Department of Environmental Quality
The Environmental Quality Council

Appendix A

September 08, 2009

Rule 3 Commencement of action.
RULES OF CIVIL PROCEDURE
II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

~~(a) How commenced.~~

~~A civil action is commenced by filing a complaint with the court.~~

(b) When commenced.

For purposes of statutes of limitation, an action shall be deemed commenced on the date of filing the complaint as to each defendant, if service is made on the defendant or on a co-defendant who is a joint contractor or otherwise united in interest with the defendant, within 60 days after the filing of the complaint. If such service is not made within 60 days the action shall be deemed commenced on the date when service is made. The voluntary waiver, acceptance or acknowledgment of service, or appearance by a defendant shall be the same as personal service on the date when such waiver, acceptance, acknowledgment or appearance is made. When service is made by publication, the action shall be deemed commenced on the date of the first publication.

Rule 5 Service and filing of pleadings and other papers.
RULES OF CIVIL PROCEDURE
II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

(a) Service; when required. -

(1) Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

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

(b) Making service. -

(1) Service under Rules 5(a) and 77(d) on a party represented by an attorney is made on the attorney unless the court orders service on the party.

(2) Service under Rule 5(a) is made by:

(A) Delivering a copy to the person served by:

(i) handing it to the person;

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

(iii) if the person has no office or the office is closed, leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

(B) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing.

(C) If the person served has no known address, leaving a copy with the clerk of court.

(D) Delivering a copy by any other means, including electronic means, consented to in writing by the person served. Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. If authorized by the clerk of the court, a party may make service under this subparagraph (D) through the court's transmission facilities. Service by electronic means under Rule 5(b)(2)(D) is not effective if the party making service learns that the attempted service did not reach the person to be served.

(c) Service; numerous defendants. -

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

(d) Filing; certificate of service. -

All papers after the complaint required to be served upon a party, together with a certificate of service, must be filed with the court either before service or within a reasonable time thereafter, but disclosures under Rule 26(a)(1), (1.1), 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 to permit entry upon 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.

(e) Filing with the court defined. -

The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Papers may be filed, signed, or verified by electronic means 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 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. All format requirements contained in applicable rules must be followed. The court may reject any paper filed not in compliance with this rule.

Amended July 13, 1964, effective October 11, 1964; amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981; amended October 22, 1992, effective January 12, 1993; amended August 5, 1997, effective October 29, 1997; amended March 28, 2005, effective July 1, 2005; amended January 8, 2008, effective July 1, 2008.

Rule 6 Time
RULES OF CIVIL PROCEDURE
II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

(a) Computation. -

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

designation of the legislature or appointment as a holiday by the governor.

(b) Enlargement. -

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court, or a commissioner thereof, for cause shown may at any time in its discretion: (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order; or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them. Provided, however, a motion served before the expiration of the time limitations set forth by these rules for an extension of time of not more than 15 days within which to answer or move to dismiss the complaint, or answer, respond or object to discovery under Rules 33, 34, and 36, if accompanied by a statement setting forth: (1) the specific reasons for the request; (2) that the motion is timely filed; (3) that the extension will not conflict with any scheduling or other order of the court; and (4) that there has been no prior extension of time granted with respect to the matter in question; may be granted once by the clerk of court, ex parte and routinely, subject to the right of the opposing party to move to set aside the order so extending time. Motions for further extensions of time with respect to matters extended by the clerk shall be presented to the court, or a commissioner thereof, for determination.

(c) Motions and motion practice. -

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

(2) A request for hearing may be served by the moving party or any party affected by the motion within 20 days after service of the motion. The court may, in its descretion, determine such motiions without a hearing, except for those motions which will determine the final rights of a party in an action. 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 from the expiration of the initial 90 day period. If the motion has not been determined within the time period established by the continuation order, it shall be deemed denied.

[Amended December 19, 2006, effective March 1, 2007; amended January 18, 2007, effective March 1, 2007]

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

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

(d) Additional time after service by mail. -

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party, and the notice or paper is served upon the party by mail or by delivery to the clerk for service, three days shall be added to the prescribed period, provided however, this rule shall not apply to service of process by registered or certified mail under Rule 4(l)(2).

[Amended July 13, 1964, effective October 11, 1964; amended December 21, 1965, effective March 21, 1996; amended July 12, 1971, effective November 18, 1971; amended March 24, 1987, effective June 16, 1987; amended October 22, 1992, effective January 12, 1993; amended November 30, 1992, effective February 25, 1993]

Rule 7 Pleadings allowed; form of motions.
RULES OF CIVIL PROCEDURE
III. PLEADINGS AND MOTIONS

~~(a) Pleadings. -~~

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

(b) Motions and other papers. -

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall have a title which identifies the party serving the paper and briefly describes its contents, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. All motions filed pursuant to Rules 12 and 56 shall, and all other motions may, contain or be accompanied by a memorandum of points and authority.

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

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

(c) Demurrers, pleas and exceptions abolished. -

Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

[Amended July 13, 1964, effective October 11, 1964]

Rule 8 General rules of pleading.
RULES OF CIVIL PROCEDURE
III. PLEADINGS AND MOTIONS

(a) Claims for relief. -

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim shall contain: (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses; form of denials. -

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative defenses. -

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

if there had been a proper designation.

(d) Effect of failure to deny. -

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

(e) Pleading to be concise and direct; consistency. -

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

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

(f) Construction of pleadings. -

All pleadings shall be so construed as to do substantial justice.

Rule 9 Pleading special matters.
RULES OF CIVIL PROCEDURE
III. PLEADINGS AND MOTIONS

(a) Capacity. -

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

(b) Fraud; mistake; condition of the mind. -

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

(c) Conditions precedent. -

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

(d) Official document or act. -

In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. -

In pleading a judgment or decision of a court, judicial or quasi judicial tribunal, or of a board or officer rendered within the United States or within a territory or insular possession subject to the dominion of the United States, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and place. -

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

(g) Special damage. -

When items of special damage are claimed, they shall be specifically stated.

(h) Municipal ordinance. -

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

Rule 10 Form of pleadings.
RULES OF CIVIL PROCEDURE
III. PLEADINGS AND MOTIONS

(a) Caption; names of parties. -

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

(b) Paragraphs; separate statements. -

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

(c) Adoption by reference; exhibits. -

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

11 Signing of pleadings, motions, and other papers; representations to court; sanctions.
RULES OF CIVIL PROCEDURE
III. PLEADINGS AND MOTIONS

(a) Signature. -

Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address, telephone number, and attorney number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to court. -

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

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

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

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

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

(c) Sanctions. -

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

(1) How initiated.

(A) By motion. - A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

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

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

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

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

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

(d) Inapplicability to discovery. -

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

[Amended January 29, 1987, effective April 21, 1987; amended August 31, 1994, effective November 29, 1994]

Rule 12 Defenses and objections; when and how presented; by pleading or motion; motion for judgment on pleadings.

RULES OF CIVIL PROCEDURE

III. PLEADINGS AND MOTIONS

(a) When presented. -

A defendant shall serve an answer within 20 days after the service of the summons and complaint upon that defendant, or if service be made without the state, or by publication, within 30 days after such service or within 30 days after the last day of publication; or, if service of the summons has been timely waived on request under Rule 4(o), within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside the United States. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court:

(1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action;

(2) If the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How presented. -

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; (5) insufficiency of service of process; (6) failure to state a claim upon which relief can be granted; (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. ~~If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.~~

~~(c) Motion for judgment on the pleadings. -~~

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

~~(d) Preliminary hearings. -~~

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

(e) Motion for more definite statement. -

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

(f) Motion to strike. -

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

(g) Consolidation of defenses in motion. -

A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) on any of the grounds there stated.

(h) Waiver or preservation of certain defenses.

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

(A) If omitted from a motion in the circumstances described in subdivision (g); or

(B) If it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

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

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

[Amended October 21, 1970, effective February 11, 1971; amended January 11, 1995, effective April 11, 1995]

Rule 15 Amended and supplemental pleadings
RULES OF CIVIL PROCEDURE
III. PLEADINGS AND MOTIONS

(a) Amendments. -

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

(b) Amendments to conform to the evidence. -

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

(c) Relation back of amendments. -

An amendment of a pleading relates back to the date of the original pleading when:

(1) Relation back is permitted by the law that provides the statute of limitations applicable to the action; or

(2) The claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading; or

(3) The amendment changes the party or the naming of the party against whom a claim is asserted if the forgoing provision (2) is satisfied and, within 120 days after the filing of the complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(d) Supplemental pleadings. -

Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

[Amended July 13, 1964, effective October 11, 1964; amended October 22, 1992, effective January 12, 1993]

Rule 16 Pretrial conferences; scheduling; management.
RULES OF CIVIL PROCEDURE
III. PLEADINGS AND MOTIONS

(a) Pretrial conferences; objectives. -

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

(1) Expediting the disposition of the action;

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

(3) Discouraging wasteful pretrial activities;

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

(5) Facilitating the settlement of the case.

(b) Scheduling and planning. -

The judge, or a court commissioner when authorized by the Uniform Rules for the District Courts, may, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail or other suitable means, enter a scheduling order that limits the time:

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

(2) To file and hear motions; and

(3) To complete discovery.

The scheduling order also may include:

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

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

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

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

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

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

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

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

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) The avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 of the Wyoming Rules of Evidence;

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

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

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

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

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

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

(11) The disposition of pending motions;

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

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

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

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

(16) Such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(d) Final pretrial conference. -

Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) Pretrial orders. -

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

(f) Sanctions. -

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

[Amended August 31, 1994, effective November 29, 1994]

Rule 19 Joinder of persons needed for just adjudication.
RULES OF CIVIL PROCEDURE
IV. PARTIES

(a) Persons to be joined if feasible. -

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if: (1) in the person's absence complete relief cannot be accorded among those already parties; or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect that interest; or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a

defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) Determination by court whenever joinder not feasible. -

If a person as described in subdivisions (a)(1) and (a)(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include:

(1) To what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties;

(2) The extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

(3) Whether a judgment rendered in the person's absence will be adequate;

(4) Whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading reasons for nonjoinder. -

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

(d) Exception of class actions. -

This rule is subject to the provisions of Rule 23.

[Amended October 21, 1970, effective February 11, 1971]

Rule 20 Permissive joinder of parties.
RULES OF CIVIL PROCEDURE
IV. PARTIES

(a) Permissive joinder. -

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate trials. -

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

[Amended October 21, 1970, effective February 11, 1971]

Rule 21 Misjoinder and nonjoinder of parties and claims.
RULES OF CIVIL PROCEDURE
IV. PARTIES

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

may be severed and proceeded with separately.

Rule 23.1 Derivative actions by shareholders.
RULES OF CIVIL PROCEDURE
IV. PARTIES

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs. [added October 21, 1970, effective February 11, 1971]

Rule 23.2 Actions relating to unincorporated associations.
RULES OF CIVIL PROCEDURE
IV. PARTIES

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e). [added October 21, 1970, effective February 11, 1971]

Rule 24 Intervention; notification of claim of unconstitutionality.
RULES OF CIVIL PROCEDURE
IV. PARTIES

(a) Intervention of right. -

Upon timely application anyone shall be permitted to intervene in an action:

(1) When a statute confers an unconditional right to intervene; or

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

(b) Permissive intervention. -

Upon timely application anyone may be permitted to intervene in an action:

(1) When a statute confers a conditional right to intervene; or

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

(c) Procedure. -

A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is

sought. The same procedure shall be followed when a statute gives a right to intervene.

(d) Constitutionality of state statute. -

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

[Amended July 13, 1964, effective October 11, 1964; amended October 21, 1970, effective February 11, 1971]

Rule 25 Substitution of parties.
RULES OF CIVIL PROCEDURE
IV. PARTIES

(a) Death. -

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

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

(b) Incompetency. -

If a party becomes incompetent, the court upon motion served as provided in subdivision (a) may allow the action to be continued by or against the party's representative.

(c) Transfer of interest. -

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

(d) Public officers; death or separation from office. -

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

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

(e) Substitution at any stage. -

Substitution of parties under the provisions of this rule may be made, either before or after judgment, by the court then having jurisdiction.

[Amended October 11, 1963, effective January 9, 1964; amended July 13, 1964, effective October 11, 1964]

Rule 26 General provisions governing discovery; duty of disclosure.
RULES OF CIVIL PROCEDURE
V. DEPOSITIONS AND DISCOVERY

(a) Required disclosures; methods to discover additional matter. -

(1) Initial disclosures. - Except in categories of proceedings specified in Rule 26 (a) (1) (E), or to the extent otherwise stipulated in writing or directed by order, a party must, without awaiting a discovery request, provide to other parties:

(A) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

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

(C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(E) The following categories of proceedings are exempt from initial disclosure under Rules 26 (a) (1) (A), (B), (C) and (D):

(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)];

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

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

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

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

(viii) a proceeding ancillary to proceedings in the court of original jurisdiction or other courts.

Unless a different time is set by stipulation in writing or by court order, these disclosures must 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 and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(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, such as savings or checking accounts, stocks, bonds, cash or cash equivalents, which schedule 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; and (v) 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) whether purchased from marital assets or obtained by gift or inheritance; 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;

(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.

These disclosures in divorce actions must be made within 30 days after the defendant is served unless a different time is set by stipulation in writing or by court order. A party must make its disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of 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) or (1.1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Wyoming Rules of Evidence.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under subdivision (e)(1).

(3) Pretrial Disclosures. - In addition to the disclosures required by Rule 26 (a)(1), (1.1), and (2), a party must provide to other parties and promptly file with the court the following information regarding the evidence that it may present at trial other than solely for impeachment:

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

(B) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and promptly file a list disclosing (i) any objections to the use under Rule 32 (a) of a deposition designated by another party under Rule 26(a)(3)(B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under Rule 26(a)(3)(C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Wyoming Rules of Evidence, are waived unless excused by the court for good cause.

(4) Form of disclosures. - Unless the court orders otherwise, all disclosures under Rules 26(a)(1), (1.1), (2), or (3) must be made in writing, signed, and served.

(5) Methods to discover additional matter. - Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property under Rule 34 or 45(a)(1)(C), for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery scope and limits. -

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

(1) In General. - Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26 (b)(2)(A), (B), and (C).

(2) Limitations. -

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

(B) 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) The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).

(3) Trial Preparation: Materials. - Subject to the provisions of subdivision (b)(4), a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is:

(A) A written statement signed or otherwise adopted or approved by the person making it; or

(B) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts. -

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under subdivision (a)(2)(B), the deposition shall not be conducted until after the report is provided.

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

(C) Unless manifest injustice would result:

(i) The court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision; and

(ii) With respect to discovery obtained under subdivision (b)(4)(B) of this rule, the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials. -

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

(B) Information Produced. If information is produced in discovery that 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 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 producing party must preserve the information until the claim is resolved.

(c) Protective orders. -

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the jurisdiction where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the disclosure or discovery not be had;

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

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

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

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

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

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be

revealed only in a designated way;

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

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

Pending resolution of any motion under Rule 26(c) or 30(d), neither the objecting party, witness, nor any attorney is required to appear at a deposition to which the motion is directed until the motion is ruled upon. The filing of a motion under either of these rules shall stay thedisclosure or discovery at which the motion is directed pending further order of the court. Any motion for relief under this subdivision directed to a deposition must be filed and served as soon as practicable after receipt of the notice of deposition, but in no event less than three days prior to the scheduled depositions. Counsel seeking such relief shall request the court for a ruling or a hearing thereon promptly after the filing of such motion, so that disclosure or discovery shall not be delayed in the event such motion is not well taken.

(d) Sequence and timing of discovery. -

Except in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E), or when authorized under these rules or by order or agreement of the parties, a party may not seek discovery from any source before that party has provided the disclosures required under Rule 26(a)(1), unless otherwise ordered by the court. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay any other party's discovery.

(e) Supplementation of disclosures and responses. -

A party who has made a disclosure under subdivision (a) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired, if ordered by the court or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals, its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed 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. With respect to testimony of an expert from whom a report is required under subdivision (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Rule 26(a)(3) are due.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) Discovery conference. -

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

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

(2) A proposed plan and schedule of discovery;

(3) Any expansion or further limitation proposed to be placed on discovery;

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

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

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

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

(g) Signing of disclosures, discovery requests, responses, and objections. -

(1) Every disclosure made pursuant to Rule 26(a)(1) or (1.1) shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

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

(3) If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

Amended July 13, 1964, effective October 11, 1964; amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981; amended and effective April 28, 1992; amended August 31, 1994, effective November 29, 1994; amended December 17, 2002, effective January 1, 2002; amended January 8, 2008, effective July 1, 2008.

Rule 28 Persons before whom depositions may be taken.
RULES OF CIVIL PROCEDURE
V. DEPOSITIONS AND DISCOVERY

(a) Within the United States. -

Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of this state or of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. The term "officer" as used in Rules 30, 31 and 32 includes a person appointed by the court or designated by the parties under Rule 29.

~~(b) In foreign countries. -~~

~~Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in [here name the country]".~~

~~When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter 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 under these rules.~~

(c) Disqualification for interest. -

No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

[Amended July 13, 1964, effective October 11, 1964; amended November 6, 1980, effective January 28, 1981; amended August 31, 1994, effective November 29, 1994]

Rule 29 Stipulations regarding discovery procedure.
RULES OF CIVIL PROCEDURE
V. DEPOSITIONS AND DISCOVERY

Unless the court orders otherwise, the parties may by written stipulation:

(1) Provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and

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

[Amended October 21, 1970, effective February 11, 1971; amended August 31, 1994, effective November 29, 1994]

Rule 30 Depositions upon oral examination.
RULES OF CIVIL PROCEDURE
V. DEPOSITIONS AND DISCOVERY

(a) When depositions may be taken; when leave required. -

(1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

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

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

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

(C) A party seeks to take a deposition before the time specified in Rule 26(d) unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the State of Wyoming and be unavailable for examination in this State unless deposed before that time.

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

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless

the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes: (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

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

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

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

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

Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Wyoming Rules of Evidence except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(2) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, or to the evidence presented, or to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and duration; motion to terminate or limit examination. -

(1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion under Rule 30(d)(4).

(2) Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours. The court must allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes or delays the examination.

(3) If the court finds that any impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(4) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the

court in which the action is pending or the court in the jurisdiction where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order. The provisions of Rule 37 (a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Review by witness; changes; signing. -

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) Certification and delivery by officer; exhibits; copies. -

(1) The officer must certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer shall then securely seal the deposition in an envelope or package indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and must promptly send it to the attorney who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

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

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to attend or to serve subpoena; expenses. -

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

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

Amended October 21, 1970, effective February 11, 1971; amended July 12, 1971, effective November 18, 1971; amended August 26, 1977, effective January 1, 1978; Amended November 6, 1980, effective January 28, 1981; amended July 20, 1984, effective October 18, 1984; amended and effective April 28, 1992; amended October 22, 1992, effective January 12, 1993; amended August 31, 1994, effective November 29, 1994; amended December 17, 2002, effective January 1, 2003; amended January 8, 2008, effective July 1, 2008

Rule 31 Depositions upon written questions.
RULES OF CIVIL PROCEDURE
V. DEPOSITIONS AND DISCOVERY

(a) Serving questions; notice; limitations. -

(1) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

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

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

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

(C) The plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that such leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery; or (ii) if special notice is given as provided in Rule 30(b)(3), in which event all provisions of Rule 30(b)(3) shall be applicable.

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating: (A) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; and (B) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(4) Within 14 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within seven days after being served with cross questions, a party may serve redirect questions upon all other parties. Within seven days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to take responses, prepare record, and deliver deposition; notice of delivery. -

A copy of the notice and copies of all questions served shall be delivered by the party initiating the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and deliver the deposition to the party initiating the deposition or as the parties otherwise agree, attaching thereto the copy of the notice and the questions received by the officer, and notifying all parties of the delivery.

(c) Custody of deposition. -

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

[Amended October 21, 1970; effective February 11, 1971; amended and effective April 28, 1992; amended August 31, 1994, effective November 29, 1994]

Rule 32 Use of depositions in court proceedings.
RULES OF CIVIL PROCEDURE
V. DEPOSITIONS AND DISCOVERY

(a) Use of depositions. -

At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance

with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Wyoming Rules of Evidence;

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose;

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) That the witness is dead;

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

(C) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used;

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offer or to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Wyoming Rules of Evidence.

(b) Objections to admissibility. -

Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) [Abrogated].

(d) Effect of errors and irregularities in depositions. -

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

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

(3) As to Taking of Deposition.

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

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

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after

service of the last questions authorized.

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

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

Rule 33 Interrogatories to parties.

RULES OF CIVIL PROCEDURE
V. DEPOSITIONS AND DISCOVERY

(a) Availability. -

Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 30 in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2).

(b) Answers and objections. -

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

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

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

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

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) Scope; use at trial. -

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

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(d) Option to produce business records. -

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

Amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981; amended and effective April 28, 1992; amended August 31, 1994, effective November 29, 1994; amended January 8, 2008; effective July 1, 2008.

Rule 34 Production of documents, electronically stored information, and things and entry upon land for inspection and other purposes.
RULES OF CIVIL PROCEDURE
V. DEPOSITIONS AND DISCOVERY

(a) Scope. -

Any party may serve on any other party a request:

(1) To produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample 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, translated, if necessary, by the respondent into reasonably usable form), or to inspect, copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. -

The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d).

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, stating the reasons for the objection. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. If objection is made to the requested form or forms for producing electronically stored information - or if no form was specified in the request - the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Unless the parties otherwise agree, or the court otherwise orders:

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

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

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

(c) Persons not parties. -

A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

Amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981; amended October 22, 1992, effective January 12, 1993; amended August 31, 1994, effective November 29, 1994; amended January 8, 2008, effective July 1, 2008.

Rule 36 Requests for admission.
RULES OF CIVIL PROCEDURE

V. DEPOSITIONS AND DISCOVERY

(a) Request for admission. -

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

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 45 days after service of the summons and complaint upon that defendant. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

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

(b) Effect of admission. -

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

[Amended October 21, 1970, effective February 11, 1971]

Rule 37 Failure to make or cooperate in discovery; sanctions.
RULES OF CIVIL PROCEDURE
V. DEPOSITIONS AND DISCOVERY

(a) Motion for order compelling discovery. -

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) Appropriate Court. - An application for an order to a party shall be made to the court in which the action is pending. An application for an order to a person who is not a party shall be made to the court where the discovery is being, or is to be,

taken.

(2) Motion. -

(A) 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. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.tion may complete or adjourn the examination before applying for an order.

(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) Evasive or Incomplete Disclosure, Answer or Response. - For purposes of this subdivision an evasive or incomplete disclosure, answer or response is to be treated as a failure to disclose, answer or respond.

(4) Expenses and Sanctions. -

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order. -

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

(2) Sanctions by Court in Which Action Is Pending. - If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

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

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

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

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

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

(c) Failure to disclose; false or misleading disclosure; refusal to admit. -

(1) A party that without substantial justification fails to disclose information as required by Rule 26(a) or 26(e)(1) or to amend a prior response to discovery as required by Rule 26(e)(2) is not, unless such failure is harmless, permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make the disclosure.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that:

(A) The request was held objectionable pursuant to Rule 36(a);

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

(C) The party failing to admit had reasonable ground to believe that the party might prevail on the matter; or

(D) There was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. -

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails: (1) to appear before the officer who is to take the deposition, after being served with a proper notice; (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories; or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B) and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

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

(e) Failure to participate in the framing of a discovery plan. -

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

(f) Electronically stored information. -

Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

Amended November 7, 1960, effective March 21, 1961; amended October 21, 1970, effective February 11, 1971; amended November 6, 1980, effective January 28, 1981; amended August 31, 1994, effective November 29, 1994; amended December 17, 2002, effective January 1, 2003; amended January 8, 2008, effective July 1, 2008.

Rule 40 Assignment of cases for trial or alternative dispute resolution.
RULES OF CIVIL PROCEDURE
VI. TRIALS

(a) Trial calendar. -

The court shall place actions upon the trial calendar: (1) without request of the parties; (2) upon request of a party and notice to the other parties; or (3) in such other manner as the court deems expedient. Precedence shall be given to actions entitled thereto by statute.

(b) Limited assignment for alternative dispute resolution. -

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

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

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

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

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

(5) Each party or attorney may then respond to the other's presentation. From time to time, the parties and their attorneys may confer privately. The mediator may adjourn the session for short periods of time. After a full, open 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. If settlement results, it should promptly be reduced to a writing executed by the settling parties. The mediator may suggest to the parties such reasonable additions or requirements as may be appropriate or beneficial in a particular case.

(c) Fees and costs. -

For those cases filed in court and assigned for settlement conference or mediation, compensation for services shall be arranged by agreement between the parties and the person conducting the settlement conference or serving as the mediator, and that person's statement shall be paid within 30 days of receipt by the parties.

(d) 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.

(e) Retained jurisdiction -

Assignment of a case to aleternative dispute resolution shall not suspend any deadlines or cancel any hearings ot trial. The court retains jurisdiction for any and all purposes while the case is assigned to any alternative dispute resolution. Amended December 19, 2006, effective March 1, 2007]

Amended August 9, 1991, effective October 29, 1991; amended January 11, 1995, effective April 11, 1995; amended December 17, 2002, effective January 1, 2003; amended January 8, 2008, effective July 1, 2008.

Rule 41 Dismissal of actions.
RULES OF CIVIL PROCEDURE
VI. TRIALS

(a) Voluntary dismissal; effect thereof. -

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

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

(b) Involuntary dismissal; effect thereof. -

(1) By Defendant. - For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

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

(See Rule 203, D. Ct.)

(c) Dismissal of counterclaim, cross-claim, or third-party claim. -

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

(d) Costs of previously dismissed action. -

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

[Amended October 21, 1970, effective February 11, 1971; amended October 22, 1992, effective January 13, 1993]

Rule 42 Consolidation; separate trials.
RULES OF CIVIL PROCEDURE
VI. TRIALS

(a) Consolidation. -

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders

concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate trials. -

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

Rule 43 Evidence.
RULES OF CIVIL PROCEDURE
VI. TRIALS

(a) Form and admissibility. -

In every trial, the testimony of witnesses shall 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. The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location.

(b) [Abrogated].

(c) [Abrogated].

(d) Affirmation in lieu of oath. -

Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on motions. -

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

(f) Interpreters. -

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

[Amended October 21, 1970, effective February 11, 1971; amended August 26, 1977, effective January 1, 1978; amended August 5, 1997, effective October 29, 1997]

Rule 55 Default.
RULES OF CIVIL PROCEDURE
VII. JUDGMENT

(a) Entry. -

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

(b) Judgment. -

Judgment by default may be entered as follows:

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

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

(c) Setting aside default. -

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

(d) Plaintiffs; counterclaimants; cross-claimants. -

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

Rule 56 Summary judgment.
RULES OF CIVIL PROCEDURE
VII. JUDGMENT

(a) For claimant. -

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For defending party. -

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and proceedings thereon. -

Unless the court otherwise orders, the motion and any response and other papers relating thereto shall be served pursuant to Rule 6(c). The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case not fully adjudicated on motion. -

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

(e) Form of affidavits; further testimony; defense required. -

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further

affidavits. When a motion for summary judgment is made and supported as provided in this rule an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When affidavits are unavailable. -

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits made in bad faith. -

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

[Amended July 13, 1964, effective October 11, 1964]

Rule 56 Summary judgment -- Required statement of material facts.
RULES OF CIVIL PROCEDURE
VII. JUDGMENT

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.

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.

Such statements shall include pinpoint citations to the specific portions of the record and materials relied upon in support of the parties' position.

Added January 8, 2008, effective July 1, 2008.

Rule 59 New trials; amendment of judgments.
RULES OF CIVIL PROCEDURE
VII. JUDGMENT

(a) Grounds. -

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

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

(2) Misconduct of the jury or prevailing party;

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

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

(5) Error in the assessment of the amount of recovery, whether too large or too small;

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

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

(8) Error of law occurring at the trial.

(b) Time for motion. -

Any motion for a new trial shall be filed no later than 10 days after entry of the judgment.

(c) Time for serving affidavits. -

When a motion for new trial is based on affidavits, they shall be filed with the motion. The opposing party has 10 days after service to file opposing affidavits, but that period may be extended for up to 20 days, either by the court for good cause or by the parties' written stipulation. The court may permit reply affidavits.

(d) On court's initiative; notice; specifying grounds. -

No later than 10 days after 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. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

(e) Motion to alter or amend judgment. -

Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

[Amended December 21, 1965, effective March 21, 1966; amended October 21, 1970, effective February 11, 1971; amended April 12, 1978, effective August 1, 1978; amended April 3, 1996, effective July 2, 1996]

Rule 60 Relief from judgment or order.

RULES OF CIVIL PROCEDURE

VII. JUDGMENT

(a) Clerical mistakes. -

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

(b) Other reasons. -

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