WYOMING RULES OF CIVIL PROCEDURE

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I. SCOPE OF RULES; ONE FORM OF ACTION

Rule 1. Scope and purpose.

These rules govern the procedure in all civil actions and proceedings in the State of Wyoming courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.
(Added February 2, 2017, effective March 1, 2017.)

Rule 2. One form of action.

There is one form of action — the civil action.
(Added February 2, 2017, effective March 1, 2017.)

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

Rule 3. Commencement of Action.

A civil action is commenced by filing a complaint with the court.
(Added February 2, 2017, effective March 1, 2017.)

Rule 3.1. Civil cover sheet.

(a) *Civil Cover Sheet Required.* — Every complaint or other document initiating a civil action shall be accompanied by a completed civil cover sheet form available on the Wyoming Judicial Branch website or from the Clerk of Court.

(b) *No Legal Effect.* — This requirement is solely for administrative purposes and has no legal effect in the action.

(c) *Absence of Cover Sheet.* — If the complaint or other document is filed without a completed civil cover sheet, the Clerk of Court or the court shall at the time of filing give notice of the omission to the party filing the document. If, after notice of the omission the coversheet is not filed within 14 calendar days, the court may impose an appropriate sanction upon the attorney or party filing the complaint or other document.

(Added February 2, 2017, effective March 1, 2017.)

Rule 4. Summons.

(a) *Contents.* — A summons must:

(1) name the court and the parties;

(2) be directed to the defendant;

(3) state the name and address of the plaintiff's attorney or — if unrepresented — of the plaintiff;

(4) state the time within which the defendant must appear and defend;

(5) notify the defendant that a failure to appear and defend may result in a default judgment against the defendant for the relief demanded in the complaint;

(6) be signed by the clerk; and

(7) bear the court's seal.

(b) *Issuance.* — On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons — or a copy of a summons that is addressed to multiple defendants — must be issued for each defendant to be served.

(c) *By Whom Served.* — Except as otherwise ordered by the court, process may be served:

(1) By any person who is at least 18 years old and not a party to the action;

(2) At the request of the party causing it to be issued, by the sheriff of the county where the service is made or sheriff's designee, or by a United States marshal or marshal's designee;

(3) In the event service is made by a person other than a sheriff or U.S. marshal, the amount of costs assessed therefor, if any, against any adverse party shall be within the discretion of the court.

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

(e) *Serving an Individual Within the United States.* — An individual other than a person under 14 years of age or an incompetent person may be served within the United States:

(1) by delivering a copy of the summons and of the complaint to the individual personally,

(2) by leaving copies thereof at the individual's dwelling house or usual place of abode with some person over the age of 14 years then residing therein,

(3) at the defendant's usual place of business with an employee of the defendant then in charge of such place of business, or

(4) by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(f) *Serving an Individual in a Foreign Country.* — An individual — other than a person under 14 years of age or an incompetent person — may be served at a place not within the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(g) *Serving a Person Under 14 years of Age or an Incompetent Person.* — An individual under 14 years of age or an incompetent person may be served within the United States by serving a copy of the summons and of the complaint upon the guardian or, if no guardian has been appointed in this state, then upon the person having legal custody and control or upon a guardian ad litem. An individual under 14 years of age or an incompetent person who is not within the United States must be served in the manner prescribed by Rule 4(f)(2)(A), (f)(2)(B), or (f)(3).

(h) *Serving a Corporation, Partnership, or Association.* —

(1) Service upon a partnership, or other unincorporated association, within the United States shall be made:

(A) by delivery of copies to one or more of the partners or associates, or a managing or general agent thereof, or agent for process, or

(B) by leaving same at the usual place of business of such defendant with any employee then in charge thereof.

(2) Service upon a corporation within the United States shall be made:

(A) by delivery of copies to any officer, manager, general agent, or agent for process, or

(B) If no such officer, manager or agent can be found in the county in which the action is brought such copies may be delivered to any agent or employee found in such county.

(C) If such delivery be to a person other than an officer, manager, general agent or agent for process, the clerk, at least 20 days before default is entered, shall mail copies to the corporation by registered or certified mail and marked 'restricted delivery' with return receipt requested, at its last known address.

(3) Service upon a partnership, other unincorporated association, or corporation not within the United States shall be made in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

(i) *Serving a Department or Agency of the State, or a Municipal or Other Public Corporation.* — Service upon a department or agency of the state, a municipal or other public corporation shall be made by delivering a copy of the summons and of the complaint to the chief executive officer thereof, or to its secretary, clerk, person in charge of its principal office or place of business, or any member of its governing body, or as otherwise provided by statute.

(j) *Serving the Secretary of State.* — Service upon the secretary of state, as agent for a party shall be made when and in the manner authorized by statute.

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

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

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

(B) For the partition of real property;

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

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

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

(3) In actions in which it is sought by a provisional remedy to take, or appropriate in any way, the property of the defendant, when:

(A) the defendant is a foreign corporation, or

(B) a nonresident of this state, or

(C) the defendant's place of residence cannot be ascertained,

(D) and in actions against a corporation incorporated under the laws of this state, which has failed to elect officers, or to appoint an agent, upon whom service of summons can be made as provided by these rules and which has no place of doing business in this state;

(4) In actions which relate to, or the subject of which is real or personal property in this state, when

(A) a defendant has or claims a lien thereon, or an actual or contingent interest therein or the relief demanded consists wholly or partly in excluding the defendant from any interest therein, and

(B) the defendant is a nonresident of the state, or a dissolved domestic corporation which has no trustee for creditors and stockholders, who resides at a known address in Wyoming, or

(C) the defendant is a domestic corporation which has failed to elect officers or appoint other representatives upon whom service of summons can be made as provided by these rules, or to appoint an agent as provided by statute, and which has no place of doing business in this state, or

(D) the defendant is a domestic corporation, the certificate of incorporation of which has been forfeited pursuant to law and which has no trustee for creditors and stockholders who resides at a known address in Wyoming, or

(E) the defendant is a foreign corporation, or

(F) the defendant's place of residence cannot be ascertained;

(5) In actions against personal representatives, conservators, or guardians, when the defendant has given bond as such in this state, but at the time of the commencement of the action is a nonresident of the state, or the defendant's place of residence cannot be ascertained;

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

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

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

(9) In suits for divorce, alimony, custody, visitation, support, to affirm or declare a marriage void, or the modification of any decree therefor entered in such suit, when the defendant is a nonresident of the state, or the defendant's residence cannot be ascertained, or the defendant keeps concealed in order to avoid service of process;

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

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

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

(l) *Requirements for Service by Publication.* —

(1) *Affidavit Required.* — Before service by publication can be made, an affidavit of the party, or the party's agent or attorney, must be filed stating:

(A) that service of a summons cannot be made within this state, on the defendant to be served by publication, and

(B) stating the defendant's address, if known, or that the defendant's address is unknown and cannot with reasonable diligence be ascertained, and

(C) detailing the efforts made to obtain an address, and

(D) that the case is one of those mentioned in subdivision (k), and

(E) when such affidavit is filed, the party may proceed to make service by publication.

(2) Publication and Notice to Clerk.

(A) *Address in publication.* — In any case in which service by publication is made when the address of a defendant is known, it must be stated in the publication.

(B) *Notice to and from clerk.* — Immediately after the first publication the party making the service shall deliver to the clerk copies of the publication, and the clerk shall mail a copy to each defendant whose name and address is known by registered or certified mail and marked 'Restricted Delivery' with return receipt requested, directed to the defendant's address named therein, and make an entry thereof on the appearance docket.

(C) *Affidavit at time of hearing.* — In all cases in which a defendant is served by publication of notice and there has been no delivery of the notice mailed to the defendant by the clerk, the party who makes the service, or the party's agent or attorney, at the time of the hearing and prior to entry of judgment, shall make and file an affidavit stating

(i) the address of such defendant as then known to the affiant, or if unknown,

(ii) that the affiant has been unable to ascertain the same with the exercise of reasonable diligence, and

(iii) detailing the efforts made to obtain an address.

Such additional notice, if any, shall then be given as may be directed by the court.

(m) *Publication of Notice.* — The publication must be made by the clerk for four consecutive weeks in a newspaper published:

(1) in the county where the complaint is filed; or

(2) if there is no newspaper published in the county, then in a newspaper published in this state, and of general circulation in such county; and

(3) if publication is made in a daily newspaper, one insertion a week shall be sufficient; and

(4) publication must contain

(A) a summary statement of the object and prayer of the complaint,

(B) mention the court wherein it is filed,

(C) notify the person or persons to be served when they are required to answer, and

(D) notify the person or persons to be served that judgment by default may be rendered against them if they fail to appear.

(n) *When Service by Publication is Complete; Proof.* —

(1) *Completion.* — Service by publication shall be deemed complete at the date of the last publication, when made in the manner and for the time prescribed in the preceding sections; and

(2) *Proof.* — Service by publication shall be proved by affidavit.

(3) For purposes of Rule 4(u), when service is made by publication, a defendant shall be deemed served on the date of the first publication.

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

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

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

(r) *Personal Service Outside the State; Service by Registered or Certified Mail.* — In all cases where service by publication can be made under these rules, or where a Wyoming statute permits service outside the state, the plaintiff may obtain service without publication by:

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

(2) *Service by Registered or Certified Mail.* — The clerk shall send by registered or certified mail:

(A) Upon the request of any party

(B) a copy of the complaint and summons

(C) addressed to the party to be served at the address within the United States given in the affidavit required under subdivision (l) of this rule.

(D) The mail shall be sent marked "Restricted Delivery," requesting a return receipt signed by the addressee or the addressee's agent who has been specifically authorized in writing by a form acceptable to, and deposited with, the postal authorities.

(E) When such return receipt is received signed by the addressee or the addressee's agent the clerk shall file the same and enter a certificate in the cause showing the making of such service.

(s) *Proof of Service.* —

(1) *In General.* — The person serving the process shall make proof of service thereof to the court promptly and within the time during which the person served must respond to the process.

(2) *Proof of Service Within the United States.* — Proof of service of process within the United States shall be made as follows:

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

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

(C) If by registered or certified mail, by the certificate of the clerk showing the date of the mailing and the date the clerk received the return receipt;

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

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

(3) *Proof of Service Outside the United States.* — Proof of service of process outside the United States shall be made as follows:

(A) if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or

(B) if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(4) *Failure to Prove Service.* — Failure to make proof of service does not affect the validity of the service.

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

(u) *Waiving Service.* —

(1) *Requesting a Waiver.* — An individual, corporation, partnership or other unincorporated association that is subject to service under subdivision 4(e), (f), or (h) has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer, manager, general agent, or agent for process, if a corporation, or else to one or more of the partners or associates, or a managing or general agent, or agent for process, if a partnership or other unincorporated association;

(B) be sent through first-class mail or other reliable means;

(C) be accompanied by a copy of the complaint and shall identify the court in which it has been filed;

(D) inform the defendant of the consequences of compliance and of a failure to comply with the request;

(E) set forth the date on which the request is sent;

(F) allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside the United States; and

(G) provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

(2) *Failure to Waive.* — If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure is shown.

(3) *Time to Answer After a Waiver.* — A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside the United States.

(4) *Results of Filing a Waiver.* — When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a

summons and complaint had been served at the time of signing the waiver, and no proof of service shall be required.

(5) *Jurisdiction and Venue Not Waived.* — A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(6) *Costs.* — The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service, together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

(v) *Acceptance of Service.* —

(1) A defendant who accepts service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of the defendant.

(2) The acceptance of service shall:

(A) Be in writing;

(B) Be notarized and executed directly by the defendant or defendant's counsel;

(C) Inform the defendant of the duty to file with the clerk and serve upon the plaintiff's attorney an answer to the complaint, or a motion under Rule 12, within 20 days after the time of signing the acceptance; and

(D) Be filed by the party requesting the acceptance of service.

(3) When an acceptance of service is filed with the court, the action shall proceed as if a summons and complaint had been served at the time of signing the acceptance, and no proof of service shall be required.

(4) Nothing in this Rule 4(v) shall compel any defendant to accept service of a summons under this Rule 4(v).

(w) *Time Limit for Service.* — If a defendant is not served within 90 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (w) does not apply to service in a foreign country under Rule 4(f).

(x) *Costs.* — Any cost of publication or mailing under this rule shall be borne by the party seeking it.

(Added February 2, 2017, effective March 1, 2017.)

Editor's notes. — For notice of lawsuit and request for waiver of service of summons form and waiver of service of summons form, see Forms 1-A and 1-B following these rules.

Rule 5. Serving and filing pleadings and other papers.

(a) *Service: When required.* —

(1) *In General.* — Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) *If a Party Fails to Appear.* — No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(3) *Seizing Property.* — If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

(b) *Service: How made.* —

(1) *Serving an Attorney.* — If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) *Service in General.* — A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address-in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) sending it by electronic means if the person consented in writing-in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing-in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(c) *Serving numerous defendants.* —

(1) *In General.* — If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) *Notifying Parties.* — A copy of every such order must be served on the parties as the court directs.

(d) *Filing.* —

(1) *Required Filings; Certificate of Service.* — Any paper after the complaint that is required to be served —together with a certificate of service — must be filed within a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission. 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.

(2) *How Filing Is Made — In General.* — A paper is filed by delivering it:

(A) to the clerk of court; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) *Acceptance by the Clerk.* — The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local practice, except the clerk may refuse to file a paper that obviously does not comply with the Rules Governing Redactions from Court Records. See Rule 7, Rules Governing Redactions from Court Records.

(e) *Filing with the court defined.* — Papers may be filed, signed, or verified by electronic means (including but not limited to email) if the necessary equipment is available to the clerk. No documents shall be transmitted to the court by facsimile or electronic means for filing without prior telephonic notification to the clerk of court. Only under emergency circumstances shall documents be filed by electronic means (including but not limited to email) or facsimile transmission. Any paper filed by electronic means must be followed by an identical signed or otherwise duly executed original, or copy of any electronic transmission other than facsimile transmission, together with the fee as set forth in the Rules For Fees and Costs For District Court or the Rules For Fees and Costs For Circuit Court, mailed within 24 hours of the electronic transmission. The clerk upon receiving the original or copy shall note its date of actual delivery, and shall replace the facsimile or other electronic transmission in the court file. A paper filed by electronic means in compliance with this rule constitutes a written paper for the purpose of applying these rules. No document which exceeds ten (10) pages in length may be filed by facsimile or electronic means. All format requirements contained in applicable rules must be followed. The court may reject any paper filed not in compliance with this rule.

(Added February 2, 2017, effective March 1, 2017.)

Rule 5.1. Constitutional challenge to a statute.

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

(Added February 2, 2017, effective March 1, 2017.)

Rule 5.2. Privacy protection for filings made with the court.

Unless otherwise ordered by the court, all documents filed with the court shall comply with the Rules Governing Redactions from Court Records and Rules Governing Access to Court Records.

(Added February 2, 2017, effective March 1, 2017.)

Rule 6. Time.

(a) *Computation.* — In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statutes, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. As used in this rule, "legal holiday" includes any day officially recognized as a legal holiday in this state by designation of the legislature, appointment as a holiday by the governor or the chief justice of the Wyoming Supreme Court, or any day designated as such by local officials.

(b) *Extending Time.* —

(1) *In General.* — When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court, or a commissioner thereof, may for good cause and in its discretion:

(A) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or

(B) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect;

(2) *Exceptions.* — A court may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

(3) *By Clerk of Court.* — A motion served before the expiration of the time limitations set forth by these rules for an extension of time of not more than 15 days within which to answer or move to dismiss the complaint, or answer, respond or object to discovery under Rules 33, 34, and 36, if accompanied by a statement setting forth:

(A) the specific reasons for the request,

(B) that the motion is timely filed,

(C) that the extension will not conflict with any scheduling or other order of the court, and

(D) that there has been no prior extension of time granted with respect to the matter in question may be granted once by the clerk of court, ex parte and routinely, subject to the right of the opposing party to move to set aside the order so extending time. Motions for further extensions of time with respect to matters extended by the clerk shall be presented to the court, or a commissioner thereof, for determination.

(c) *Motions and motion practice.* —

(1) *In General.* — Unless these rules or an order of the court establish time limitations other than those contained herein, all motions shall be served at least 14 days before the hearing on the motion, with the following exceptions:

(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 (5) and (6) below, together with supporting affidavits, if any.

(2) *Responses.* — 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 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.

(3) *Replies.* — 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.

(4) *Request for Hearing.* — A request for hearing may be served by the moving party or any party affected by the motion within 20 days after service of the motion. The court may, in its discretion, determine such motions without a hearing. Any motion, under Rules 50(b) and (c)(2), 52(b), 59 and 60(b), not determined within 90 days after filing shall be deemed denied unless, within that period, the determination is continued by order of the court, which continuation may not exceed 60 days, at which time, if the motion has not been determined, it shall be deemed denied.

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

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

(d) *Additional time after service by mail.* — Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served upon the party by mail or by delivery to the clerk for service, three days shall be added to the prescribed period, provided however, this rule shall not apply to service of process by registered or certified mail under Rule 4(r).

(Added February 2, 2017, effective March 1, 2017.)

III. PLEADINGS AND MOTIONS

Rule 7. Pleadings allowed; form of motions and other papers.

(a) *Pleadings.* — Only these pleadings are allowed:

(1) a complaint;

(2) an answer to a complaint;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to a crossclaim;

(5) a third-party complaint;

(6) an answer to a third-party complaint; and

(7) if the court orders one, a reply to an answer.

(b) *Motions and Other Papers.* —

(1) *In General.* — A request for a court order must be made by motion. The motion must:

(A) be in writing unless made during a hearing or trial;

(B) state with particularity the grounds for seeking the order; and

(C) state the relief sought.

(2) The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. All motions filed pursuant to Rules 12 and 56 shall, and all other motions may, contain or be accompanied by a memorandum of points and authority.

(3) *Form.* — The rules governing captions and other matters of form in pleadings apply to motions and other papers.

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

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

(Added February 2, 2017, effective March 1, 2017.)

Rule 8. General rules of pleading.

(a) *Claims for Relief.* — A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) *Defenses; Admissions and Denials.* —

(1) *In General.* — In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) *Denials — Responding to the Substance.* — A denial must fairly respond to the substance of the allegation.

(3) *General and Specific Denials.* — A party that intends in good faith to deny all the allegations of a pleading — including the jurisdictional grounds — may do so by a general denial subject to the obligations set forth in Rule 11. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) *Denying Part of an Allegation.* — A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) *Lacking Knowledge or Information.* — A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) *Effect of Failing to Deny.* — An allegation — other than one relating to the amount of damages — is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) *Affirmative Defenses.* —

(1) *In General.* — In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

accord and satisfaction;
arbitration and award;
assumption of risk;
contributory negligence;
duress;
discharge in bankruptcy;
estoppel;
failure of consideration;
fraud;
illegality;
injury by fellow servant;
laches;
license;
payment;
release;
res judicata;
statute of frauds;
statute of limitations; and
waiver.

(2) *Mistaken Designation.* — If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) *Pleading to be Concise and Direct; Alternative Statements; Inconsistency.* —

(1) *In General.* — Each allegation must be simple, concise, and direct. No technical form is required.

(2) *Alternative Statements of a Claim or Defense.* — A party may set out two or more statements of a claim or defense alternatively or hypothetically, either in a

single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) *Inconsistent Claims or Defenses.* — A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) *Construing Pleadings.* — Pleadings must be construed so as to do justice.

(Added February 2, 2017, effective March 1, 2017.)

Rule 9. Pleading special matters.

(a) *Capacity or Authority to Sue; Legal Existence.* —

(1) *In General.* — Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) *Raising Those Issues.* — To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) *Fraud or Mistake; Conditions of Mind.* — In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) *Conditions Precedent.* — In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) *Official Document or Act.* — In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(e) *Judgment.* — In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) *Time and Place.* — An allegation of time or place is material when testing the sufficiency of a pleading.

(g) *Special Damages.* — If an item of special damage is claimed, it must be specifically stated.

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

(Added February 2, 2017, effective March 1, 2017.)

Rule 10. Form of pleadings.

(a) *Caption; Names of Parties.* — Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) *Paragraphs; Separate Statements.* — A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence — and each defense other than a denial — must be stated in a separate count or defense.

(c) *Adoption by Reference; Exhibits.* — A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of

a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(d) **(Effective January 1, 2019)** All filed documents shall be on 8½ by 11 inch white paper, single-sided, unless (1) the original of the document or written instrument is another size paper and/or double-sided and (2) the law requires the original document or written instrument be filed with the Court, as in the case of wills or other documents. (Added February 2, 2017, effective March 1, 2017; amended August 21, 2018, effective January 1, 2019.)

Rule 11. Signing pleadings, motions, and other papers; representations to the court; sanctions.

(a) *Signature.* — Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name — or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, telephone number, and attorney number, if any. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) *Representations to the Court.* — By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies 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, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely 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 belief or a lack of information.

(c) *Sanctions.* —

(1) *In General.* — If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanctions.* — A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Court's Initiative.* — On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) *Nature of a Sanction.* — A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others

similarly situated. The sanction may include nonmonetary directives; 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 part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) *Limitations on Monetary Sanctions.* — The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) *Requirements for an Order.* — An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) *Inapplicability to Discovery.* — This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

(Added February 2, 2017, effective March 1, 2017.)

Rule 12. When and how presented; motion for judgment on the pleadings; consolidating motions; waiving defenses; pretrial hearing.

(a) *Time to Serve a Responsive Pleading.* —

(1) *In General.* — Unless another time is specified by this rule or a state statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 20 days after being served with the summons and complaint;

(ii) within 30 days after being served with the summons and complaint if service is made outside the State of Wyoming;

(iii) within 30 days after the last day of publication; or

(iv) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 20 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 20 days after being served with an order to reply, unless the order specifies a different time.

(2) *Effect of a Motion.* — Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) *How to Present Defenses.* — Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) *Motion for Judgment on the Pleadings.* — After the pleadings are closed — but early enough not to delay trial — a party may move for judgment on the pleadings.

(d) *Result of Presenting Matters Outside the Pleadings.* — If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) *Motion for a More Definite Statement.* — A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 10 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) *Motion to Strike.* — The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 20 days after being served with the pleading.

(g) *Joining Motions.* —

(1) *Right to Join.* — A motion under this rule may be joined with any other motion allowed by this rule.

(2) *Limitation on Further Motions.* — Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) *Waiving and Preserving Certain Defenses.* —

(1) *When Some Are Waived.* — A party waives any defense listed in Rule 12(b)(2)--(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others.* — Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) *Lack of Subject-Matter Jurisdiction.* — If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) *Decision Before Trial.* — If a party so moves, any defense listed in Rule 12(b)(1)--(7) — whether made in a pleading or by motion — and a motion under Rule 12(c) must be decided before trial unless the court orders a deferral until trial.

(Added February 2, 2017, effective March 1, 2017.)

Rule 13. Counterclaim and crossclaim.

(a) *Compulsory Counterclaim.* —

(1) *In General.* — A pleading must state as a counterclaim any claim that — at the time of its service — the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) *Exceptions.* — The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(b) *Permissive Counterclaim.* — A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) *Relief Sought in a Counterclaim.* — A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) *Counterclaim Against the State.* — These rules do not expand the right to assert a counterclaim — or to claim a credit — against the state or against a county, municipal corporation or other political subdivision, public corporation, or any officer or agency thereof.

(e) *Counterclaim Maturing or Acquired After Pleading.* — The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

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

(g) *Crossclaim Against a Coparty.* — A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

(h) *Joining Additional Parties.* — Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

(i) *Separate Trials; Separate Judgments.* — If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

(Added February 2, 2017, effective March 1, 2017.)

Rule 14. Third-party practice.

(a) *When a Defending Party may Bring in a Third Party.* —

(1) *Timing of the Summons and Complaint.* — A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer.

(2) *Third-Party Defendant's Claims and Defenses.* — The person served with the summons and third-party complaint — the "third-party defendant":

(A) must assert any defense against the third-party plaintiff's claim under Rule 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(g);

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(3) *Plaintiff's Claims Against a Third-Party Defendant.* — The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).

(4) *Motion to Strike, Sever, or Try Separately.* — Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) *Third-Party Defendant's Claim Against a Nonparty.* — A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(b) *When a Plaintiff may Bring in a Third Party.* — When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

(Added February 2, 2017, effective March 1, 2017.)

Rule 15. Amended and supplemental pleadings.

(a) *Amendments Before Trial.* —

(1) *Amending as a Matter of Course.* — A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Other Amendments.* — In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) *Time to Respond.* — Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) *Amendments During and After Trial.* —

(1) *Based on an Objection at Trial.* — If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) *For Issues Tried by Consent.* — When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move — at any time, even after judgment — to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) *Relation Back of Amendments.* —

(1) *When an Amendment Relates Back.* — An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out — or attempted to be set out — in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(w) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) *Notice to the State.* — When the State or a State officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the Attorney General of the State or to the officer or agency.

(d) *Supplemental Pleadings.* — On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

(Added February 2, 2017, effective March 1, 2017.)

Rule 16. Pretrial conferences; scheduling; management.

(a) *Purposes of a Pretrial Conference.* — In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

(1) expediting 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 settlement

(b) *Scheduling.* —

(1) *Scheduling Order.* — The judge, or a court commissioner when authorized by the Uniform Rules for the District Courts, may, after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference, telephone, mail or other suitable means, enter a scheduling order.

(2) *Time to Issue.* — The judge must issue the scheduling order as soon as practicable.

(3) Contents of the Order.

(A) *Required Contents.* — The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.

(B) *Permitted Contents.* — The scheduling order may:

(i) modify the timing of disclosures under Rules 26(a) and 26(e)(1);

(ii) modify the extent of discovery;

(iii) provide for disclosure, discovery, or preservation of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;

(v) direct that before moving for an order relating to discovery, the movant must request a conference with the court;

(vi) set dates for pretrial conferences and for trial; and

(vii) include other appropriate matters.

(4) *Modifying a Schedule.* — A schedule may be modified only for good cause and with the judge's consent.

(c) *Attendance and Matters for Consideration at a Pretrial Conference.* —

(1) *Attendance.* — A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) *Matters for Consideration.* — At any pretrial conference, the court may consider and take appropriate action on the following matters:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under Wyoming Rule of Evidence 702;

(E) determining the appropriateness and timing of summary adjudication under Rule 56;

(F) controlling and scheduling discovery, including orders affecting disclosures and discovery under Rule 26 and Rules 29 through 37;

(G) identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for further conferences and for trial;

(H) referring matters to a court commissioner or master;

(I) settling the case and using special procedures to assist in resolving the dispute under Rule 40(b) or other alternative dispute resolution procedures;

(J) determining the form and content of the pretrial order;

(K) disposing of pending motions;

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

(M) ordering a separate trial under Rule 42(b) of a claim, counterclaim, crossclaim, third-party claim, or particular issue;

(N) ordering the presentation of evidence early in the trial on a manageable issue that might, 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);

(O) establishing a reasonable limit on the time allowed to present evidence; and

(P) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(d) *Pretrial Orders.* — After any conference under this rule, the court shall issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

(e) *Final Pretrial Conference and Orders.* — The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of

evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

(f) *Sanctions.* —

(1) *In General.* — On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)--(vii), if a party or its attorney:

(A) fails to appear at a scheduling or other pretrial conference;

(B) is substantially unprepared to participate — or does not participate in good faith — in the conference; or

(C) fails to obey a scheduling or other pretrial order.

(2) *Imposing Fees and Costs.* — Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses — including attorney's fees — incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

(Added February 2, 2017, effective March 1, 2017.)

IV. PARTIES

Rule 17. Plaintiff and defendant; capacity; public officers.

(a) *Real Party in Interest.* —

(1) *Designation in General.* — An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for another's benefit; and

(G) a party authorized by statute.

(2) *Action in the Name of the United States for Another's Use or Benefit.* — When a federal statute so provides, an action for another's use or benefit must be brought in the name of the United States.

(3) *Joinder of the Real Party in Interest.* — The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) *Capacity to sue or be sued.* —

(1) The capacity of an individual, including one acting in a representative capacity, to sue or be sued, shall be determined by the law of this State.

(2) A married person may sue or be sued in all respects as if he or she were single.

(3) The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized, unless a statute of this State provides to the contrary.

(4) A partnership or other unincorporated association may sue or be sued in its common name.

(c) *Minor or Incompetent Person.* —

(1) *With a Representative.* — The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A) a general guardian;

(B) a committee;

(C) a conservator; or

(D) a like fiduciary.

(2) *Without a Representative.* — A minor or an incompetent person who does not have a duly appointed representative, or if such representative fails to act the minor or incompetent person may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem — or issue another appropriate order — to protect a minor or incompetent person who is unrepresented in an action.

(d) *Suing person by fictitious name.* — When the identity of a defendant is unknown, such defendant may be designated in any pleading or proceeding by any name and description, and when the true name is discovered the pleading or proceeding may be amended accordingly; and the plaintiff in such case must state in the complaint that the plaintiff could not discover the true name, and the summons must contain the words, 'real name unknown', and a copy thereof must be served personally upon the defendant.

(e) *Public Officer's Title and Name.* — A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

(Added February 2, 2017, effective March 1, 2017.)

Rule 18. Joinder of claims.

(a) *In General.* — A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) *Joinder of Contingent Claims.* — A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

(Added February 2, 2017, effective March 1, 2017.)

Rule 19. Required joinder of parties.

(a) *Persons Required to Be Joined if Feasible.* —

(1) *Required Party.* — A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) *Joinder by Court Order.* — If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) *Venue.* — If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) *When Joinder Is Not Feasible.* — If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) *Pleading the Reasons for Nonjoinder.* — When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) *Exception for Class Actions.* — This rule is subject to Rule 23.

(Added February 2, 2017, effective March 1, 2017.)

Rule 20. Permissive joinder of parties.

(a) *Persons Who May Join or Be Joined.* —

(1) *Plaintiffs.* — Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) *Defendants.* — Persons may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) *Extent of Relief.* — Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) *Protective Measures.* — The court may issue orders — including an order for separate trials — to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

(Added February 2, 2017, effective March 1, 2017.)

Rule 21. Misjoinder and nonjoinder of parties.

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

(Added February 2, 2017, effective March 1, 2017.)

Rule 22. Interpleader.

(a) *Grounds.* —

(1) *By a Plaintiff.* — Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) *By a Defendant.* — A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) *Relation to Other Rules.* — This rule supplements — and does not limit — the joinder of parties allowed by Rule 20.

(Added February 2, 2017, effective March 1, 2017.)

Rule 23. Class actions.

(a) *Prerequisites.* — One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) *Types of Class Actions.* — A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

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

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) *Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.* —

(1) *Certification Order.* —

(A) *Time to Issue.* — At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel.* — An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(f).

(C) *Altering or Amending the Order.* — An order that grants or denies class certification may be altered or amended before final judgment.

(2) *Notice.* —

(A) *For (b)(1) or (b)(2) Classes.* — For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) *For (b)(3) Classes.* — For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) *Judgment.* — Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) *Particular Issues.* — When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) *Subclasses.* — When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) *Conducting the Action.* —

(1) *In General.* — In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require — to protect class members and fairly conduct the action — giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) *Combining and Amending Orders.* — An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) *Settlement, Voluntary Dismissal, or Compromise.* — The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.

(2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.

(3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

(f) *Class Counsel.* —

(1) *Appointing Class Counsel.* — Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(g); and

(E) may make further orders in connection with the appointment.

(2) *Standard for Appointing Class Counsel.* — When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(f)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) *Interim Counsel.* — The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) *Duty of Class Counsel.* — Class counsel must fairly and adequately represent the interests of the class.

(g) *Attorney's Fees and Nontaxable Costs.* — In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion

must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a master, as provided in Rule 54(d)(2)(D).

(Added February 2, 2017, effective March 1, 2017.)

Rule 23.1. Derivative actions.

(a) *Prerequisites.* — This rule applies when one or more shareholders or members of a corporation or an unincorporated association bring a derivative action to enforce a right that the corporation or association may properly assert but has failed to enforce. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.

(b) *Pleading Requirements.* — The complaint must be verified and must:

(1) allege that the plaintiff was a shareholder or member at the time of the transaction complained of, or that the plaintiff's share or membership later devolved on it by operation of law;

(2) allege that the action is not a collusive one to confer jurisdiction that the court would otherwise lack; and

(3) state with particularity:

(A) any effort by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members; and

(B) the reasons for not obtaining the action or not making the effort.

(c) *Settlement, Dismissal, and Compromise.* . — A derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders.

(Added February 2, 2017, effective March 1, 2017.)

Rule 23.2. Actions relating to unincorporated associations.

This rule applies to an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action may be maintained only if it appears that those parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may issue any appropriate orders corresponding with those in Rule 23(d), and the procedure for settlement, voluntary dismissal, or compromise must correspond with the procedure in Rule 23(e).

(Added February 2, 2017, effective March 1, 2017.)

Rule 24. Intervention.

(a) *Intervention of Right.* — On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) *Permissive Intervention.* —

(1) *In General.* — On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) *By a Government Officer or Agency.* — On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) *Delay or Prejudice.* — In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) *Notice and Pleading Required.* — A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

(Added February 2, 2017, effective March 1, 2017.)

Rule 25. Substitution of parties.

(a) *Death.* —

(1) *Substitution if the Claim Is Not Extinguished.* — If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) *Continuation Among the Remaining Parties.* — After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) *Service.* — A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

(b) *Incompetency.* — If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

(c) *Transfer of Interest.* — If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

(d) *Public Officers; Death or Separation from Office.* —

(1) An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded.

(2) A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.

(e) *Substitution at any stage.* — Substitution of parties under the provisions of this rule may be made, either before or after judgment, by the court then having jurisdiction.
(Added February 2, 2017, effective March 1, 2017.)

V. DEPOSITIONS AND DISCOVERY

Rule 26. Duty to disclose; general provisions governing discovery.

(a) *Required Disclosures.* —

(1) *Initial Disclosure.* —

(A) *In General.* — Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties, but not file with the court, unless otherwise ordered by the court or required by other rule:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information — along with the subjects of that information — that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy — or a description by category and location — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party — who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(B) *Proceedings Exempt from Initial Disclosure.* — The following proceedings are exempt from initial disclosure:

(i) cases arising under Title 14 of the Wyoming Statutes;

(ii) cases in which the court sits in probate;

(iii) divorce actions [for which the required initial disclosures are set forth in Rules 26(a)(1.1) (A), (B), (C), (D), (E), (F), (G) and (H)] , and custody and support actions where the parties are not married [for which the required initial disclosures are set forth in Rule 26(a)(1.2) (A)];

(iv) review on an administrative record;

(v) a forfeiture action in rem arising from a Wyoming statute;

(vi) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(vii) an action brought without an attorney by a person in the custody of the State, county, or other political subdivision of the State;

(viii) an action to enforce or quash an administrative summons or subpoena;

(ix) a proceeding ancillary to a proceeding in another court; and

(x) an action to enforce an arbitration award.

(1.1) *Initial disclosures in divorce actions.* — In divorce actions the following initial disclosures are required in pre-decree proceedings, and in post-decree proceedings to the extent that they pertain to a particular claim or defense:

(A) A schedule of financial assets, owned by the party individually or jointly, which shall include savings or checking accounts, stocks, bonds, cash or cash equivalents, and shall include:

(i) the name and address of the depository;

(ii) the date such account was established;

(iii) the type of account;

(iv) the account number;

(v) the current value of the account; and

(vi) whether acknowledged to be a marital asset or asserted to be a non-marital asset and, if asserted to be a non-marital asset, an explanation of the legal and factual basis for such assertion;

(B) A schedule of non-financial assets, owned by the party individually or jointly, which schedule shall include:

(i) the purchase price and the date of acquisition;

(ii) the present market value;

(iii) any indebtedness relating to such asset;

(iv) the state of record ownership;

(v) the current location of the asset;

(vi) whether purchased from marital assets or obtained by gift or inheritance; and

(vii) whether acknowledged to be a marital asset or asserted to be a non-marital asset and, if asserted to be a non-marital asset, an explanation of the legal and factual basis for such assertion;

(C) A schedule of all debts owed individually or jointly, identifying:

(i) the date any obligation was incurred;

(ii) the spouse in whose name the debt was incurred;

(iii) the present amount of all debts and the monthly payments;

(iv) the use to which the money was put which caused the debt to arise;

(v) identification of any asset which serves as security for such debt; and

(vi) an acknowledgement of whether each debt is a marital or non-marital debt and, if asserted to be a non-marital debt, an explanation of the legal and factual basis for such assertion;

(D) As to safe deposit boxes:

(i) the name and address of the institution where the box is located;

(ii) the box number;

(iii) the name and address of the individual(s) who have access to the box;

(iv) an inventory of the contents; and

(v) the value of the assets located therein;

(E) Employment:

(i) the name and address of the employer;

(ii) gross monthly wage;

(iii) payroll deduction(s), specifically identifying the type and amount;

(iv) the amount of other benefits including transportation, employer contributions to health care, and employer contributions to retirement accounts; and

(v) outstanding bonuses;

(F) Other income: list all sources of other income as defined by Wyo.Stat.Ann. § 20-6-202(a)(ix), including the name and address of the source and the amount and date received;

(G) As to retirement accounts or benefits:

(i) the name and address of the institution holding such account or benefits;

(ii) the present value if readily ascertainable;

(iii) the initial date of any account;

(iv) the expected payment upon retirement and the specific retirement date; and

(v) the value of the account at the date of the marriage if the account existed prior to marriage;

(H) A party seeking custody or a change in custody shall set forth the facts believed to support the claim of superior entitlement to custody. In addition, as to a change of custody the party shall set forth any facts comprising a substantial change in circumstances and disclose any supporting documentation.

(1.2) *Initial disclosures in custody and support actions where the parties are not married.* — In custody and support actions where the parties are not married, the following initial disclosures are required in original proceedings and in modification proceedings to the extent that they pertain to a particular claim or defense:

(A) A party seeking custody or a change in custody shall set forth the facts believed to support the claim of superior entitlement to custody. In addition, as to a change of custody, the party shall set forth any facts comprising a substantial change in circumstances and disclose any supporting documentation.

(1.3) *Timing of disclosures; requirement to disclose.* — Unless a different time is set by stipulation in writing or by court order, these disclosures pursuant to 26(a)(1), 26(a)(1.1) and 26(a)(1.2) shall be made within 30 days after a party's answer is required to be served under Rule 12(a) or as that period may be altered as described in Rule 12(a) by the party's service of a dispositive motion as described in Rule 12(b). Any party later served or otherwise joined must make these disclosures within 30 days after being served or joined unless a different time is set by stipulation in writing or by court order. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) *Disclosure of Expert Testimony.* —

(A) In addition to the disclosures required by paragraph (1), (1.1) or (1.2), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Wyoming Rule of Evidence 702, 703, or 705.

(B) *Witnesses Who Must Provide a Written Report.* — Unless otherwise stipulated or ordered by the court, if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony, this disclosure must be accompanied by a written report prepared and signed by the witness or a disclosure signed by counsel for the party. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) *Witnesses Who Do Not Provide a Written Report.* — Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(i) the subject matter on which the witness is expected to present evidence under Wyoming Rule of Evidence 702, 703, or 705; and

(ii) a summary of the facts and opinions to which the witness is expected to testify.

(D) *Time to Disclose Expert Testimony.* — A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(i) at least 90 days before the date set for trial or for the case to be ready for trial; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.

(E) *Supplementing the Disclosure.* — The parties must supplement these disclosures when required under Rule 26(e).

(3) *Pretrial Disclosures.* —

(A) *In General.* — In addition to the disclosures required by Rule 26(a)(1), (1.1), (1.2) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(i) the name and, if not previously provided, the address and telephone number of each witness — separately identifying those the party expects to present and those it may call if the need arises;

(ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(iii) an identification of each document or other exhibit, including summaries of other evidence — separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) *Time for Pretrial Disclosures; Objections.* — Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii). An objection not so made — except for one under Wyoming Rule of Evidence 402 or 403 — is waived unless excused by the court for good cause.

(4) *Form of Disclosures.* — Unless the court orders otherwise, all disclosures under Rule 26(a)(1), (1.1), (1.2), (2), or (3) must be in writing, signed, and served.

(b) *Discovery Scope and Limits.* —

(1) *Scope in General.* — Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) *Limitations on Frequency and Extent.* —

(A) *When Permitted.* — By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under Rule 30. By order, the court may also limit the number of requests under Rule 36.

(B) *Specific Limitations on Electronically Stored Information.* — A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) *When Required.* — On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by the court if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

(3) *Trial Preparation: Materials.* —

(A) *Documents and Tangible Things.* — Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) *Protection Against Disclosure.* — If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) *Previous Statement.* — Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording — or a transcription of it — that recites substantially verbatim the person's oral statement.

(4) *Trial Preparation: Experts.* —

(A) *Deposition of an Expert Who May Testify.* — A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) *Trial-Preparation Protection for Draft Reports or Disclosures.* — Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) *Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses.* — Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) *Expert Employed Only for Trial Preparation.* — Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in Rule 35(b); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(E) *Payment.* — Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and

(ii) for discovery under (D), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

(5) *Claiming Privilege or Protecting Trial-Preparation Materials.* —

(A) *Information Withheld.* — When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

(i) expressly make the claim; and

(ii) describe the nature of the documents, communications, or tangible things not produced or disclosed — and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) *Information Produced.* — If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) *Protective Orders.* —

(1) *In General.* — A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending — or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the

movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) *Ordering Discovery.* — If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) *Awarding Expenses.* — Rule 37(a)(5) applies to the award of expenses.

(d) *Timing and Sequence of Discovery.* —

(1) *Timing.* — Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order, a party may not seek discovery from any source before the period for initial disclosures has expired and that party has provided the disclosures required under Rule 26(a)(1), (1.1), or (1.2).

(2) *Sequence.* — Unless the parties stipulate or the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and

(B) discovery by one party does not require any other party to delay its discovery.

(e) *Supplementing Disclosures and Responses.* —

(1) *In General.* — A party who has made a disclosure under Rule 26(a) — or who has responded to an interrogatory, request for production, or request for admission — must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is 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; or

(B) as ordered by the court.

(2) *Expert Witness.* — For an expert whose report must be disclosed under Rule 26(a)(2)(B), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 26(a)(3) are due.

(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 14 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 Disclosures and Discovery Requests, Responses, and Objections.* —

(1) *Signature Required; Effect of Signature.* — Every disclosure under Rule 26(a)(1), (1.1), (1.2), or (3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name / or by the party personally, if unrepresented — and must state the signer's address, email address, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(A) with respect to a disclosure, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(i) consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) *Failure to Sign.* — Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) *Sanction for Improper Certification.* — If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

(Added February 2, 2017, effective March 1, 2017; amended March 27, 2018, effective July 1, 2018.)

Editor's notes. — Within Rule 26 (a)(1.1)(A), there is no subdivision (v).

Rule 27. Depositions to perpetuate testimony.

(a) *Before an Action is Filed.* —

(1) *Petition.* — A person who wants to perpetuate testimony about any matter cognizable in any court of the state may file a verified petition in the district court for the district where any expected adverse party resides. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner's name and must show:

(A) that the petitioner expects to be a party to an action cognizable in a court of the state but cannot presently bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner's interest;

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

(D) the names or a description of the persons whom the petitioner expects to be adverse parties and their addresses, so far as known; and

(E) the name, address, and expected substance of the testimony of each deponent.

(2) *Notice and Service.* — At least 20 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served either inside or outside the state in the manner provided in Rule 4. If that service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise. The court must appoint an attorney to represent persons not served in the manner provided in Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. If any expected adverse party is a minor or is incompetent, Rule 17(c) applies.

(3) *Order and Examination.* — If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules, and the court may issue orders like those authorized by Rules 34 and 35. A reference in these rules to the court where an action is pending means, for purposes of this rule, the court where the petition for the deposition was filed.

(4) *Using the Deposition.* — A deposition to perpetuate testimony may be used under Rule 32(a) in any later-filed district court action involving the same subject matter if the deposition either was taken under these rules or, although not so taken, would be admissible in evidence in the courts of the state where it was taken.

(b) *Pending Appeal.* —

(1) *In General.* — The court where a judgment has been rendered may, if an appeal has been taken or may still be taken, permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

(2) *Motion.* — The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in the trial court. The motion must show:

(A) the name, address, and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) *Court Order.* — If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 34 and 35. The depositions may be taken and used as any other deposition taken in a pending district court action.

(c) *Perpetuation by an Action.* — This rule does not limit a court's power to entertain an action to perpetuate testimony.
(Added February 2, 2017, effective March 1, 2017.)

Rule 28. Persons before whom depositions may be taken.

(a) *Within the United States.* —
(1) *In General.* — Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:
(A) an officer authorized to administer oaths either by the laws of this state or of the United States or of the place of examination; or
(B) a person appointed by the court where the action is pending to administer oaths and take testimony.
(2) Definition of "Officer." The term "officer" in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29(a).
(b) *In a Foreign Country.* —
(1) *In General.* — A deposition may be taken in a foreign country:
(A) under an applicable treaty or convention;
(B) under a letter of request, whether or not captioned a "letter rogatory";
(C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or
(D) before a person commissioned by the court to administer any necessary oath and take testimony.
(2) *Issuing a Letter of Request or a Commission.* — A letter of request, a commission, or both may be issued:
(A) on appropriate terms after an application and notice of it; and
(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.
(3) *Form of a Request, Notice, or Commission.* — When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed "To the Appropriate Authority in [name of country]." A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.
(4) *Letter of Request — Admitting Evidence.* — Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States.
(c) *Disqualification.* — A deposition must not be taken before a person who is any party's relative, employee, or attorney; who is related to or employed by any party's attorney; or who is financially interested in the action.
(Added February 2, 2017, effective March 1, 2017.)

Rule 29. Stipulations about discovery procedure.

Unless the court orders otherwise, the parties may stipulate that:
(a) a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified — in which event it may be used in the same way as any other deposition; and
(b) other procedures governing or limiting discovery be modified — but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion, or for trial.

(Added February 2, 2017, effective March 1, 2017.)

Rule 30. Depositions by oral examination.

(a) *When a Deposition May Be Taken.* —

(1) *Without Leave.* — A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) *With Leave.* — A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

(A) if the parties have not stipulated to the deposition and:

(i) the 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 the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take the deposition before the time specified in Rule 26(d), unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave the State of Wyoming and be unavailable for examination in this State after that time; or

(B) if the deponent is confined in prison.

(b) *Notice of the Deposition; Other Formal Requirements.* —

(1) *Notice in General.* — A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing Documents.* — If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.

(3) *Method of Recording.* —

(A) *Method Stated in the Notice.* — The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(B) *Additional Method.* — With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) *By Remote Means.* — The parties may stipulate — or the court may on motion order — that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place where the deponent answers the questions.

(5) *Officer's Duties.* —

(A) *Before the Deposition.* — Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with an on-the-record statement that includes:

(i) the officer's name and business address;

(ii) the date, time, and place of the deposition;

(iii) the deponent's name;

(iv) the officer's administration of the oath or affirmation to the deponent; and

(v) the identity of all persons present.

(B) *Conducting the Deposition; Avoiding Distortion.* — If the deposition is recorded nonstenographically, the officer must repeat the items in Rule 30(b)(5)(A)(i)-(iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) *After the Deposition.* — At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) *Notice or Subpoena Directed to an Organization.* — In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

(c) *Examination and cross-examination; record of examination; oath; objections.* —

(1) *Examination and Cross-Examination.* — The examination and cross-examination of a deponent proceed as they would at trial under the Wyoming Rules of Evidence, except Rules 103 and 615. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) *Objections.* — An objection at the time of the examination — whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition — must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) *Participating Through Written Questions.* — Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) *Duration; Sanction; Motion to Terminate or Limit.* —

(1) *Duration.* — Unless otherwise stipulated or ordered by the court, a deposition is limited to one day of seven hours. The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Sanction.* — The court may impose an appropriate sanction — including the reasonable expenses and attorney's fees incurred by any party — on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) *Motion to Terminate or Limit.* —

(A) *Grounds.* — At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses

the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order.* — The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) *Award of Expenses.* — Rule 37(a)(5) applies to the award of expenses.

(e) *Review by the Witness; Changes.* —

(1) *Review; Statement of Changes.* — On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) *Changes Indicated in the Officer's Certificate.* — The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

(f) *Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Filing.* —

(1) *Certification and Delivery.* — The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) *Documents and Tangible Things.* —

(A) *Originals and Copies.* — Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals — after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked — in which event the originals may be used as if attached to the deposition.

(B) *Order Regarding the Originals.* — Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.

(3) *Copies of the Transcript or Recording.* — Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) *Notice of Filing.* — A party who files the deposition must promptly notify all other parties of the filing.

(g) *Failure to Attend a Deposition or Serve a Subpoena; Expenses.* — A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

(Added February 2, 2017, effective March 1, 2017.)

Rule 31. Depositions by written questions.

(a) *When a Deposition May Be Taken.* —

(1) *Without Leave.* — A party may, by written questions, depose any person, including a party, without leave of court except as provided in Rule 31(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) *With Leave.* — A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(1) and (2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take a deposition before the time specified in Rule 26(d); or

(B) if the deponent is confined in prison.

(3) *Service; Required Notice.* — A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(4) *Questions Directed to an Organization.* — A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with Rule 30(b)(6).

(5) *Questions from Other Parties.* — Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within seven days after being served with cross-questions; and recross-questions, within seven days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

(b) *Delivery to the Officer; Officer's Duties.* — The party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f) to:

(1) take the deponent's testimony in response to the questions;

(2) prepare and certify the deposition; and

(3) send it to the party, attaching a copy of the questions and of the notice.

(c) *Notice of Completion or Filing.* —

(1) *Completion.* — The party who noticed the deposition must notify all other parties when it is completed.

(2) *Filing.* — A party who files the deposition must promptly notify all other parties of the filing.

(Added February 2, 2017, effective March 1, 2017.)

Rule 32. Using depositions in court proceedings.

(a) *Using Depositions.* —

(1) *In General.* — At a hearing or trial, all or part of a deposition may be used against a party on these conditions:

(A) the party was present or represented at the taking of the deposition or had reasonable notice of it;

(B) it is used to the extent it would be admissible under the Wyoming Rules of Evidence if the deponent were present and testifying; and

(C) the use is allowed by Rule 32(a)(2) through (8).

(2) *Impeachment and Other Uses.* — Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the Wyoming Rules of Evidence.

(3) *Deposition of Party, Agent, or Designee.* — An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4).

(4) *Unavailable Witness.* — A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

(A) that the witness is dead;

(B) that the witness is absent from the state, unless it appears that the witness's absence was procured by the party offering the deposition;

(C) that the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;

(D) that the party offering the deposition could not procure the witness's attendance by subpoena; or

(E) on motion and notice, that exceptional circumstances make it desirable-in the interest of justice and with due regard to the importance of live testimony in open court-to permit the deposition to be used.

(5) *Limitations on Use.* —

(A) *Deposition Taken on Short Notice.* — A deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place — and this motion was still pending when the deposition was taken.

(B) *Unavailable Deponent; Party Could Not Obtain an Attorney.* — A deposition taken without leave of court under the unavailability provision of Rule 30(a)(2)(A)(iii) must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.

(6) *Using Part of a Deposition.* — If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(7) *Substituting a Party.* — Substituting a party under Rule 25 does not affect the right to use a deposition previously taken.

(8) *Deposition Taken in an Earlier Action.* — A deposition lawfully taken and, if required, filed in any federal or state court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the Wyoming Rules of Evidence.

(b) *Objections to Admissibility.* — Subject to Rules 28(b) and 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) *Form of Presentation.* — Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but may provide the court with the testimony in nontranscript form as well. On any party's request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in nontranscript form, if available, unless the court for good cause orders otherwise.

(d) *Waiver of Objections.* —

(1) *To the Notice.* — An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) *To the Officer's Qualification.* — An objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) To the Taking of the Deposition

(A) *Objection to Competence, Relevance, or Materiality.* — An objection to a deponent's competence — or to the competence, relevance, or materiality of testimony — is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(B) *Objection to an Error or Irregularity.* — An objection to an error or irregularity at an oral examination is waived if:

(i) it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(ii) it is not timely made during the deposition.

(C) *Objection to a Written Question.* — An objection to the form of a written question under Rule 31 is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within seven days after being served with it.

(4) *To Completing and Returning the Deposition.* — An objection to how the officer transcribed the testimony— or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition — is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

(Added February 2, 2017, effective March 1, 2017.)

Rule 33. Interrogatories to parties.

(a) *In General.* —

(1) *Number.* — Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).

(2) *Scope.* — An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

(b) *Answers and Objections.* —

(1) *Responding Party.* — The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.

(2) *Time to Respond.* — The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(3) *Answering Each Interrogatory.* — Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) *Objections.* — The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(5) *Signature.* — The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) *Use.* — An answer to an interrogatory may be used to the extent allowed by the Wyoming Rules of Evidence.

(d) *Option to Produce Business Records.* — If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

(Added February 2, 2017, effective March 1, 2017.)

Rule 34. Producing documents, electronically stored information, and tangible things, or entering onto land for inspection and other purposes.

(a) *In General.* — A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information-including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations-stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) *Procedure.* —

(1) *Contents of the Request.* — The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) *Responses and Objections.* —

(A) *Time to Respond.* — The party to whom the request is directed must respond in writing within 30 days after being served. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(B) *Responding to Each Item.* — For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce

copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

(C) *Objections.* — An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.

(D) *Responding to a Request for Production of Electronically Stored Information.* — The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form — or if no form was specified in the request — the party must state the form or forms it intends to use.

(E) *Producing the Documents or Electronically Stored Information.* — Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

(c) *Nonparties.* — As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

(Added February 2, 2017, effective March 1, 2017.)

Rule 35. Physical and mental examinations.

(a) *Order for an Examination.* —

(1) *In General.* — The court where the action is pending may order a party whose mental or physical condition — including blood group — is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) *Motion and Notice; Contents of the Order.* — The order:

(A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

(b) *Examiner's Report.* —

(1) *Request by the Party or Person Examined.* — The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) *Contents.* — The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) *Request by the Moving Party.* — After delivering the reports, the party who moved for the examination may request — and is entitled to receive — from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) *Waiver of Privilege.* — By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have — in that action or any other action involving the same controversy — concerning testimony about all examinations of the same condition.

(5) *Failure to Deliver a Report.* — The court on motion may order — on just terms — that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.

(6) *Scope.* — This subdivision (b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This subdivision does not preclude obtaining an examiner's report or deposing an examiner under other rules.

(Added February 2, 2017, effective March 1, 2017.)

Rule 36. Requests for admission.

(a) *Scope and Procedure.* —

(1) *Scope.* — A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(2) *Form; Copy of a Document.* — Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) *Time to Respond; Effect of Not Responding.* — A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

(4) *Answer.* — If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) *Objections.* — The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) *Motion Regarding the Sufficiency of an Answer or Objection.* — The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

(b) *Effect of an Admission; Withdrawing or Amending It.* — A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or

defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding. (Added February 2, 2017, effective March 1, 2017.)

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

(a) *Motion for an Order Compelling Disclosure or Discovery.* —

(1) *In General.* — On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. 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 disclosure or discovery in an effort to obtain it without court action.

(2) *Appropriate Court.* — A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken.

(3) *Specific Motions.* —

(A) *To Compel Disclosure.* — If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(B) *To Compel a Discovery Response.* — A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(i) a deponent fails to answer a question asked under Rule 30 or 31;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);

(iii) a party fails to answer an interrogatory submitted under Rule 33; or

(iv) a party fails to produce documents or fails to respond that inspection will be permitted — or fails to permit inspection — as requested under Rule 34.

(C) *Related to a Deposition.* — When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(4) *Evasive or Incomplete Disclosure, Answer, or Response.* — For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

(5) *Payment of Expenses; Protective Orders.* —

(A) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* — If the motion is granted — or if the disclosure or requested discovery is provided after the motion was filed — the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) *If the Motion Is Denied.* — If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable

expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) *If the Motion Is Granted in Part and Denied in Part.* — If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) *Failure to Comply with Court Order.* —

(1) *Sanctions Sought in the District Where the Deposition Is Taken.* — If the court where the discovery is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court. If a deposition-related motion is transferred to the court where the action is pending, and that court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of either the court where the discovery is taken or the court where the action is pending.

(2) *Sanctions Sought in the District Where the Action Is Pending.* —

(A) *For Not Obeying a Discovery Order.* — If a party or a party's officer, director, or managing agent — or a witness designated under Rule 30(b)(6) or 31(a)(4) — fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(B) *For Not Producing a Person for Examination.* — If a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(2)(A)(i)-(vi), unless the disobedient party shows that it cannot produce the other person.

(C) *Payment of Expenses.* — Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) *Failure to Disclose, to Supplement an Earlier Response, or to Admit.* —

(1) *Failure to Disclose or Supplement.* — If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).

(2) *Failure to Admit.* — If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 36(a);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) *Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.* —

(1) *In General.* —

(A) *Motion; Grounds for Sanctions.* — The court where the action is pending may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent — or a person designated under Rule 30(b)(6) or 31(a)(4) — fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

(B) *Certification.* — A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) *Unacceptable Excuse for Failing to Act.* — A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

(3) *Types of Sanctions.* — Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)-(vi). Instead of or in addition to these sanctions, the court shall require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) *Failure to Preserve Electronically Stored Information.* — If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) dismiss the action or enter a default judgment.

(f) *Failure to Participate in Framing a Discovery Plan.* — If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by Rule 26(f), the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

(Added February 2, 2017, effective March 1, 2017.)

VI. TRIALS

Rule 38. Right to a jury trial; demand.

(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, must 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 14 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 indorsed upon a pleading of the party.

(2) *Jury Fees.* —

(A) *District Courts.* —

(i) All demands for trial by jury in district courts shall be accompanied by a deposit of $50.00, if a six person jury is demanded, or $150.00, if a twelve person jury is demanded.

(ii) 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

(iii) The clerk shall tax costs in each such case, and in all other cases in which a jury trial is had, a jury fee of $50.00, if a six person jury trial is held, or $150.00, if a twelve person jury trial is held, to be recovered by 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.

(B) *Circuit Courts.* —

(i) All demands for trial by jury in circuit courts shall be accompanied by a deposit of $50.00.

(ii) The jury fees in cases where jury trials are demanded shall be paid to the clerk of the court, and paid by the clerk to the State of Wyoming Treasurer at the close of each month, and

(iii) 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) *Specifying issues.* — In its jury demand a party may specify the issues which the party wishes to be tried by a jury; 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 14 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 triable by a jury in the action.

(d) *Waiver.* — The failure of a party to properly serve and file a jury demand as required by this rule constitutes a waiver by the party of trial by jury. A proper demand for trial by jury may not be withdrawn without the consent of the parties.

(Added February 2, 2017, effective March 1, 2017.)

Rule 39. Trial by jury or by the court.

(a) *By Jury.* — When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:

(1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court, on motion or on its own, finds that on some or all of those issues or

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

(b) *By the Court.* — Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(c) *Advisory Jury; Jury Trial by Consent.* — In an action not triable of right by a jury, the court, on motion or on its own:

(1) may try any issue with an advisory jury; or

(2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is against the State of Wyoming when a statute provides for a nonjury trial.

(Added February 2, 2017, effective March 1, 2017.)

Rule 39.1. Jury trial; jury note taking; juror notebooks.

(a) *Juror note taking.* — At the beginning of civil trials, the court shall instruct the jurors that they will be permitted to take notes during the trial if they wish to do so. The court shall provide each juror with appropriate materials for this purpose and shall give jurors appropriate instructions about procedures for note taking and restrictions on jurors' use of their notes. The jurors may take their notes with them for use during court recesses and deliberations, but jurors shall not be permitted to take their notes out of the courthouse. The bailiff or clerk shall collect all jurors' notes at the end of each day of trial and shall return jurors' notes when trial resumes. After the trial has concluded and the jurors have completed their deliberations, the bailiff or clerk shall collect all jurors' notes before the jurors are excused. The bailiff or clerk shall promptly destroy these notes.

(b) *Juror notebooks.* — The court may provide all jurors with identical "Juror Notebooks" to assist the jurors in organizing materials the jurors receive at trial. Typical contents of a juror notebook include blank paper for note taking, stipulations of the parties, lists or seating charts identifying counsel and their respective clients, general instructions for jurors, and pertinent case specific instructions. Notebooks may also include copies of important exhibits (which may be highlighted), glossaries of key technical terms, pictures of witnesses, and a copy of the court's juror handbook, if one is available. During the trial, the materials in the juror notebooks may be supplemented with additional materials as they become relevant and are approved by the court for inclusion. Copies of any additional jury instructions given to jurors during trial or before closing arguments should also be included in juror notebooks before the jurors retire to deliberate. The trial court should generally resolve with counsel at a pretrial conference whether juror notebooks will be used and, if so, what contents will be included. The trial court may require that counsel meet in advance of the pretrial conference to confer and attempt to agree on the contents of the notebooks. The jurors may take their notebooks with them for use during court recesses and deliberations, but jurors shall not be permitted to take their notebooks out of the courthouse. The bailiff or clerk shall collect all jurors' notebooks at the end of each day of trial and shall return

jurors' notebooks when trial resumes. After the trial has concluded and the jurors have completed their deliberations, the bailiff or clerk shall collect all jurors' notebooks before the jurors are excused. The bailiff or clerk shall promptly destroy the contents of the notebooks, except that one copy of the contents of the juror notebooks, excluding jurors' personal notes and annotations, shall be preserved and retained as part of the official trial record.
(Added February 2, 2017, effective March 1, 2017.)

Rule 39.2. Juror questionnaires.

In appropriate cases, the court may use case-specific juror questionnaires to gather information from prospective jurors in advance of jury selection. When case-specific questionnaires will be used, the court should require counsel to confer and attempt to reach agreement on the questions that will be included in the questionnaires. The court shall rule on inclusion or exclusion of any questions the court deems improper. The court shall note on the record the basis on which it overruled any objections to inclusion or exclusion of particular questions. The court shall confer with counsel concerning the timing and procedures to be used for disseminating questionnaires and collecting completed questionnaires from prospective jurors, as well as to permit counsel adequate time and opportunity to review the completed questionnaires thoroughly before jury selection will begin. In its discretion, the court may require that the costs of copying, disseminating and collecting the questionnaires be borne (1) by both parties, (2) by the party requesting use of the questionnaires, or (3) by the court. In the alternative, these expenses may be assessed against the losing party as part of the costs.
(Added February 2, 2017, effective March 1, 2017.)

Rule 39.3. Copies of instructions for jurors.

The trial court shall provide each juror with the juror's own copy of all written instructions that the court reads to the jury before, during or at the conclusion of the trial. The court may include the copies of the instructions in the juror notebook provided to each juror, if juror notebooks will be used at trial. Jurors shall be permitted to take their copies of the instructions with them for reference during recesses and during their deliberations. Jurors shall not be permitted, however, to take their copies of the jury instructions out of the courthouse.
(Added February 2, 2017, effective March 1, 2017.)

Rule 39.4. Juror questions for witnesses.

At the beginning of civil trials, the court shall instruct jurors that they will be permitted to submit written questions for witnesses if they have questions about the witnesses' testimony that have not been answered after counsel for all parties have finished examining the witnesses. The court shall also instruct the jurors that some questions they submit may not be asked, as some jurors' questions may be legally improper or otherwise inappropriate. The court shall provide jurors with paper and a pen or pencil with which they may write down questions for submission to the court.

Before each witness is excused, the court shall determine whether any jurors have questions for that witness. The court shall review jurors' written questions with counsel, out of the hearing of the jury, making the question part of the record. The court shall permit counsel to interpose objections, including objections based on litigation strategy or stipulation of the parties. The court shall rule on any objections, noting the basis of the ruling on the record. If the court determines that the question is not improper or unfairly prejudicial, the court shall read the question to the witness or permit counsel to read the question to the witness. The question may be modified as

deemed appropriate by the court in consultation with counsel. After the witness responds to the question, the court shall permit counsel for both sides to ask follow-up questions if such follow-up questions appear to be necessary or appropriate.

The court shall permit counsel to present additional rebuttal evidence at trial if necessary to prevent unfair prejudice attributable to testimony that results from questions that jurors submit.

(Added February 2, 2017, effective March 1, 2017.)

Rule 40. Assignment for trial or alternative dispute resolution.

(a) *Scheduling Actions for Trial.* — The court shall place actions upon the trial calendar:

(1) without request of the parties; or

(2) upon request of a party and notice to the other parties; or

(3) in such other manner as the court deems expedient.

Precedence shall be given to actions entitled to trial by statute.

(b) *Limited Assignment for Alternative Dispute Resolution.* —

(1) *Assignment.* — For the purpose of invoking nonbinding alternative dispute resolution methods:

(A) *Court Assignment.* — The court may, or at the request of any party, shall, assign the case to:

(i) another active judge,

(ii) a retired judge,

(iii) retired justice, or

(iv) other qualified person on limited assignment.

(B) *By Agreement.* — By agreement, the parties may select the person to conduct the settlement conference or to serve as the mediator.

(i) If the parties are unable to agree, they may advise the court of their recommendations, and

(ii) the court shall then appoint a person to conduct the settlement conference or to serve as the mediator.

(2) *Alternative Dispute Resolution Procedure.* — A settlement conference or mediation may be conducted in accordance with procedures prescribed by the person conducting the settlement conference or mediation. A mediation also may be conducted in accordance with the following recommended rules of procedure:

(A) *Written Submissions.* — Prior to the session, the mediator may require confidential ex parte written submissions from each party. Those submissions should include:

(i) each party's honest assessment of the strengths and weaknesses of the case with regard to liability, damages, and other relief,

(ii) a history of all settlement offers and counteroffers in the case,

(iii) an honest statement from plaintiff's counsel of the minimum settlement authority that plaintiff's counsel has or is able to obtain, and

(iv) an honest statement from defense counsel of the maximum settlement authority that defense counsel has or is able to obtain.

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

(C) *Conduct of Alternative Dispute Resolution.* —

(i) *Commencement.* — The mediator may begin the session by stating the objective, which is to seek a workable resolution that is in the best

interests of all involved and that is fair and acceptable to the parties. The parties should be informed of statutory provisions governing mediation, including provisions relating to confidentiality, privilege, and immunity.

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

(iii) *Responses.* — Each party or attorney may then respond to the other's presentation.

(iv) *Conferences.* — From time to time, the parties and their attorneys may confer privately.

(v) *Mediator's Role.* — The mediator may adjourn the session for short periods of time. After a full, open discussion, the mediator may summarize, identify the strong and weak points in each case, point out the risks of trial to each party, suggest a probable verdict or judgment range, and suggest a fair settlement of the case. This may be done in the presence of all parties or separately.

(vi) *Settlement.* — If settlement results, it should promptly be reduced to a writing executed by the settling parties or recorded by other reliable means. The mediator may suggest to the parties such reasonable additions or requirements as may be appropriate or beneficial in a particular case.

(D) *Fees and Costs.* — For those cases filed in court and assigned for settlement conference or mediation:

(i) compensation for services shall be arranged by agreement between the parties and the person conducting the settlement conference or serving as the mediator, and

(ii) that person's statement shall be paid within 30 days of receipt by the parties.

(E) *Other forms of Alternative Dispute Resolution.* — Nothing in this rule is intended to preclude the parties from agreeing to submit their dispute to other forms of alternative dispute resolution, including arbitration and summary jury trial.

(F) *Retained Jurisdiction.* — Assignment of a case to alternative dispute resolution shall not suspend any deadlines or cancel any hearings or trial. The court retains jurisdiction for any and all purposes while the case is assigned to any alternative dispute resolution.

(Added February 2, 2017, effective March 1, 2017.)

Rule 40.1. Transfer of trial and change of judge (Effective until July 1, 2019).

(a) *Transfer of Trial.* —

(1) *Time.* — Any party may move to transfer trial within 15 days after the last pleading is filed.

(2) *Transfer.* — The court shall transfer the action to another county for trial if the court is satisfied that:

(A) there exists within the county where the action is pending such prejudice against the party or the party's cause that the party cannot obtain a fair and impartial trial, or

(B) that the convenience of witnesses would be promoted thereby.

(3) *Hearing.* — All parties shall have an opportunity to be heard at the hearing on the motion and any party may urge objections to any county.

(4) *Transfer.* — If the motion is granted the court shall order that the action be transferred to the most convenient county to which the objections of the parties do

not apply or are the least applicable, whether or not such county is specified in the motion.

(5) *Additional Motions to Transfer.* — After the first motion has been ruled upon, no party may move for transfer without permission of the court.

(6) *Upon Transfer.* — When a transfer is ordered:

(A) The clerk shall transmit to the clerk of the court to which the action has been transferred all papers in the action or duplicates thereof.

(B) The party applying for the transfer shall within 14 days pay the costs of preparing and transmitting such papers and shall pay a docket fee to the clerk of court of the county to which the action is transferred.

(C) The action shall continue in the county to which it is transferred as though it had been originally filed therein.

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

(b) *Change of Judge.* —

(1) *Peremptory Disqualification.* —

(A) *Motion.* — 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.

(B) *Time.* —

(i) *Motion by Plaintiff.* — 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 the 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.

(ii) *Motion by Defendant.* — 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.

(iii) *Parties Added Later.* — One made a party to an action subsequent to the filing of the first responsive pleading by a defendant cannot peremptorily disqualify a judge.

(C) *One Time Challenge.* — In any matter, a party may exercise the peremptory disqualification only one time and against only one judge.

(D) *Criminal and Juvenile Proceedings.* — This rule, and the procedures set forth herein, shall not apply to criminal cases or proceedings in juvenile court.

(2) *Disqualification for Cause.* —

(A) *Grounds.* — Whenever the grounds for such motion become known, any party may move for a change of district judge on the ground that the presiding judge

(i) has been engaged as counsel in the action prior to being appointed as judge,

(ii) is interested in the action,

(iii) is related by consanguinity to a party,

(iv) is a material witness in the action, or

(v) is biased or prejudiced against the party or the party's counsel.

(B) *Motion, Affidavits and Counter-Affidavits.* — The motion shall be supported by an affidavit or affidavits of any person or persons, stating

sufficient facts to show the existence of such grounds. Prior to a hearing on the motion any party may file counter-affidavits.

(C) *Hearing.* — The motion shall be heard by the presiding judge, or at the discretion of the presiding judge by another judge. If the motion is granted, the presiding judge shall immediately call in another judge to try the action.

(3) *Effect of Ruling.* — A ruling on a motion for a change of district judge shall not be an appealable order, but the ruling shall be entered on the docket and made a part of the record and may be assigned as error in an appeal of the case.

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

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

(Added February 2, 2017, effective March 1, 2017.)

Editor's notes. — By court order dated December 4, 2012, the Wyoming Supreme Court ordered that Rule 40.1(b)(1) of the Wyoming Rules of Civil Procedure was suspended in juvenile proceedings, to the extent said rule applies in those proceedings pursuant to Wyo. Stat. Ann. § 14-3-404 and § 14-6-204. Said suspension would continue until such time as the Permanent Rules Advisory Committee, Juvenile Division, may consider this suspension and make recommendations to the Court regarding the future, if any, of peremptory disqualification of judges in juvenile proceedings.

By Court Order dated November 26, 2013, the Supreme Court suspended the rules that permit peremptory disqualifications in criminal and juvenile cases. The Court stated in relevant part:

"Wyoming is in the minority of States that permit peremptory challenges of judges. R. Flamm, Judicial Disqualification: Recusal and Disqualification of Judges, 789-822 (2d ed. 2007) (state-by-state review of statutes and court rules). The peremptory disqualification rule dates back to 1975. While no clear statement of intent was provided by the Court when the peremptory disqualification rules were initially adopted, we conclude that its purpose was to allow attorneys to remove judges selectively when they had concerns that a certain judge may have attitudes that, while not sufficient to support a motion to remove a judge for cause, created concerns for that party that the judge may have a predisposition in that particular case. It was never intended to allow wholesale removal of a judge from all cases in which that attorney may be involved. Throughout its history, Rule 21.1(a) (and its predecessor W.R.Cr.P. 23(d)) has been the subject of intermittent misuse by individual attorneys who utilized it to remove a particular judge from many or all of their cases before that judge. That misuse resulted in this Court suspending the rule and reconsidering its efficacy. In the most recent example, a prosecutor invoked Rule 21.1(a) as a means to remove an assigned judge from eight newly filed juvenile actions and another prosecutor requested blanket disqualification of a judge in all criminal matters. When misuse has risen to an unacceptable level, district judges have objected to this Court and sought relief from the burdens that practice created for them.

This marks at least the third time the rule has been abolished or suspended. The Court previously abolished the rule in 1983, reinstated it and later suspended it in 1998. Each time we ultimately reinstated the rule and admonished attorneys to not use the rule to seek removal of a judge for all cases. In 2010, at the request of the district court judges, the Board of Judicial Policy and Administration established a task force to once again evaluate the apparent misuse of the disqualification rule. Over the objection of the district court judges on the taskforce, it recommended amendments to the rule which would have required a formal procedure for handling these motions and required the judge to respond, a process perceived by the district judges to be similar to disqualifications for cause with a lesser burden of proof. On March 10, 2011, after careful consideration of the taskforce's recommendation to revise the rule, this Court reluctantly decided to leave the rule intact without limitation, but once again admonished the officers of the bar that lawyers should refrain from improper use of the rule and reminded them the rule was not intended to allow attorneys to replace a judge in all cases. By December, 2012, the practice of blanket disqualification of a local judge returned. While these situations were not

widespread, they did cause the predictable disruption of multiple district court dockets and demonstrated that compliance with the intent of the rule could not be assured in the future.

The blanket use of the disqualification rules negatively affects the orderly administration of justice. Judicial dockets are interrupted, replacement judges must be recruited, sometimes including their court reporters, and unnecessary travel expenses are incurred. Peremptory disqualifications of assigned judges affect not only the specific cases at issue, but also the caseload of judges and the cases of other litigants whose cases are pending before the removed judge and the replacement judge at the same time. Where replacement judges are from other judicial districts, the cost and efficient utilization of judicial resources is greatly impacted. These costs cause financial burdens upon district courts budgets. Each district court has a limited budget for outside judges brought in to preside over cases in which challenges have been utilized. Criminal and juvenile cases comprise a significant portion of the cases on a district court's docket and, consequently, multiple disqualifications in those types of cases have a severe impact on the operation of the district court.

In addition, when peremptory challenges are exercised, delays in the timely resolution of juvenile and criminal cases may result. Quick resolution of matters involving children is not only statutorily required, but of paramount concern to this Court. Further, any delay in criminal proceedings resulting from a judge's removal, however slight, can impact a defendant's speedy trial rights, potentially contributing to a dismissal of criminal charges.

Allowing unfettered peremptory challenges of judges encourages judge shopping. In practice, it permits parties to strike a judge who is perceived to be unfavorable because of prior rulings in a particular type of case rather than partiality in the case in question. Disqualifying a judge because of his or her judicial rulings opens the door for manipulation of outcomes. Such undermines the reputation of the judiciary and enhances the public's perception that justice varies according to the judge. It also seriously undercuts the principle of judicial independence and distorts the appearance, if not the reality, of fairness in the delivery of justice.

The inherent power of this Court encompasses the power to enact rules of practice. Included in this power is the authority to suspend or repeal those rules where appropriate. Wyo. Const. Art. V, § 2; Wyo. Stat. Ann. § 5-2-114 (LexisNexis 2013); White v. Fisher, 689 P.2d 102, 106 (Wyo. 1984). In accordance with our inherent authority, and given our duty to ensure the orderly and efficient function of Wyoming's judicial system, we find it advisable to repeal and amend the rules that permit peremptory disqualifications in criminal and juvenile cases."

Rule 40.1. Transfer of trial and change of judge (Effective July 1, 2019).

(a) *Transfer of Trial.* —

(1) *Time.* — Any party may move to transfer trial within 15 days after the last pleading is filed.

(2) *Transfer.* — The court shall transfer the action to another county for trial if the court is satisfied that:

(A) there exists within the county where the action is pending such prejudice against the party or the party's cause that the party cannot obtain a fair and impartial trial, or

(B) that the convenience of witnesses would be promoted thereby.

(3) *Hearing.* — All parties shall have an opportunity to be heard at the hearing on the motion and any party may urge objections to any county.

(4) *Transfer.* — If the motion is granted the court shall order that the action be transferred to the most convenient county to which the objections of the parties do not apply or are the least applicable, whether or not such county is specified in the motion.

(5) *Additional Motions to Transfer.* — After the first motion has been ruled upon, no party may move for transfer without permission of the court.

(6) *Upon Transfer.* — When a transfer is ordered:

(A) The clerk shall transmit to the clerk of the court to which the action has been transferred all papers in the action or duplicates thereof.

(B) The party applying for the transfer shall within 14 days pay the costs of preparing and transmitting such papers and shall pay a docket fee to the clerk of court of the county to which the action is transferred.

(C) The action shall continue in the county to which it is transferred as though it had been originally filed therein.

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

(b) *Change of Judge.* —

(1) *Peremptory Disqualification.* —

(A) *Motion.* — A party may peremptorily disqualify a district judge from acting in a case by filing a motion to disqualify the assigned judge.

(B) *Time for Filing Motion by Plaintiff.* — The motion shall be filed no later than fourteen (14) days after:

(i) the entry of a notice assigning the judge as described in sub-section (H) or

(ii) the entry of an order re-assigning the matter to another judge following the filing of a motion by a defendant under subsection (b)(1)(C), whichever occurs later.

(C) *Time for Filing Motion by Defendant.* — The motion shall be filed no later than:

(i) The time of filing defendant's first responsive pleading or W.R.C.P. 12 motion; or

(ii) Fourteen (14) days after the entry of an order re-assigning the matter to another judge following the filing of a motion by a plaintiff under subsection (b)(1)(B) or by a co-defendant under subsection (b)(1)(C), which ever occurs later.

(D) *Parties Added Later.* — One added as a party to an action after the filing of the first responsive pleading or W.R.C.P. 12 motion by a defendant cannot peremptorily disqualify a judge.

(E) *Subsequent Motions or Additional Claims.* — No party may move to disqualify a judge peremptorily upon the filing of any additional claims, whether counterclaims, crossclaims, or otherwise, or upon subsequent motions filed in the same docket number.

(F) *One Time Challenge.* — In any matter, a party may exercise the peremptory disqualification only one time and against only one judge.

(G) *Criminal and Juvenile Proceedings.* — This rule, and the procedures set forth herein, shall not apply to criminal cases or proceedings in juvenile court.

(H) *Initial Notice of Assignment.* — No later than five (5) days after a complaint is filed, the clerk of court shall enter a notice of assignment of judge.

(I) *Conduct of Proceedings.* — Unless otherwise ordered by the newly assigned District Judge, all proceedings, except for final trial on the merits, may be conducted by telephone or videoconference.

(2) *Disqualification for Cause.* —

(A) *Grounds.* — Whenever the grounds for such motion become known, any party may move for a change of district judge on the ground that the presiding judge

(i) has been engaged as counsel in the action prior to being appointed as judge,

(ii) is interested in the action,

(iii) is related by consanguinity to a party,

(iv) is a material witness in the action, or

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(B) *Motion, Affidavits and Counter-Affidavits.* — The motion shall be supported by an affidavit or affidavits of any person or persons, stating sufficient facts to show the existence of such grounds. Prior to a hearing on the motion any party may file counter-affidavits.

(C) *Hearing.* — The motion shall be heard by the presiding judge, or at the discretion of the presiding judge by another judge. If the motion is granted, the presiding judge shall immediately call in another judge to try the action.

(3) *Effect of Ruling.* — A ruling on a motion for a change of district judge shall not be an appealable order, but the ruling shall be entered on the docket and made a part of the record and may be assigned as error in an appeal of the case.

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

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

(Added February 2, 2017, effective March 1, 2017; amended April 2, 2019, effective July 1, 2019.)

Advisory Notes. — Subsection (E) clarifies that parties may not peremptorily disqualify a judge after the judge has already made any decision in the case. In the Matter of Estate of Meeker, 2017 WY 75, ¶ 19, 397 P.3d 183, 188 (Wyo. 2017), the Wyoming Supreme Court held that a party making a will contest could disqualify a judge under the rule because the will contest was a separate action from the pending probate matter. The Wyoming Supreme Court has also held that a custody modification petition, even though filed under the same docket number as the original divorce action, "is considered a separate and distinct proceeding." Goss v. Goss, 780 P.2d 306, 310 (Wyo. 1989). However, in denying a petition for writ of review, the Wyoming Supreme Court in Hendrickson v. Casey, Case No. 02-140, held that a party to a modification petition could not peremptorily disqualify the judge who heard the initial custody case because the judge had "presided over prior modification proceedings." Subsection (E) clarifies that a party may not seek a different judge when seeking to modify an order entered by a judge who had not been disqualified at the start of the case.

Although this Rule does not apply to Criminal and Juvenile proceedings, it does apply to all other original proceedings before the District Courts whether initiated by a "Petitioner," a "Movant," or otherwise.

Editor's notes. — By court order dated December 4, 2012, the Wyoming Supreme Court ordered that Rule 40.1(b)(1) of the Wyoming Rules of Civil Procedure was suspended in juvenile proceedings, to the extent said rule applies in those proceedings pursuant to Wyo. Stat. Ann. § 14-3-404 and § 14-6-204. Said suspension would continue until such time as the Permanent Rules Advisory Committee, Juvenile Division, may consider this suspension and make recommendations to the Court regarding the future, if any, of peremptory disqualification of judges in juvenile proceedings.

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In addition, when peremptory challenges are exercised, delays in the timely resolution of juvenile and criminal cases may result. Quick resolution of matters involving children is not only statutorily required, but of paramount concern to this Court. Further, any delay in criminal proceedings resulting from a judge's removal, however slight, can impact a defendant's speedy trial rights, potentially contributing to a dismissal of criminal charges.

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The inherent power of this Court encompasses the power to enact rules of practice. Included in this power is the authority to suspend or repeal those rules where appropriate. Wyo. Const. Art. V, § 2; Wyo. Stat. Ann. § 5-2-114 (LexisNexis 2013); White v. Fisher, 689 P.2d 102, 106 (Wyo. 1984). In accordance with our inherent authority, and given our duty to ensure the orderly and efficient function of Wyoming's judicial system, we find it advisable to repeal and amend the rules that permit peremptory disqualifications in criminal and juvenile cases."

Rule 41. Dismissal of actions.

(a) *Voluntary Dismissal.* —

(1) *By the Plaintiff.* —

(A) *Without a Court Order.* — Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) *Effect.* — Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal or state court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) *By Court Order; Effect.* — Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a counterclaim was plead by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the counterclaim shall remain pending for independent adjudication by the court to the extent permitted by the court's subject matter jurisdiction. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) *Involuntary Dismissal; Effect.* —

(1) *By Defendant.* — If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule — except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19 — operates as an adjudication on the merits.

(2) *By the Court.* — Upon its own motion, after reasonable notice to the parties, the court may dismiss, without prejudice, any action not prosecuted or brought to trial with due diligence. See U.R.D.C. 203.

(c) *Dismissing a Counterclaim, Crossclaim, or Third-Party Claim.* — This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) *Costs of a Previously Dismissed Action.* — If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

(Added February 2, 2017, effective March 1, 2017.)

Rule 42. Consolidation; separate trials.

(a) *Consolidation.* — If actions before the court involve a common question of law or fact, the court may:

(1) join for hearing or trial any or all matters at issue in the actions;

(2) consolidate the actions; or

(3) issue any other orders to avoid unnecessary cost or delay.

(b) *Separate Trials.* — For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any right to a jury trial.

(Added February 2, 2017, effective March 1, 2017.)

Rule 43. Taking testimony.

(a) *In Open Court.* — At trial, the witnesses' testimony must be taken in open court unless these rules, a statute, the Wyoming Rules of Evidence, or other rules adopted by the Supreme Court of Wyoming provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) *Affirmation Instead of an Oath.* — When these rules require an oath, a solemn affirmation suffices.

(c) *Evidence on a Motion.* — When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(d) *Interpreter.* — The court may appoint an interpreter of its choosing; fix reasonable compensation to be paid from funds provided by law or by one or more parties; and tax the compensation as costs.

(Added February 2, 2017, effective March 1, 2017.)

Rule 44. Determining foreign law.

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

(Added February 2, 2017, effective March 1, 2017.)

Rule 45. Subpoena.

(a) *In General.* —

(1) *Form and Contents.* —

(A) *Requirements — In General.* — Every subpoena must:

(i) state the court from which it issued;

(ii) state the title of the action and its civil action number;

(iii) command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45 (c), (d) and (e).

(v) A command to produce evidence or to permit inspection, copying, testing, or sampling may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(2) A subpoena must issue as follows:

(A) *Command to Attend Trial.* — For attendance at a trial or hearing, from the court for the district in which the action is pending;

(B) *Command to Attend a Deposition.* — For attendance at a deposition, from the court in which the action is pending, stating the method for recording the testimony; and

(C) *Command to Produce.* — For production, inspection, copying, testing, or sampling, if separate from a subpoena commanding a person's attendance, from the court for the district where the production or inspection is to be made.

(3) *Issued by Whom.* — 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) a court in which the attorney is authorized to practice; or

(B) a court for a district in which a deposition or production is compelled by the subpoena, if the deposition or production pertains to an action pending in a court in which the attorney is authorized to practice.

(4) *Notice to Other Parties Before Service.* — If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice must be served on each party.

(b) *Service; place of attendance; notice before service.* —

(1) *By Whom and How; Fees.* — 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 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.* — Proving service, when necessary, requires filing with the clerk of the court by which the subpoena is issued, a statement of the date and manner of service and of the names of the persons served. The statement must be certified by the person who made the service.

(3) *Place of Compliance for Trial.* — 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) *Place of Compliance for Deposition.* — A person commended 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) *Protecting a Person Subject to Subpoena; Enforcement.* —

(1) *Avoiding Undue Burden or Expense; Sanctions.* — 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) *Command to Produce Materials or Permit Inspection.* —

(A) *Appearance not Required.* — A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless also commanded to appear for deposition, hearing or trial.

(B) *Objections.* — Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling 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 producing any or all of the designated materials or inspection of the premises - or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample 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, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from

significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) *Quashing or Modifying a Subpoena.* —

(A) *When Required.* — 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 a person who is not a party or an officer of a party to travel outside that person's county of residence or employment or a county where that person regularly transacts business in person except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* — 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 request 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 will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in Responding to Subpoena.* —

(1) *Producing Documents or Electronically Stored Information.* —

(A) *Documents.* — 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.

(B) *Form of Electronically Stored Information if Not Specified.* — If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) *Electronically Stored Information Produced in Only One Form.* — A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* — A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.* —

(A) *Making a Claim.* — 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.

(B) *Information Produced.* — If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* — Failure of 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. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by subparagraph (c)(3)(A)(ii).

(Added February 2, 2017, effective March 1, 2017.)

Rule 46. Objecting to a ruling or order.

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

(Added February 2, 2017, effective March 1, 2017.)

Rule 47. Selecting jurors for trial.

(a) *Qualifications.* — All prospective jurors must answer as to their qualifications to be jurors; such answers shall be in writing, signed under penalty of perjury and filed with the clerk of the court. The written responses of the prospective jurors shall be preserved by the clerk of the court for the longer of the following:

(1) One year after the end of the jury term; or

(2) Until all appeals from any trial held during that term of court have been finally resolved.

The judge shall inquire of the jurors in open court on the record to insure that they are qualified.

(b) *Excused Jurors.* — For good cause but within statutory limits a judge may excuse a juror for a trial, for a fixed period of time, or for the term. All excuses shall be written and filed with the clerk or granted in open court on the record.

(c) *Examination of Jurors.* — After the jury panel is qualified, the attorneys, or a pro se party, shall be entitled to conduct the examination of prospective jurors, but such examination shall be under the supervision and control of the judge, and the judge may conduct such further examination as the judge deems proper. The judge may assume the examination if counsel or a pro se party fail to follow this rule. If the judge assumes the examination, the judge may permit counsel or a pro se party to submit questions in writing.

(1) *Purpose of Examination.* — The only purpose of the examination is to select a panel of jurors who will fairly and impartially hear the evidence and render a just verdict.

(2) *Comments and Questions not Permitted.* — The court shall not permit counsel or a pro se party to attempt to precondition prospective jurors to a particular result, comment on the personal lives and families of the parties or their attorneys, or question jurors concerning the pleadings, the law, the meaning of words, or the comfort of jurors.

(3) *Voir Dire Prohibitions.* — In voir dire examination, counsel or a pro se party shall not:

(A) Ask questions of an individual juror that cannot be asked of the panel or a group of jurors collectively;

(B) Ask questions answered in a juror questionnaire except to explain an answer;

(C) Repeat a question asked and answered;

(D) Instruct the jury on the law or argue the case; or

(E) Ask a juror what the juror's verdict might be under any hypothetical circumstances.

(F) Notwithstanding the restrictions set forth in subsections 47(c)(3)(A)-(E), counsel or a pro se party shall be permitted during voir dire examination to preview portions of the evidence from the case in a non-argumentative manner when a preview of the evidence would help prospective jurors better understand the context and reasons for certain lines of voir dire questioning.

(d) *Alternate Jurors.* — The court may direct that not more than six jurors in addition to the regular jury be called and empanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged when the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be empanelled, two peremptory challenges if three or four alternate jurors are to be empanelled, and three peremptory challenges if five or six alternate jurors are to be empanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by law shall not be used against an alternate juror.

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

(f) *Excusing a Juror.* — During trial or deliberation, the court may excuse a juror for good cause.

(Added February 2, 2017, effective March 1, 2017.)

Rule 48. Number of jurors; verdict; polling.

(a) *Number of Jurors.* — A jury must begin with at least 6 and no more than 12 members, and each juror must participate in the verdict unless excused under Rule 47(f).

(b) *Verdict.* — Unless the parties stipulate otherwise, the verdict must be unanimous and must be returned by a jury of at least 6 members.

(c) *Polling.* . — After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or may order a new trial.

(Added February 2, 2017, effective March 1, 2017.)

Rule 49. Special verdict; general verdict and questions.

(a) *Special Verdict.* —

(1) *In General.* — The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

(A) submitting written questions susceptible of a categorical or other brief answer;

(B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or

(C) using any other method that the court considers appropriate.

(2) *Instructions.* — The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) *Issues Not Submitted.* — A party waives the right to a jury trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

(b) *General Verdict with Answers to Written Questions.* —

(1) *In General.* — The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

(2) *Verdict and Answers Consistent.* — When the general verdict and the answers are consistent, the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers.

(3) *Answers Inconsistent with the Verdict.* — When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:

(A) approve, for entry under Rule 58, an appropriate judgment according to the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its answers and verdict; or

(C) order a new trial.

(4) *Answers Inconsistent with Each Other and the Verdict.* — When the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court must direct the jury to further consider its answers and verdict, or must order a new trial.

(Added February 2, 2017, effective March 1, 2017.)

Rule 50. Judgment as a matter of law in jury trials; alternative motion for new trial; conditional rulings.

(a) *Judgment as a matter of law.* —

(1) *In General.* — If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) Resolve the issue against a party; and

(B) Grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) *Motion.* — A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) *Renewing the motion after trial; alternative motion for a new trial.* — If the court does not grant a motion for judgment as a matter of law made under subdivision (a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 28 days after the entry of judgment or, if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged. The movant may alternatively request a new trial or join a motion for a new trial under Rule 59. In ruling on a renewed motion, the court may:

(1) If a verdict was returned:
  (A) Allow the judgment to stand,
  (B) Order a new trial, or
  (C) Direct entry of judgment as a matter of law; or
(2) If no verdict was returned:
  (A) Order a new trial, or
  (B) Direct entry of judgment as a matter of law.

(c) *Granting Renewed Motion for Judgment as a Matter of Law; Conditional Rulings; Motion for a New Trial.* —

(1) *In General.* — If the court grants a renewed motion for judgment as a matter of law, the court shall also conditionally rule on the motion for a new trial, if any, by determining whether a new trial should be granted if the judgment is thereafter vacated or reversed. The court shall specify the grounds for conditionally granting or denying the motion for the new trial.

(2) *Effect of Conditional Ruling.* — 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.

(d) *Time for a Losing Party's New Trial Motion.* — Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered shall be filed no later than 28 days after entry of the judgment.

(e) *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.

(Added February 2, 2017, effective March 1, 2017.)

Editor's notes. — *The annotations below referring to the former terms "motion for directed verdict" and "motion for judgment notwithstanding the verdict" retain their applicability with respect to motions for judgment as a matter of law and renewed motions for judgment as a matter of law.*

Rule 51. Instructions to the jury; objections; preserving a claim of error.

(a) *Requests.* —

(1) *Before or at the Close of the Evidence.* — At the close of the evidence or at any earlier reasonable time that the court orders, a party may file and furnish to every other party written request for the jury instructions it wants the court to give.

(2) *After the Close of the Evidence.* — After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated by an earlier time that the court set for requests; and

(B) with the court's permission, file untimely requests for instructions on any issue.

(b) *Instructions.* — The court:

(1) must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;

(2) must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered; and

(3) may instruct the jury at any time before the jury is discharged.

(c) *Objections.* —

(1) *How to Make.* — A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection.

(2) *When to Make.* — An objection is timely if:

(A) a party objects at the opportunity provided under Rule 51(b)(2); or

(B) a party was not informed of an instruction or action on a request before that opportunity to object, and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) *Record.* — The instructions to the jury, exclusive of rulings which are recorded by the court for inclusion in any record, shall be reduced to writing, numbered and delivered to the jury and shall be part of the record in the case.

(Added February 2, 2017, effective March 1, 2017.)

Rule 52. Findings by the court; judgment on partial findings; reserved questions.

(a) *General and Special Findings by Court.* —

(1) *Trials by the Court or Advisory Jury.* — 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. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in Rule 52(c).

(A) *Requests for Written Findings.* — If 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, the court shall state in writing its special findings of fact separately from its conclusions of law;

(B) *Written Findings Absent Request.* — Without a request from the parties, 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.

(2) *Findings of a Master.* — The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court.

(b) *Amendment or Additional Findings.* — On a party's motion filed no later than 28 days after entry of judgment; the court may amend its findings - or make additional

findings - and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59. When special findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may be later questioned whether or not in the court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

(c) *Judgment on Partial Findings.* — If a party has been fully heard on an issue in a trial without a jury and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party 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 Rule 52(a).

(d) *Reserved Questions.* —

(1) *In General.* — In all cases in which a court reserves an important and difficult constitutional question arising in an action or proceeding pending before it, the court, before sending the question to the supreme court for decision, shall

(A) dispose of all necessary and controlling questions of fact and make special findings of fact thereon, and

(B) 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.

(2) *Constitutional Questions.* — 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 court, a decision on the constitutional question is necessary to the rendition of final judgment. The constitutional 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.

(Added February 2, 2017, effective March 1, 2017.)

Rule 53. Masters.

(a) *Appointment and compensation.* —

(1) *Appointment.* — The court in which any action is pending may appoint a master therein. As used in these rules the word "master" includes, but is not limited to, a referee, an auditor, or an examiner.

(2) *Compensation.* — The compensation to be allowed to a master shall be fixed by the court, and may be charged against one or more of the parties, paid out of any fund or subject matter of the action which is in the custody and control of the court, or as the court may direct. The master shall not retain the master's report as security for the master's compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) *Reference.* — A reference to a master shall be the exception and not the rule.

(1) *Jury Trials.* — In actions to be tried by a jury, a reference shall be made only when the issues are complicated.

(2) *Nonjury Trials.* — In actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

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

(d) *Proceedings.* —

(1) *Meetings.* — When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference.

(A) *Time.* — Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys.

(B) *Delay.* — It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make the master's report.

(C) *Appearance of Parties Required.* — If a party fails to appear at the time and place appointed, the master may proceed ex parte, or in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

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

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

(e) *Report.* —

(1) *Contents and Filing.* — The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and serve on all parties notice of the filing. Unless otherwise directed by the order of reference, the master shall also serve a copy of the report on each party.

(2) *In Nonjury Actions.* — In an action to be tried without a jury, unless otherwise directed by the order of reference, the master shall file with the report a transcript of the proceedings and of the evidence and the original exhibits.

(A) *Findings Accepted.* — In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous.

(B) *Objections.* — Within 14 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice. The court, after hearing, may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

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

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

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

(Added February 2, 2017, effective March 1, 2017.)

VII. JUDGMENT

Rule 54. Judgment; costs.

(a) *Definition; Form.* — "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings. A court's decision letter or opinion letter, made or entered in writing, is not a judgment.

(b) *Judgment on Multiple Claims or Involving Multiple Parties.* — When an action presents more than one claim for relief — whether as a claim, counterclaim, crossclaim, or third-party claim — or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) *Demand for Judgment; Relief to be Granted.* — A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) *Costs; Attorney's Fees.* —

(1) *Costs Other Than Attorney's Fees.* — Unless a statute, these rules, or a court order provides otherwise, costs — other than attorney's fees — should be allowed to the prevailing party, when a motion for such costs is filed no later than 21 days after the entry of judgment. But costs against the State of Wyoming, its officers, and its agencies may be imposed only to the extent allowed by law.

(2) *Attorney's Fees.* —

(A) *Claim to Be by Motion.* — A claim for attorney's fees and allowable costs shall be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) *Timing and Contents of the Motion.* — Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 21 days after the entry of judgment;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(C) *Proceedings.* — Subject to Rule 23(g), the court must, on a party's request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c) or 78. The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a).

(D) *Special Procedures; Reference to a Master.* — The court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a)(1).

(E) *Exceptions.* — Subparagraphs (A)-(D) do not apply to claims for fees and expenses as sanctions for violating these rules.

(3) *Contents of the Motion.* — Unless a statute or a court order provides otherwise, any motion must:

(A) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(B) state the amount sought or provide a fair estimate of it; and

(C) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(Added February 2, 2017, effective March 1, 2017.)

Rule 55. Default; default judgment.

(a) *Entering a Default.* — When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) *Entering a Default Judgment.* —

(1) *By the Clerk.* — If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk — on the plaintiff's request, with an affidavit showing the amount due — must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(2) *By the Court.* — In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a guardian, guardian ad litem, trustee, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals — preserving any statutory right to a jury trial — when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence; or

(D) investigate any other matter.

(c) *Setting Aside a Default or a Default Judgment.* — The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).

(d) *Judgment Against State.* — A default judgment may be entered against the state, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.
(Added February 2, 2017, effective March 1, 2017.)

Rule 56. Summary judgment.

(a) *Motion for Summary Judgment or Partial Summary Judgment.* — A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) *Time to File a Motion.* — Unless a different time is set by court order otherwise, a party may file a motion for summary judgment at any time.

(c) *Procedures.* —

(1) *Supporting Factual Positions.* — A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* — A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* — The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* — An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) *When Facts are Unavailable to the Nonmovant.* — If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) *Failing to Properly Support or Address a Fact.* — If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) *Judgment Independent of the Motion.* — After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) *Failing to Grant All the Requested Relief.* — If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact — including an item of damages or other relief — that is not genuinely in dispute and treating the fact as established in the case.

(h) *Affidavit or Declaration Submitted in Bad Faith.* — If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court — after notice and a reasonable time to respond — may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

(Added February 2, 2017, effective March 1, 2017.)

Rule 56.1. Summary judgment -- required statement of material facts.

(a) Upon any motion for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure, in addition to the materials supporting the motion, there shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried.

(b) In addition to the materials opposing a motion for summary judgment, there shall be annexed a separate, short and concise statement of material facts as to which it is contended that there exists a genuine issue to be tried.

(c) Such statements shall include pinpoint citations to the specific portions of the record and materials relied upon in support of the parties' position.

(Added February 2, 2017, effective March 1, 2017.)

Rule 57. Declaratory judgment.

These rules govern the procedure for obtaining a declaratory judgment pursuant to statute. Rules 38 and 39 govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory judgment action.

(Added February 2, 2017, effective March 1, 2017.)

Rule 58. Entering judgment.

(a) *Presentation.* — Subject to the provisions of Rule 55(b) and unless otherwise ordered by the court, if the parties are unable to agree on the form and content of a proposed judgment or order, it shall be presented to the court and served upon the other parties within 14 days after the court's decision is made known. Any objection to the form or content of a proposed judgment or order, together with an alternate form of judgment or order which cures the objection(s), shall be filed with the court and served upon the other parties within 5 days after service of the proposed judgment or order. If no written objection is timely filed, the court may sign the judgment or order. If objection is timely filed, the court will resolve the matter with or without a hearing.

(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 shall be deemed to be entered whenever a form of such judgment or final order pursuant to these rules is filed in the office of the clerk of court in which the case is pending.

(d) *Cost or Fee Awards.* — Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Wyoming Rule of Appellate Procedure 2.02(a) as a timely motion under Rule 59. (Added February 2, 2017, effective March 1, 2017.)

Rule 59. New trial; altering or amending a judgment.

(a) *In General.* —

(1) *Grounds for New Trial.* — The court may, on motion, grant a new trial on all or some of the issues, for any of the following causes:

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

(B) Misconduct of the jury or prevailing party;

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

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

(E) Error in the assessment of the amount of recovery, whether too large or too small;

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

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

(H) Error of law occurring at the trial.

(2) *Further Action After a Nonjury Trial.* — After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) *Time to File a Motion for a New Trial.* — A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) *Time to Serve Affidavits.* — When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits, but that period may be extended for up to 21 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) *New Trial on the Court's Initiative or for Reasons Not in the Motion.* — No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) *Motion to Alter or Amend a Judgment.* . — A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.
(Added February 2, 2017, effective March 1, 2017.)

Rule 60. Relief from a judgment or order.

(a) *Corrections Based on Clerical Mistakes; Oversights and Omissions.* — The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on

motion or on its own, with or without notice. But after an appeal has been docketed in the Supreme Court, and while it is pending, such a mistake may be corrected only with leave of the Supreme Court.

(b) *Grounds for Relief from a Final Judgment, Order, or Proceeding.* — On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) *Timing and Effect of the Motion.* —

(1) *Timing.* — A motion under Rule 60(b) must be made within a reasonable time-and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality.* — The motion does not affect the judgment's finality or suspend its operation.

(d) *Other Powers to Grant Relief.* — This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief as provided by statute; or

(3) set aside a judgment for fraud on the court.

(e) *Bills and Writs Abolished.* — The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.
(Added February 2, 2017, effective March 1, 2017.)

Rule 61. Harmless error.

Unless justice requires otherwise, no error in admitting or excluding evidence — or any other error by the court or a party — is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.
(Added February 2, 2017, effective March 1, 2017.)

Rule 62. Stay of proceedings to enforce a judgment.

(a) *(Effective until January 1, 2019) Automatic Stay; Exceptions for Injunctions, and Receiverships.* — Except as stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry. But unless the court orders otherwise, an interlocutory or final judgment in an action for an injunction or a receivership is not stayed after being entered, even if an appeal is taken.

(a) *(Effective January 1, 2019) Automatic Stay; Exceptions for Injunctions, and Receiverships.* — Except as stated in this rule or otherwise provided by statute or court order, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry. But unless the court orders otherwise, an interlocutory or final judgment in an action for an injunction or a receivership is not stayed after being entered, even if an appeal is taken.

(b) *Stay Pending Disposition of a Motion.* — On appropriate terms for the opposing party's security, the court may stay the execution of a judgment — or any proceedings to enforce it — pending disposition of any of the following motions:

(1) under Rule 50, for judgment as a matter of law;

(2) under Rule 52(b), to amend the findings or for additional findings;

(3) under Rule 59, for a new trial or to alter or amend a judgment; or

(4) under Rule 60, for relief from a judgment or order.

(c) *Injunction Pending an Appeal.* — While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

(d) *Stay with Bond on Appeal.* — If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in the limitations contained in the Wyoming Rules of Appellate Procedure and an action described in the last sentence of Rule 62(a). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

(e) *Stay Without Bond on Appeal by the State, Its Officers, or Its Agencies.* — The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the State, its officers, or its agencies.

(f) *Supreme Court's Power Not Limited.* — This rule does not limit the power of the Supreme Court or one of its justices:

(1) to stay proceedings — or suspend, modify, restore, or grant an injunction — while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(g) *Stay with Multiple Claims or Parties.* — A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

(Added February 2, 2017, effective March 1, 2017; amended August 21, 2018, effective January 1, 2019.)

Rule 62.1. Indicative ruling on a motion for relief that is barred by a pending appeal.

(a) *Relief Pending Appeal.* — If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state either that it would grant the motion if the appellate court remands for that purpose or that the motion raises a substantial issue.

(b) *Notice to the appellate court.* — The movant must promptly notify the Clerk of the appellate court if the trial court states that it would grant the motion or that the motion raises a substantial issue.

(c) *Remand.* — The trial court may decide the motion if the appellate court remands for that purpose.

(Added February 2, 2017, effective March 1, 2017.)

Rule 63. Judge's inability to proceed.

(a) If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a nonjury trial, the

successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

(b) *After verdict or filing of findings of fact and conclusions of law.* — If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge sitting in or assigned to the district in which the action was tried or any active or retired district judge or supreme court justice designated by the supreme court may perform those duties; but if the successor judge cannot perform those duties because the successor judge did not preside at the trial or for any other reason, the successor judge may grant a new trial.

(Added February 2, 2017, effective March 1, 2017.)

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 64. Seizing a person or property.

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

(Added February 2, 2017, effective March 1, 2017.)

Rule 65. Injunctions and restraining orders.

(a) *Preliminary Injunction.* —

(1) *Notice.* — The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits.* — Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) *Temporary Restraining Order.* —

(1) *Issuing Without Notice.* — The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) *Contents; Expiration.* — Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry — not to exceed 14 days — that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) *Expediting the Preliminary-Injunction Hearing.* — If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings

on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) *Motion to Dissolve.* — On 2 days' notice to the party who obtained the order without notice — or on shorter notice set by the court — the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) *Security.* — The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.

(d) *Contents and Scope of Every Injunction and Restraining Order.* —

(1) *Contents.* — Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail — and not by referring to the complaint or other document — the act or acts restrained or required.

(2) *Persons Bound.* — The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

(e) *When inapplicable.* — This rule shall not apply to suits for divorce, alimony, separate maintenance, or custody of minors.

(Added February 2, 2017, effective March 1, 2017.)

Rule 65.1. Proceedings against a surety.

Whenever these rules require or allow a party to give security, and security is given through a bond or other undertaking with one or more sureties, each surety submits to the court's jurisdiction and irrevocably appoints the court clerk as its agent for receiving service of any papers that affect its liability on the bond or undertaking. The surety's liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the court clerk, who must promptly mail a copy of each to every surety whose address is known.

(Added February 2, 2017, effective March 1, 2017.)

Rule 66. Receivers.

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

(Added February 2, 2017, effective March 1, 2017.)

Rule 67. Deposit into court.

(a) *Depositing Property.* . — If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party — on notice to every other party and by leave of court — may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

(b) *Investing and Withdrawing Funds.* — Money paid into court under this rule shall be held by the clerk of the court subject to withdrawal in whole or in part at any time upon order of the court or written stipulation of the parties. The money shall be deposited in an interest-bearing account or invested in a court-approved, interest-bearing instrument.

(c) Prior to the disbursement of the funds, all information necessary for the clerk to make a proper disbursement shall be provided by the party seeking disbursement, in a form that complies with the Rules Governing Redaction From Court Records.

(Added February 2, 2017, effective March 1, 2017.)

Rule 68. Offer of settlement or judgment.

(a) *Making an Offer; Acceptance of Offer.* — At any time more than 60 days after service of the complaint and at least 28 days before the date set for trial, any party may serve on an opposing party an offer to allow settlement or judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service.

(b) *Unaccepted Offer.* — An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs. As used herein, "costs" do not include attorney's fees.

(c) *Offer After Liability is Determined.* — When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time not less than 14 days before the date set for a hearing to determine the extent of liability.

(d) *Paying Costs After an Unaccepted Offer.* — If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

(Added February 2, 2017, effective March 1, 2017.)

Rule 69. Execution.

(a) *Money Judgment; Applicable Procedure.* — A money judgment is enforced by a writ of execution, unless the court directs otherwise.

(b) *Obtaining Discovery.* — In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person — including the judgment debtor — as provided in these rules.

(Added February 2, 2017, effective March 1, 2017.)

Rule 70. Enforcing a judgment for a specific act.

(a) *Party's Failure to Act; Ordering Another to Act.* — If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done — at the disobedient party's expense — by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) *Vesting Title.* — If the real or personal property is within the district, the court — instead of ordering a conveyance — may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) *Obtaining a Writ of Attachment or Sequestration.* — On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) *Obtaining a Writ of Execution or Assistance.* — On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) *Holding in Contempt.* — The court may also hold the disobedient party in contempt.

(Added February 2, 2017, effective March 1, 2017.)

Rule 71. Enforcing relief for or against a nonparty.

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

(Added February 2, 2017, effective March 1, 2017.)

Rule 71.1. Condemnation of property.

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

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

(c) *Complaint.* —

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

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

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

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

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

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

(2) *Joinder.* — Upon the commencement of the action the plaintiff shall join as defendants those persons having or claiming an interest in the property as owner, lessee or encumbrancer whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property as owner, lessee or encumbrancer whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. Other defendants, as described in Rule 4(o), shall be made defendants when they are necessary parties.

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

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

(d) *Order for hearing; process; answer.* —

(1) *Order for Hearing.* — If plaintiff seeks a court order permitting immediate entry upon the property pursuant to W.S. 1-26-507, it shall apply to the court for an order fixing time for a hearing, and the court shall direct defendant or defendants to appear at the time and place set for the hearing to show cause why such an order should not be entered. If plaintiff does not seek such an order, it shall apply to the court for an order fixing the time and place for a hearing upon the complaint.

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

(3) *Answer.* —

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

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

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

(e) *Hearings.* —

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

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

(B) If plaintiff prevails on these points, the district judge shall enter an order permitting entry. Any order permitting immediate entry shall describe the purpose therefor, setting forth the nature and scope of activities determined to be reasonably necessary and authorized by law, and including terms and conditions respecting time, place, and manner of entry, and authorized activities by plaintiff, all in order to facilitate the purpose of entry and to minimize damage, hardship, and burden upon the parties.

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

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

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

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

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

(D) If the judge determines not to proceed informally, the judge shall make an order appointing three disinterested appraisers, residents of the county in which the complaint is filed, to ascertain the compensation to be made to the defendant, or defendants, for the taking or injuriously affecting the property described in the complaint, and specifying a time and place for the first meeting of such appraisers, and the time within which the said appraisers shall make such assessment.

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

(F) Unless exempted by statute and subject to the deposit provision of W.S. 1-26-513, plaintiff shall pay a sufficient sum into the court, or give approved security to pay the compensation in that behalf when ascertained; and

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

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

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

(h) *Appraisers; procedure.* —

(1) The appraisers appointed by the court, before entering upon the duties of their office, shall take an oath to faithfully and impartially discharge their duties as said appraisers.

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

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

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

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

(i) *Order of award.* —

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

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

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

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

(B) A certified copy of said order shall be recorded and indexed in the office of the register of deeds of the proper county; and

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

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

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

(2) *Procedure.* — The formal trial or trial by jury shall be conducted in the same manner as other civil actions.

(3) *Decision; Verdict.* — If the action is tried without jury, the court shall determine the compensation to be made to the defendant or defendants, and shall

render its decision in writing, and enter its judgment accordingly. If the action is tried with jury, the jury shall determine these matters, and shall render its verdict in writing, signed by the foreman, and the verdict shall be entered in the record.

(k) *Dismissal of action.* —

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

(2) *By Stipulation.* — Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed in whole or in part without an order of the court as to any property by filing a stipulation of dismissal by the plaintiff and defendant affected thereby; and, if the parties so stipulate, the court may vacate any judgment that has been entered.

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

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

(l) *Deposit and its distribution.* — The plaintiff shall deposit with the court any money or bond required by law as a condition to the exercise of the power of eminent domain, or as a condition to the right of continuing or obtaining immediate possession. In such cases the court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. Interest shall not accrue as to the sum deposited by the plaintiff from and after the time the deposit becomes available for distribution to the defendant or defendants. If the compensation finally awarded to any defendant exceeds the amount which has been paid to that defendant on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to that defendant, the court shall enter judgment against that defendant and in favor of the plaintiff for the overpayment.

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

(Added February 2, 2017, effective March 1, 2017.)

IX. DISTRICT COURTS AND CLERKS

Rule 77. District courts and clerks; notice of an order or judgment.

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

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

(c) *The Clerk's Office Hours; Clerk's Orders.* —

(1) *Hours.* — The clerk's office, with the clerk or a deputy in attendance, must be open during all business hours every day except Saturdays, Sundays, and legal holidays (by designation of the legislature, appointment as a holiday by the governor or the chief justice of the Wyoming Supreme Court, or any day designated as such by local officials).

(2) *Orders.* — All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended, altered or rescinded by the court upon cause shown.

(d) *Service of Orders or Judgments.* —

(1) *Service.* — Immediately upon the entry of an order or judgment the clerk shall provide and serve a copy thereof to every party who is not in default for failure to appear. The clerk shall record the date of service and the parties served in the docket. Service by the clerk may be accomplished by mail, hand delivery, clerk's boxes, or electronic means. The clerk shall provide envelopes and postage for the mailings. If service is accomplished by electronic means, this rule supersedes the requirements of W.S. § 5-3-210 to attach the seal of the court to all writs and orders. Any party may in addition serve a notice of such entry in the manner provided in Rule 5(b) for the service of papers.

(2) *Time to Appeal Not Affected by Lack of Notice.* — Lack of notice of the entry by the clerk does not affect the time to appeal or relieve, or authorize the court to relieve, a party for failure to appeal within the time allowed, except as permitted by the Wyoming Rules of Appellate Procedure.

(Added February 2, 2017, effective March 1, 2017.)

Rule 78. Hearing motions; decision on briefs.

(a) *Providing a Regular Schedule for Oral Hearings.* . — A court may establish regular times and places for oral hearings on motions.

(b) *Providing for Decision on Briefs.* — The court may provide for submitting or deciding motions on briefs, without oral hearings.

(Added February 2, 2017, effective March 1, 2017.)

Rule 79. Books and records kept by the clerk.

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

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

(Added February 2, 2017, effective March 1, 2017.)

Rule 80. Stenographic transcript as evidence.

If stenographically reported testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript certified by the person who reported it.

(Added February 2, 2017, effective March 1, 2017.)

X. GENERAL PROVISIONS

Rule 81. Applicability in general.

Statutory provisions shall not apply whenever inconsistent with these rules, provided:

(a) that in special statutory proceedings any rule shall not apply insofar as it is clearly inapplicable; and

(b) where the statute creating a special proceeding provides the form, content, time of service or filing of any pleading, writ, notice or process, either the statutory provisions relating thereto or these rules may be followed.

(Added February 2, 2017, effective March 1, 2017.)

Rule 82. Jurisdiction and venue unaffected.

These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts.

(Added February 2, 2017, effective March 1, 2017.)

Rule 83. Rules by courts of record; judge's directives.

(a) *Uniform Rules.* —

(1) *In General.* — A court conference, acting by a majority of the judges of the conference and approval by the Supreme Court, may adopt and amend uniform rules governing its practice. A uniform rule must be consistent with — but not duplicate — Wyoming statutes and rules. A uniform rule takes effect on the date specified by the Supreme Court and remains in effect unless amended by the court. Approved uniform rules shall be published in the Wyoming Court Rules volume.

(2) No court may establish rules of procedure applicable only in that court.

(3) *Requirement of Form.* — A uniform rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.

(b) *Procedure When There is No Controlling Law.* — A judge may regulate practice in any manner consistent with state law, rules, and the uniform rules. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in state law, state rules, or the uniform rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

(Added February 2, 2017, effective March 1, 2017.)

Rule 84. Forms.

No forms are provided with these rules.

(Added February 2, 2017, effective March 1, 2017.)

Rule 85. Title.

These rules shall be known as the Wyoming Rules of Civil Procedure and may be cited as W.R.C.P.

(Added February 2, 2017, effective March 1, 2017.)

Rule 86. Effective dates.

(a) *In General.* — These rules take effect on March 1, 2017. They govern:

(1) proceedings in an action commenced after their effective date; and

(2) proceedings after that date in an action then pending unless:

(A) the Supreme Court specifies otherwise; or

(B) the court determines that applying them in a particular action would be infeasible or work an injustice.

(b) *Amendments and additions.* — Amendments or additions to these rules shall take effect on dates to be fixed by the supreme court subject to the exception above set out as to pending actions. If no date is fixed by the supreme court, the amendments or additions take effect 60 days after their publication in the Pacific Reporter Advance Sheets.

(Added February 2, 2017, effective March 1, 2017.)