

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1980

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**IN THE SUPREME COURT  
STATE OF WYOMING  
FILED**

IN THE MATTER OF THE AMENDMENT )  
OF RULES 5, 26, 28, 30, 32, 33, )  
34, 37, 45, and 71.1, WYOMING )  
RULES OF CIVIL PROCEDURE )

**NOV 6 1980**

RITA M. WHITE

*M. J. Leonard*

DEPUTY

ORDER AMENDING WYOMING RULES OF CIVIL PROCEDURE

The Permanent Rules Advisory Committee, Honorable Joseph F. Maier, Chairman, Honorable George P. Sawyer, William S. Bon, David H. Carmichael, G. L. Spence, Lawrence Yonkee, and Christopher Mueller, having met from time to time to consider amendments to the Wyoming Rules of Civil Procedure (W.R.C.P.), after research and study have recommended to this Court that Rules 5(d), 26, 28(a), 30(b)(4) and (f)(1), 32(a)(1) and (4), 33(c), 34(b), 37, 45(d)(1) in order to bring them into conformity with the Federal Rules of Civil Procedure insofar as possible and appropriate for Wyoming and that Rule 71.1(e), W.R.C.P. pertaining to eminent domain be amended to assure that various preliminary questions be determined before an order of possession is allowed.

The Court having fully considered the recommendations of the committee finds it advisable to amend the rules accordingly.

It is, therefore,

ORDERED that the Wyoming Rules of Civil Procedure be and they are hereby amended by including therein amendments to Rules 5(d), 26, 28(a), 30(b)(4) and (f)(1), 32(a)(1) and (4), 33(c),

34(b), 37, 45(d)(1) and 71.1(e) as shown on the attachments to this order.

FURTHER ORDERED that the within ordered amendments be and are effective on the sixtieth day after publication in the advance sheets of the Pacific Second Reporter.

FURTHER ORDERED that the amendments, as shown on the attachments hereto, be published in the Wyoming Reporter as shown.

FURTHER ORDERED that the rules, as amended, be published in Wyoming Court Rules but that the stricken words of the rules as they appeared before this amendment and the capitalized words added by this amendment shall not be shown as stricken or capitalized in Wyoming Court Rules.

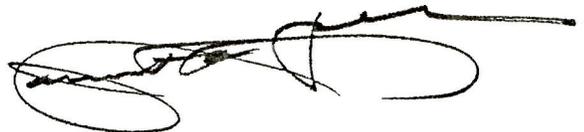
FURTHER ORDERED that all members of the judiciary and bar of this state be notified by mail that the numbered rules have been amended and where the full text thereof may be found.

FURTHER ORDERED that this order with the rules as herein amended be spread at length on the journal of this Court.

FINALLY ORDERED that the members of the Permanent Rules Advisory Committee be and are commended for their diligence and work and the gratitude of this Court be and is extended to each.

November 6, 1980.

By the Court



JOHN F. RAPER  
Chief Justice

11-6-80

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Wyoming Rules of Civil Procedure

Rule 5(d). Filing. All papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter, BUT THE COURT MAY ON MOTION OF A PARTY OR ON ITS OWN INITIATIVE ORDER THAT DEPOSITIONS UPON ORAL EXAMINATION AND INTERROGATORIES, REQUESTS FOR DOCUMENTS, REQUESTS FOR ADMISSION, AND ANSWERS AND RESPONSES THERETO NOT BE FILED UNLESS ON ORDER OF THE COURT OR FOR USE IN THE PROCEEDING.

Wyoming Rules of Civil Procedure

Rule 26(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 LIMITATIONS 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 HIS 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.

Wyoming Rules of Civil Procedure

Rule 28(a). Within the United States. Within the United States or within a territory or insular possession subject to the ~~dominion~~ 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.

Wyoming Rules of Civil Procedure

Rule 30(b). Notice of Examination: General Requirements; Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization; DEPOSITION BY TELEPHONE.

\* \* \*

(4) THE PARTIES MAY STIPULATE IN WRITING OR [F]the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means<sub>7</sub>. ~~in-which-event~~ [t]The STIPULATION OR order shall designate THE PERSON BEFORE WHOM THE DEPOSITION SHALL BE TAKEN, the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. ~~If-the-order-is-made~~<sub>7</sub>-a A party may nevertheless arrange to have a stenographic transcription made at his own expense. ANY OBJECTIONS UNDER SUBDIVISION (c), ANY CHANGES MADE BY THE WITNESS, HIS SIGNATURE IDENTIFYING THE DEPOSITION AS HIS OWN OR THE STATEMENT OF THE OFFICER THAT IS REQUIRED IF THE WITNESS DOES NOT SIGN, AS PROVIDED IN SUBDIVISION (e), AND THE CERTIFICATION OF THE OFFICER REQUIRED BY SUBDIVISION (f) SHALL BE SET FORTH IN A WRITING TO ACCOMPANY A DEPOSITION RECORDED BY NON-STENOGRAPHIC MEANS.

\* \* \*

(7) THE PARTIES MAY STIPULATE IN WRITING OR THE COURT MAY UPON MOTION ORDER THAT A DEPOSITION BE TAKEN BY TELEPHONE. FOR THE PURPOSES OF THIS RULE AND RULES 28(a), 37(a)(1), 37(b)(1) AND 45(d), A DEPOSITION TAKEN BY TELEPHONE IS TAKEN IN THE DISTRICT AND AT THE PLACE WHERE THE DEPONENT IS TO ANSWER QUESTIONS PRO-POUNDED TO HIM.

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(f) Certification and filing by officer; exhibits; copies; notice of filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. UNLESS OTHERWISE ORDERED BY THE COURT, [H]he shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to ~~and returned with~~ the deposition and may be inspected and copied by any party, except that ~~(A)~~ IF the person producing the materials DESIRES TO RETAIN THEM HE may ~~substitute~~ (A) OFFER copies to be marked for identification AND ANNEXED TO THE DEPOSITION AND TO SERVE THEREAFTER AS ORIGINALS if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and OR (B) ~~if the person producing the materials requests their return, the officer shall mark them, give~~ OFFER THE ORIGINALS TO BE MARKED FOR IDENTIFICATION, AFTER GIVING TO each party an opportunity to inspect and copy them, ~~and return them to the person producing them, and~~ IN WHICH EVENT the materials may then be used in the same manner as if annexed to ~~and returned with~~ 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.

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Wyoming Rules of Civil Procedure

Rule 32(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.

\* \* \*

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him 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 ~~has-been-dismissed~~ 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.

Wyoming Rules of Civil Procedure

Rule 33(c). Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, ~~or from~~ INCLUDING a compilation, abstract or summary ~~based thereon~~ 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.

## Wyoming Rules of Civil Procedure

Rule 34(b). Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A PARTY WHO PRODUCES DOCUMENTS FOR INSPECTION SHALL PRODUCE THEM AS THEY ARE KEPT IN THE USUAL COURSE OF BUSINESS OR SHALL ORGANIZE AND LABEL THEM TO CORRESPOND WITH THE CATEGORIES IN THE REQUEST.

Wyoming Rules of Civil Procedure

Rule 37(b). Failure to comply with order.

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

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

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him 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 him to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that he 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 him 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.

\* \* \*

(e) FAILURE TO PARTICIPATE IN THE FRAMING OF A DISCOVERY PLAN. IF A PARTY OR HIS 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 OPPORTUNITY FOR HEARING, REQUIRE SUCH PARTY OR HIS ATTORNEY TO PAY TO ANY OTHER PARTY THE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES, CAUSED BY THE FAILURE.

Wyoming Rules of Civil Procedure

Rule 45(d). Subpoena for Taking Depositions; Place of Examination.

(1) Proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) constitutes a sufficient authorization for the issuance by the clerk of the district court for the county in which the deposition is to be taken, or by the notary public or other officer authorized to take the deposition, of subpoenas for the persons named or described therein. PROOF OF SERVICE MAY BE MADE BY FILING WITH THE CLERK OF THE DISTRICT COURT FOR THE COUNTY IN WHICH THE DEPOSITION IS TO BE TAKEN A COPY OF THE NOTICE TOGETHER WITH A STATEMENT OF THE DATE AND MANNER OF SERVICE AND OF THE NAMES OF THE PERSONS SERVED, CERTIFIED BY THE PERSON WHO MADE SERVICE. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of this rule.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

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## Wyoming Rules of Civil Procedure

Rule 71.1(e). Hearing. The hearing shall be held not less than fifteen days after service upon the defendant, unless the defendant otherwise consents in writing. At the hearing, which may be adjourned from time to time, the district judge shall require evidence that notice of hearing has been given as provided in this rule, and shall hear and determine the questions of the plaintiff's right to make the appropriation, plaintiff's inability to agree with the owner, the necessity for the appropriation, and shall hear proofs and allegations of all parties interested touching the regularity of the proceeding. If the district judge determines these questions in favor of the plaintiff as to any or all of the property and persons interested therein, he shall make an order appointing three disinterested appraisers, residents of the county in which the complaint is filed, to ascertain the compensation to be made to the defendant, or defendants, for the taking or injuriously affecting the property described in the complaint, and specifying a time and place for the first meeting of such appraisers, and the time within which the said appraisers shall make such assessment. At the hearing, or at any stage of the proceedings under this rule AFTER THE QUESTIONS PREVIOUSLY MENTIONED HAVE BEEN HEARD AND DETERMINED the district judge may, by order in that behalf made and if demanded by plaintiff in his complaint or in any amendment thereto, authorize the plaintiff, if already in possession, and if not in possession, to take possession of, and use said property during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against the plaintiff on account thereof; provided, unless exempted by statute, plaintiff shall pay a sufficient sum into the court, or give approved security to pay the compensation in that behalf when ascertained, and in every case where possession shall be so authorized, it shall be lawful for the defendant, or defendants, to conduct the proceedings to a conclusion if the same shall be delayed by the plaintiff.