IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 1994

IN THE SUPREME COURT
STATE OF WYOMING
FILED

AUG 3 1 1994

JUDY PACHECO, CLERK

In the Matter of Amendments to Rules 1, 11, 16, 26, 28, 29, 30, 31, 33, 34, 37, 38, 50, 52, 54, and 58, Wyoming Rules of Civil Procedure

ORDER AMENDING RULES 1, 11, 16, 26, 28, 29, 30, 31, 33, 34, 37, 38, 50, 52, 54, and 58, WYOMING RULES OF CIVIL PROCEDURE

The Permanent Rules Advisory Committee, Civil Division, having submitted to the court proposed amendments to Rules 1, 11, 16, 26, 28, 29, 30, 31, 33, 34, 37, 38, 50, 52, 54, and 58, Wyoming Rules of Civil Procedure, as attached hereto, and the court having reviewed the proposed amendments and finding that the proposed amendments should be adopted; it is therefore

ORDERED that the amendments to Rules 1, 11, 16, 26, 28, 29, 30, 31, 33, 34, 37, 38, 50, 52, 54, and 58, Wyoming Rules of Civil Procedure, as attached hereto, shall be, and they are hereby, adopted by the court and they shall supersede all other court rules that are in conflict therewith, including but not limited to Rule 601, Uniform Rules of District Courts; it is further

ORDERED that said amended rules be published in the Wyoming Reporter and shall become effective 60 days after their publication in the advance sheets of the Pacific Reporter; and shall thereupon be spread at length upon the journal of this court; and, it is further

ORDERED that the members of the Civil Division, Permanent Rules Advisory Committee be commended for the excellence of their work and that sincere appreciation be extended to them.

Dated this 31st day of August, 1994.

BY THE COURT:

Michael Golden

Michael Golden

PROPOSED AMENDMENTS TO RULES 1, 11, 16, 26, 28, 29, 30, 31, 33, 34, 37, 38, 50, 52, 54, 58, WYOMING RULES OF CIVIL PROCEDURE

Rule 1. Scope and purpose 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 and administered to secure the just, speedy, and inexpensive determination of every action.

Rule 11. Signing ~~and verification~~of pleadings, motions, and other papers; representations to court; sanctions.

(a) ~~*Signing of pleadings*~~*Signature*. -- Every pleading, written 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~~or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. 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.~~An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) ~~*Verification*~~Representations to court. -- ~~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.~~By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) *Sanctions*. -- If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How initiated.

(A) By motion. -- A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the

reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On court's initiative. -- On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of sanction; limitations. -- A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. -- When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) *Inapplicability to discovery.* -- Subdivisions (a) through (c) of this rule do not apply to discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

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 the Uniform Rules for the District Courts, 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 formulation 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, and limitations or restrictions on the use of testimony under Rule 702 of the Wyoming Rules of Evidence;

(5) The appropriateness and timing of summary adjudication under Rule 56;

(6) The control and scheduling of discovery, including orders affecting discovery pursuant to Rule 26 and Rules 29 through 37;

(~~5~~7) 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~~8) 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;~~

(9) Settlement and the use of special procedures to assist in resolving the dispute under Rule 40(b) or other alternative dispute resolution procedures;

(~~8~~10) The form and substance of the pretrial order;

(~~9~~11) The disposition of pending motions;

(~~10~~12) 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~~

(13) An order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;

(14) An order directing a party or parties to present evidence early in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);

(15) An order establishing a reasonable limit on the time allowed for presenting evidence; and

(~~11~~16) Such other matters as may ~~aid in the~~facilitate the just, speedy, and inexpensive 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. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(d) *Final pretrial conference*. -- Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. 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 modified 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 participate 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.

Rule 26. General provisions governing discovery.

(a) *Discovery methods*. -- Parties may obtain discovery by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Production of documents or things or permission to enter upon land or other property, for inspection and other purposes;

(4) Physical and mental examinations; and

(5) Requests for admission.

(b) *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) (A) 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.

(B) Limitations. -- 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: (~~A~~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; (~~B~~ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (~~C~~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), a party may obtain discovery of documents and tangible things otherwise discoverable under

subdivision (b)(1) 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) 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) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. Upon motion, the court may order further discovery by other means~~,~~. Such deposition or other discovery is subject to such

restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C), 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); and

(ii) With respect to discovery obtained under subdivision (b)(4)(A)(ii) the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) 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.

(5) Claims of Privilege or Protection of Trial Preparation Materials. -- When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) *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:

(A) That the discovery not be had;

(B) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(C) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(D) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(E) That discovery be conducted with no one present except persons designated by the court;

(F) That a deposition after being sealed be opened only by order of the court;

(G) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(H) 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 this subdivision 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.

(d) *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.

(e) *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 to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.~~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 limitation 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.

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, d~~Depositions may be taken in a foreign country~~:~~ (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) 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~~; (2)~~, or (4) 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~~of request 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~~of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter ~~rogatory~~of request 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~~of request may be addressed "To the Appropriate Authority in ~~([~~here name the country~~])~~". When a letter of request

or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter ~~rogatory~~of request need not be excluded merely ~~for the reason that~~because it is not a verbatim transcript, because ~~or that~~ the testimony was not taken under oath, or ~~for~~because of 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.

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~~other procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

Rule 30. Depositions upon oral examination.

(a) *When depositions may be taken; ~~limitations~~when leave required.*

(1) ~~After commencement of the action, any~~A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2). ~~Leave of court, granted with or without notice, must be obtained 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: (A) if a defendant has served a notice of taking deposition or otherwise sought discovery; or (B) if special notice is given as provided in subdivision (b)(2).~~ 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.~~

(2) ~~Limitations on discovery. -- Discovery by any party by the method of depositions upon oral examination is limited to the deposition of any other party, the deposition of one expert witness and three other depositions~~A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(1)(B), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) A proposed deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) The person to be examined already has been deposed in the case; or

(C) 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 such leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery; or (ii) if special notice is given as provided in subdivision (b)(3).

~~(3) The court in any lawsuit may for good cause shown revoke or amend the limitations provided by the foregoing subdivision (a)(2).~~

~~(4) Subject to these limitations or those that may be provided or ordered by the court pursuant to Rule 26(b) and (c), the frequency or extent of use of the methods of discovery is not limited.~~

(b) *Notice of examination: general requirements; special notice; ~~nonstenographic~~method of 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.

(2) 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~~3) 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)(3) 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 party taking the deposition shall state in the notice the method by which the testimony shall be recorded. 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~~,~~ and 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~~the person 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 or other remote electronic means. For the purposes of this rule and Rules 28(a), 37(a)(1), and 37(b)(1), ~~and 45(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.

(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 except Rule 103. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation 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~~method ordered ~~in accordance with~~or stipulated to pursuant to 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~~or to any other ~~objection to~~aspect of the proceedings~~,~~ shall be noted by the officer upon the record of the deposition~~. Evidence objected to shall be~~; but the examination shall proceed, with the testimony being 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) *Schedule and duration; Mmotion to terminate or limit examination.* --

(1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under paragraph (3).

(2) By order, the court may limit the time permitted for the conduct of a deposition, but shall allow additional time consistent with Rule 26(b)(1)(B) if needed for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

3) At any time during ~~the taking of the~~a 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.

Rule 31. Depositions upon written questions.

(a) *Serving questions; notice; limitations.*

(1) ~~After commencement of the action, any~~A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). 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.~~

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(1)(B), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) A proposed deposition would result in more than ten depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) The person to be examined already has been deposed in the case; or

(C) 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 such leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery; or (ii) if special notice is given as provided in Rule 30(b)(3), in which event all provisions of Rule 30(b)(3) shall be applicable.

(~~2~~3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating: (A) 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 (B) 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).

(~~3~~4) Within ~~30~~14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ~~10~~seven days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ~~10~~seven 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.

~~(4) *Limitations on discovery.* -- Discovery by any party by the method of depositions upon oral examination is limited to the deposition of any other party, the deposition of one expert witness and three other depositions.~~

~~(5) The court in any lawsuit may for good cause shown revoke or amend the limitations provided by the foregoing subdivision (a)(4).~~

~~(6) Subject to these limitations or those that may be provided or ordered by the court pursuant to Rule 26(b) and (c), the frequency or extent of use of the methods of discovery is not limited.~~

(b) *Officer to take responses, ~~and~~ prepare record, and deliver deposition; notice of delivery*. -- A copy of the notice and copies of all questions served shall be delivered by the party ~~taking~~initiating 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~~deliver the deposition to the party initiating the deposition or as the parties otherwise agree, attaching thereto the copy of the notice and the questions received by the officer, and notifying all parties of the delivery.

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

Rule 33. Interrogatories to parties.

(a) *Availability~~; procedures for use~~*. -- Without leave of court or written stipulation, ~~A~~any party may serve upon any other party written interrogatories, not exceeding 30 in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association~~,~~ or 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. Additional interrogatories may be served only upon leave of court for good cause shown~~Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(1)(B).

(b) Answers and objections.

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection ~~shall be stated in lieu of an answer~~and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) 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~~A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) 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~~c) *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.

(ed) *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.

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, the items to be inspected, 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~~A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. 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 and inspection permitted of the remaining parts. 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*. -- 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 37. Failure to make or cooperate in discovery; sanctions.

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

(1) Appropriate Court. -- An application for an order to a party ~~may~~shall 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~~person who is not a party shall be made to the court where the ~~deposition is being taken~~discovery is being, or is to be, 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. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. 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 or Response. -- For purposes of this subdivision an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

(4) ~~Award of~~ Expenses ~~of Motion~~and Sanctions. -- If the motion is granted or if the requested discovery is provided after the motion was filed, the court shall, after affording an opportunity ~~for hearing~~to be heard, 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~~making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the discovery without court action, or that the~~opposition to the motion~~opposing party's response or objection was substantially justified, or that other circumstances make an award of expenses unjust.

If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity ~~for hearing~~to be heard, require the moving party or the attorney ~~advising~~filing 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 enter any protective order authorized under Rule

26(c) and may, after affording an opportunity to be heard, 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~~the disobedient party 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 subparagraphs ~~(A) through (C)~~(A), (B), and (C) of this ~~paragraph~~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);

(2) The admission sought was of no substantial importance;

(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; (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 ~~subdivisions~~subparagraphs ~~(b)(2)(A) through (b)(2)(C)~~(A), (B) and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this

subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. 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~~a pending motion 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~~a party's 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 affording an opportunity ~~for hearing~~to be heard, require such party or ~~his~~ attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

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; Filing. -- Any party may demand a trial by jury of any issue triable of right by a jury by (A) 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, and (B) filing the demand as required by Rule 5(d). Such demand may be ~~i~~ndorsed upon a pleading of the party.

(2) Jury Fees. -- All demands for trial by jury in district courts 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) *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 and file 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 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~~ on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to ~~have found~~find for that party ~~with respect to~~ on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party ~~on any~~with respect to a claim~~, counterclaim, cross-claim, or third party claim~~or defense 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; ~~C~~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; ~~D~~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 subdivision (c) of this rule.

(b) *Amendment or additional findings.* -- 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) *Judgment on partial findings.* -- If during a trial without a jury a party has been fully heard ~~with respect to~~on 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~~with respect to a claim or defense 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.

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~~A court's decision letter or opinion letter, made or entered in writing, is not a judgment.

(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; attorney's fees.* --

(1) Costs Other Than Attorney's Fees. Except when express provision therefor is made either in a statute or in these rules, costs other than attorney's fees 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.

(2) Attorney's Fees.

(A) When allowed by law, claims for attorney's fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(B) Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(C) On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion in accordance with Rule 43(e). The court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided in Rule 52(a), and a judgment shall be set forth in a separate document as provided in Rule 58.

(D) The court may establish special procedures by which issues relating to such fees may be resolved without extensive evidentiary hearings. In addition, the court may refer issues relating to the value of services to a master under Rule 53 without regard to the provisions of subdivision (b) thereof.

(E) The provisions of subparagraphs (A) through (D) do not apply to claims for fees and expenses as sanctions for violations of these rules.

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 10 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, shall be identified as such, and may include findings of fact and conclusions of law. 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. Entry of the judgment shall not be delayed, nor the time for appeal extended, in order to tax costs or award fees, except that, when a timely motion for attorney's fees is made under Rule 54(d)(2), the court, before the appellate court acquires jurisdiction, may order that the motion have the same effect on the time for appeal for all parties as a timely motion under Rule 59.