Pacific Reporter and thereafter in the Wyoming Reporter; that the amended rules shall become effective 60 days after the publication thereof in the advance sheets of the Pacific Reporter, and thereupon shall be spread at length upon the journal of this court.

Dated this 22ND day of October, 1992.

BY THE COURT:


Richard J. Macy
Chief Justice

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

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(d) Filing; CERTIFICATE OF SERVICE. -- 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.

Rule 6. Time.

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(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 MAY 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) A REQUEST FOR HEARING MAY BE SERVED BY THE MOVING PARTY OR ANY PARTY AFFECTED BY THE MOTION WITHIN 30 DAYS AFTER SERVICE OF THE MOTION. Absent a TIMELY 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.

Rule 15. Amended and supplemental pleadings.

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(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. AN AMENDMENT OF A PLEADING RELATES BACK TO THE DATE OF THE ORIGINAL PLEADING WHEN:

(1) RELATION BACK IS PERMITTED BY THE LAW THAT PROVIDES THE STATUTE OF LIMITATIONS APPLICABLE TO THE ACTION; OR

(2) 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; OR

(3) THE AMENDMENT CHANGES THE PARTY OR THE NAMING OF THE PARTY AGAINST WHOM A CLAIM IS ASSERTED IF THE FOREGOING PROVISION (2) IS SATISFIED AND, WITHIN 120 DAYS AFTER THE FILING OF THE COMPLAINT, THE PARTY TO BE BROUGHT IN BY AMENDMENT (A) 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 (B) 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.

Rule 30. Depositions upon oral examination.

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

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(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 B), a deposition taken by telephone is deemed to be taken at the place where the deponent is to answer questions propounded to the deponent.

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

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(c) Persons not parties. -- A PERSON NOT A PARTY TO THE ACTION MAY BE COMPELLED TO PRODUCE DOCUMENTS AND THINGS OR TO SUBMIT TO AN INSPECTION AS PROVIDED IN RULE 45. 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.

Rule 40.1. Transfer of trial and change of judge.

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(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, UNLESS THE ASSIGNED JUDGE HAS NOT BEEN DESIGNATED WITHIN THAT TIME PERIOD, IN WHICH EVENT THE DEFENDANT MUST FILE THE MOTION WITHIN FIVE DAYS AFTER THE NAME OF THE ASSIGNED JUDGE HAS BEEN PROVIDED BY A REPRESENTATIVE OF THE COURT TO COUNSEL FOR THE DEFENDANT BY PERSONAL ADVICE AT THE COURTHOUSE, TELEPHONE CALL, OR A MAILED NOTICE. 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.

Rule 41. Dismissal of actions.

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(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.

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 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.

(A) FORM; ISSUANCE.

(1) EVERY SUBPOENA SHALL:

(A) STATE THE NAME OF THE COURT FROM WHICH IT ISSUED; AND

(B) STATE THE TITLE OF THE ACTION, THE NAME OF THE COURT IN WHICH IT IS PENDING, AND ITS CIVIL ACTION NUMBER; AND

(C) COMMAND EACH PERSON TO WHOM IT IS DIRECTED TO ATTEND AND GIVE TESTIMONY BY DEPOSITION OR AT TRIAL OR HEARING, OR TO PRODUCE AND PERMIT INSPECTION AND COPYING OF DESIGNATED BOOKS, DOCUMENTS OR TANGIBLE THINGS IN THE POSSESSION, CUSTODY OR CONTROL OF THAT PERSON, OR TO PERMIT INSPECTION OF PREMISES, AT A TIME AND PLACE THEREIN SPECIFIED; AND

(D) SET FORTH THE TEXT OF SUBDIVISIONS (C), (D) AND (E) OF THIS RULE.

A COMMAND TO PRODUCE EVIDENCE OR TO PERMIT INSPECTION MAY BE JOINED WITH A COMMAND TO APPEAR AT TRIAL OR HEARING OR AT DEPOSITION, OR MAY BE ISSUED SEPARATELY.

(2) A SUBPOENA SHALL ISSUE FROM THE COURT IN WHICH THE ACTION IS PENDING.

(3) A SUBPOENA MAY BE ISSUED TO COMMAND ATTENDANCE OR PRODUCTION AT TRIAL OR HEARING WITHOUT NOTICE TO OTHER PARTIES. A SUBPOENA TO COMMAND ATTENDANCE AT DEPOSITION, OR TO PRODUCE AND PERMIT INSPECTION AND COPYING OF DESIGNATED BOOKS, DOCUMENTS OR TANGIBLE THINGS BEFORE TRIAL OR HEARING, OR TO PERMIT INSPECTION OF PREMISES BEFORE TRIAL OR HEARING, SHALL BE ISSUED ONLY AFTER OR CONCURRENTLY WITH REASONABLE NOTICE, SERVED IN THE MANNER PRESCRIBED BY RULE 5(B), TO ALL OTHER PARTIES TO THE ACTION OF THE DEPOSITION, PRODUCTION OR INSPECTION.

(4) THE CLERK SHALL ISSUE A SUBPOENA, SIGNED BUT OTHERWISE IN BLANK, TO A PARTY REQUESTING IT, WHO SHALL COMPLETE IT BEFORE SERVICE. AN ATTORNEY AS OFFICER OF THE COURT MAY ALSO ISSUE AND SIGN A SUBPOENA

ON BEHALF OF A COURT IN WHICH THE ATTORNEY IS AUTHORIZED TO PRACTICE.

(B) SERVICE; PLACE OF ATTENDANCE.

(1) 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, IF THE PERSON'S ATTENDANCE IS COMMANDED, BY TENDERING TO THAT PERSON THE STATUTORY WITNESS FEES FOR ONE DAY'S ATTENDANCE AND THE MILEAGE ALLOWED BY LAW. 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.

(2) PROOF OF SERVICE SHALL BE MADE, WHEN NECESSARY, AS PROVIDED IN RULE 4(M), AND COSTS SHALL BE TAXED AS PROVIDED IN RULE 4(C)(4).

(3) A SUBPOENA FOR TRIAL OR HEARING MAY REQUIRE THE PERSON SUBPOENAED TO APPEAR AT THE TRIAL OR HEARING IRRESPECTIVE OF THE PERSON'S PLACE OF RESIDENCE, PLACE OF EMPLOYMENT, OR WHERE SUCH PERSON REGULARLY TRANSACTS BUSINESS IN PERSON.

(4) A PERSON COMMANDED BY SUBPOENA TO APPEAR AT A DEPOSITION MAY BE REQUIRED TO ATTEND ONLY IN THE COUNTY WHEREIN THAT PERSON 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.

(C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A PARTY OR AN ATTORNEY RESPONSIBLE FOR THE ISSUANCE AND SERVICE OF A SUBPOENA SHALL TAKE REASONABLE STEPS TO AVOID IMPOSING UNDUE BURDEN OR EXPENSE ON A PERSON SUBJECT TO THAT SUBPOENA. THE COURT ON BEHALF OF WHICH THE SUBPOENA WAS ISSUED SHALL ENFORCE THIS DUTY AND IMPOSE UPON THE PARTY OR ATTORNEY IN BREACH OF THIS DUTY AN APPROPRIATE SANCTION, WHICH MAY INCLUDE, BUT IS NOT LIMITED TO, LOST EARNINGS AND A REASONABLE ATTORNEY'S FEE.

(2) (A) A PERSON COMMANDED TO PRODUCE AND PERMIT INSPECTION AND COPYING OF DESIGNATED BOOKS, PAPERS, DOCUMENTS OR TANGIBLE THINGS, OR INSPECTION OF PREMISES NEED NOT APPEAR IN PERSON AT THE PLACE OF PRODUCTION OR INSPECTION UNLESS COMMANDED TO APPEAR FOR DEPOSITION, HEARING OR TRIAL.

(B) SUBJECT TO SUBDIVISION (D)(2) OF THIS RULE, A PERSON COMMANDED TO PRODUCE AND PERMIT INSPECTION AND COPYING MAY, WITHIN 14 DAYS AFTER SERVICE OF THE SUBPOENA OR BEFORE THE TIME SPECIFIED

FOR COMPLIANCE IF SUCH TIME IS LESS THAN 14 DAYS AFTER SERVICE, SERVE UPON THE PARTY OR ATTORNEY DESIGNATED IN THE SUBPOENA WRITTEN OBJECTION TO INSPECTION OR COPYING OF ANY OR ALL OF THE DESIGNATED MATERIALS OR OF THE PREMISES. IF OBJECTION IS MADE, THE PARTY SERVING THE SUBPOENA SHALL NOT BE ENTITLED TO INSPECT AND COPY THE MATERIALS OR INSPECT THE PREMISES EXCEPT PURSUANT TO AN ORDER OF THE COURT BY WHICH THE SUBPOENA WAS ISSUED. IF OBJECTION HAS BEEN MADE, THE PARTY SERVING THE SUBPOENA MAY, UPON NOTICE TO THE PERSON COMMANDED TO PRODUCE, MOVE AT ANY TIME FOR AN ORDER TO COMPEL THE PRODUCTION. SUCH AN ORDER TO COMPEL PRODUCTION SHALL PROTECT ANY PERSON WHO IS NOT A PARTY OR AN OFFICER OF A PARTY FROM SIGNIFICANT EXPENSE RESULTING FROM THE INSPECTION AND COPYING COMMANDED.

(3) (A) ON TIMELY MOTION, THE COURT BY WHICH A SUBPOENA WAS ISSUED SHALL QUASH OR MODIFY THE SUBPOENA IF IT:

(I) FAILS TO ALLOW REASONABLE TIME FOR COMPLIANCE;

(II) REQUIRES, IN THE CASE OF A DEPOSITION OR PRODUCTION PRIOR TO HEARING OR TRIAL, A PERSON TO TRAVEL OUTSIDE THAT PERSON'S COUNTY OF RESIDENCE OR EMPLOYMENT OR A COUNTY WHERE THAT PERSON REGULARLY TRANSACTS BUSINESS IN PERSON; OR

(III) REQUIRES DISCLOSURE OF PRIVILEGED OR OTHER PROTECTED MATTER AND NO EXCEPTION OR WAIVER APPLIES; OR

(IV) SUBJECTS A PERSON TO UNDUE BURDEN.

(B) IF A SUBPOENA:

(I) REQUIRES DISCLOSURE OF A TRADE SECRET OR OTHER CONFIDENTIAL RESEARCH, DEVELOPMENT, OR COMMERCIAL INFORMATION; OR

(II) REQUIRES DISCLOSURE OF AN UNRETAINED EXPERT'S OPINION OR INFORMATION NOT DESCRIBING SPECIFIC EVENTS OR OCCURRENCES IN DISPUTE AND RESULTING FROM THE EXPERT'S STUDY MADE NOT AT THE REQUIRES OF ANY PARTY; OR

(III) REQUIRES A PERSON WHO IS NOT A PARTY OR AN OFFICER OF A PARTY TO INCUR SUBSTANTIAL EXPENSE TO TRAVEL TO ATTEND TRIAL,

THE COURT MAY, TO PROTECT A PERSON SUBJECT TO OR AFFECTED BY THE SUBPOENA, QUASH OR MODIFY THE SUBPOENA OR, IF THE PARTY IN WHOSE BEHALF THE SUBPOENA IS ISSUED SHOWS SUBSTANTIAL NEED FOR THE TESTIMONY OR MATERIAL THAT CANNOT BE OTHERWISE MET WITHOUT UNDUE HARDSHIP AND ASSURES THAT THE PERSON TO WHOM THE SUBPOENA IS ADDRESSED WITH BE REASONABLY COMPENSATED, THE COURT MAY ORDER APPEARANCE OR PRODUCTION ONLY UPON SPECIFIED CONDITIONS.

(D) DUTIES IN RESPONDING TO SUBPOENA.

(1) A PERSON RESPONDING TO A SUBPOENA TO PRODUCE DOCUMENTS 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 DEMAND.

(2) WHEN INFORMATION OR MATERIAL SUBJECT TO A SUBPOENA IS WITHHELD ON A CLAIM THAT IT IS PRIVILEGED OR SUBJECT TO PROTECTION AS TRIAL PREPARATION MATERIALS, THE CLAIM SHALL BE MADE EXPRESSLY AND SHALL BE SUPPORTED BY A DESCRIPTION OF THE NATURE OF THE DOCUMENTS, COMMUNICATIONS, OR THINGS NOT PRODUCED THAT IS SUFFICIENT TO ENABLE THE DEMANDING PARTY TO CONTEST THE CLAIM.

(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. ADEQUATE CAUSES FOR FAILURE TO OBEY INCLUDE LACK OF PERSONAL SERVICE UPON THE PERSON SUBPOENAED, AND WHEN A SUBPOENA PURPORTS TO REQUIRE A PERSON TO ATTEND A DEPOSITION OR PRODUCE PRIOR TO HEARING OR TRIAL AT A PLACE NOT WITHIN THE LIMITS PROVIDED BY CLAUSE (II) OF SUBDIVISION (c) (3) (A).

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.

RULE 50. JUDGMENT AS A MATTER OF LAW IN ACTIONS TRIED BY JURY; ALTERNATIVE MOTION FOR NEW TRIAL; CONDITIONAL RULINGS.

(A) JUDGMENT AS A MATTER OF LAW.

(1) IF DURING A TRIAL BY JURY A PARTY HAS BEEN FULLY HEARD WITH RESPECT TO AN ISSUE AND THERE IS NO LEGALLY SUFFICIENT EVIDENTIARY BASIS FOR A REASONABLE JURY TO HAVE FOUND FOR THAT PARTY WITH RESPECT TO THAT ISSUE, THE COURT MAY GRANT A MOTION FOR JUDGMENT AS A MATTER OF LAW AGAINST THAT PARTY ON ANY CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD PARTY CLAIM THAT CANNOT UNDER THE CONTROLLING LAW BE MAINTAINED OR

DEFEATED WITHOUT A FAVORABLE FINDING ON THAT ISSUE.

(2) MOTIONS FOR JUDGMENT AS A MATTER OF LAW MAY BE MADE AT ANY TIME BEFORE SUBMISSION OF THE CASE TO THE JURY. SUCH A MOTION SHALL SPECIFY THE JUDGMENT SOUGHT AND THE LAW AND THE FACTS ON WHICH THE MOVING PARTY IS ENTITLED TO THE JUDGMENT.

(B) RENEWAL OF MOTION FOR JUDGMENT AFTER TRIAL; ALTERNATIVE MOTION FOR NEW TRIAL. -- WHENEVER A MOTION FOR A JUDGMENT AS A MATTER OF LAW MADE AT THE CLOSE OF ALL THE EVIDENCE IS DENIED OR FOR ANY REASONS IS NOT GRANTED, THE MOVING PARTY MAY RENEW THE MOTION BY SERVICE AND FILING NOT LATER THAN 10 DAYS AFTER ENTRY OF JUDGMENT. A MOTION FOR A NEW TRIAL UNDER RULE 59 MAY BE JOINED WITH A RENEWAL OF THE MOTION FOR JUDGMENT AS A MATTER OF LAW, OR A NEW TRIAL MAY BE REQUESTED 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 RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW AS AN ALTERNATIVE. IF A VERDICT WAS RETURNED, THE COURT MAY, IN DISPOSING OF THE RENEWED MOTION, ALLOW THE JUDGMENT TO STAND OR MAY REOPEN THE JUDGMENT AND EITHER ORDER A NEW TRIAL OR DIRECT THE ENTRY OF JUDGMENT AS A MATTER OF LAW. IF NO VERDICT WAS RETURNED, THE COURT MAY, IN DISPOSING OF THE RENEWED MOTION, DIRECT THE ENTRY OF JUDGMENT AS A MATTER OF LAW OR MAY ORDER A NEW TRIAL.

(C) SAME; CONDITION RULINGS ON GRANT OF MOTION FOR JUDGMENT AS A MATTER OF LAW.

(1) IF THE RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW 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 AGAINST WHOM JUDGMENT AS A MATTER OF LAW HAS BEEN RENDERED MAY SERVE A MOTION FOR A NEW TRIAL PURSUANT TO RULE 59 NOT LATER THAN 10 DAYS AFTER ENTRY OF THE JUDGMENT.

(D) SAME; DENIAL OF MOTION FOR JUDGMENT AS A MATTER OF LAW. -- IF THE MOTION FOR JUDGMENT AS A MATTER OF LAW 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. 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.

Rule 52. Findings by the court; JUDGMENT ON PARTIAL FINDINGS.

(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) SUBDIVISION (c) OF THIS RULE.

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(c) JUDGMENT ON PARTIAL FINDINGS. -- IF DURING A TRIAL WITHOUT A JURY A PARTY HAS BEEN FULLY HEARD WITH RESPECT TO AN ISSUE AND THE COURT FINDS AGAINST THE PARTY ON THAT ISSUE, THE COURT MAY ENTER JUDGMENT AS A MATTER OF LAW AGAINST THAT PARTY ON ANY CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD PARTY CLAIM THAT CANNOT UNDER THE CONTROLLING LAW BE MAINTAINED OR DEFEATED WITHOUT A FAVORABLE FINDING ON THAT ISSUE, OR THE COURT MAY DECLINE TO RENDER ANY JUDGMENT UNTIL THE CLOSE OF ALL THE EVIDENCE. THE PARTY AGAINST WHOM ENTRY OF SUCH A JUDGMENT IS CONSIDERED SHALL BE ENTITLED TO NO SPECIAL INFERENCE AS A CONSEQUENCE OF SUCH CONSIDERATION, AND THE COURT MAY WEIGH THE EVIDENCE AND RESOLVE CONFLICTS. SUCH A JUDGMENT SHALL BE SUPPORTED BY FINDINGS AS PROVIDED IN SUBDIVISION (A) OF THIS RULE.

(d) 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.

(END)