

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 1971

IN THE SUPREME COURT
STATE OF WYOMING

FILED

JUL 12 1971

In the Matter of Wyoming)
)
Rules of Civil Procedure)

O R D E R

By: Ann Oeland, Clerk
Ann M. White
DEPUTY CLERK

It is ordered that new Rule 40.1, Wyoming Rules of Civil Procedure, reading as hereinafter set out, be adopted:

RULE 40.1

TRANSFER OF TRIAL AND CHANGE OF JUDGE

(a) Transfer of Trial.

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

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

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

(b) Change of Judge.

(1) Any party, at least fifteen (15) days prior to the date set for trial, may move for a change of district judge on the grounds (A) that the presiding judge (i) has been engaged as counsel in the action prior to his election or appointment as judge, (ii) is interested in the action, (iii) is kin to a party,

or (iv) is a material witness in the action; or (B) that the party or his counsel believes that the presiding judge is biased or prejudiced against the movant. The motion shall be supported by an affidavit made by either the party or his counsel stating one or more of the above grounds, with a certificate of counsel attached that such affidavit is made in good faith and not for the purpose of delay. No more than one motion for change of judge shall be filed on behalf of a party, but the affidavit may disqualify one other judge on the same grounds. The presiding judge shall forthwith call in another district judge, not disqualified, to try the action.

(2) The presiding judge may at any time on his own motion order a change of judge when it appears that the ends of justice would be promoted thereby.

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

It is further ordered that Rules 6(a), 27(a)(4), and 30(b)(6), Wyoming Rules of Civil Procedure, be amended to read as follows, the amending portions being in italics and the deleted portions indicated by asterisks:

RULE 6

TIME

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, 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, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the governor or legislature of the State of Wyoming.

RULE 27

DEPOSITIONS BEFORE ACTION OR PENDING APPEAL

(a) Before Action.

(4) Use of Deposition. If a deposition to perpetuate

testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in a district court of the state, in accordance with the provisions of * * * Rule 32(a).

RULE 30

DEPOSITIONS UPON ORAL EXAMINATION

(b) Notice of Examination: General Requirements; Special Notice; Non-stenographic Recording; Production of Documents and Things; Deposition of Organization.

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

It is further ordered that the following addition to Rule 87(a), Wyoming Rules of Civil Procedure, be adopted:

RULE 87

LAWS SUPERSEDED

(a) Generally.

(3) From and after the effective date of these rules, the sections of Wyoming Statutes, 1957, as amended, hereinafter enumerated, shall be superseded, and such statutes and all other laws in conflict with these rules shall be of no further force or effect:

Secs. 1-53, 1-54, 1-56 and 1-57.

It is further ordered that these rules be published in the Wyoming Reporter and shall become effective ninety days after Second Series, their publication in the Pacific Reporter/Advance Sheets, and thereupon shall be spread at length upon the journal of this court.

Dated at Cheyenne, Wyoming this 12th day of July, 1971.

BY THE COURT:



JOHN J. McINTYRE, Chief Justice

Entered in Rules Journal on 10/18/71 (RMW)