

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

**APRIL TERM, A.D. 1993**

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

JUL 22 1993

JERRILL D. CARTER, CLERK

*Judy Pacheco*  
by DEPUTY

In the Matter of the Amendments of )  
Rules 1, 3, 3.1, 5, 15, 17, 18, 21.1, 23, )  
26, 26.2, 32, 39, 41, 44, 45, 46, 46.1, and 54, )  
Wyoming Rules of Criminal Procedure )

**ORDER AMENDING RULES 1, 3, 3.1, 5, 15, 17, 18, 21.1, 23,  
26, 26.2, 32, 39, 41, 44, 45, 46, 46.1, AND 54,  
WYOMING RULES OF CRIMINAL PROCEDURE**

The members of the Permanent Rules Advisory Committee--Criminal Division having submitted to the court proposed revisions to Rules 1, 3, 3.1, 5, 15, 17, 18, 21.1, 23, 26, 26.2, 32, 39, 41, 44, 45, 46, 46.1, and 54, Wyoming Rules of Criminal Procedure; and the court having duly published a notice in the Wyoming State Bar publication, "Wyoming Lawyer", Vol. XVI No. 3, June 1993 Edition, stating that written comments of the proposed amendments were required to be submitted to the supreme court no later than Monday, June 28, 1993; and the court noting that no written comments have been received by the court by that date; and based upon the submission and recommendation of the advisory committee and with the approval of the court; it is therefore

**ORDERED** that Rules 1, 3, 3.1, 5, 15, 17, 18, 21.1, 23, 26, 26.2, 32, 39, 41, 44, 45, 46, 46.1, and 54, Wyoming Rules of Criminal Procedure, as amended and attached hereto shall be, and they are hereby, adopted; and it is further

**ORDERED** that Rule 61, Wyoming Rules of Criminal Procedure, previously amended, have been updated with the correct statutory references; and it is further

**ORDERED** that the amended rules, as attached hereto, be published in the advance sheets of the Pacific Reporter and thereafter in the Wyoming Reporter; that the amended rules shall become effective 60 days after the publication thereof in the advance sheets of the Pacific Reporter, and thereupon shall be spread at length upon the journal of this court.

Dated this 22nd day of July, 1993.

BY THE COURT:

*Richard J. Macy*  
Richard J. Macy  
Chief Justice

## WYOMING RULES OF CRIMINAL PROCEDURE

### Rule 1. Scope and definitions.

(a) *Scope.* -- Except as provided in Rule 54, these rules govern the procedures to be followed in all criminal, delinquent and CHINS (children in need of supervision) proceedings in all Wyoming courts, except as stated in Rule 54. When not inconsistent with the Juvenile Court Act, these rules shall also apply in delinquency proceedings. In the event that a procedure is not established by these rules, the Wyoming Rules of Civil Procedure shall govern.

#### (b) *Definitions.*

(1) "Commissioner" means commissioner of the district or county court.

(2) "Judicial officer" means justices of the supreme court, district judges, county judges, justices of the peace, municipal judges and commissioners.

(3) "Attorney for the state" means an attorney authorized by statute or by ordinance to prosecute criminal cases.

(4) "Clerk" means, depending on context:

(A) The elected clerk of district court in each county; or

(B) For county, justice of the peace and municipal courts the person so designated by the court.

(5) "State" means State of Wyoming except in prosecutions in municipal court in which it shall mean the municipality.

(6) "Sheriff" means a county sheriff except for prosecutions in municipal court in which it shall include the chief of police for the municipality.

(7) "Custodial officer" means the sheriff, chief of police or the officer in charge of a facility in which a defendant is being held on criminal charges.

(8) "Citation" means a document charging a defendant with an offense and requiring the defendant to appear in court and answer to the charge. The citation must state:

~~(A) The name of the court where it is to be filed;~~

~~(B) The names of the state or municipality and the defendant;~~

~~(C) For each count a reference to the statute, ordinance, rule, regulation or other provision of law which the defendant is alleged to have violated;~~

~~(D) The date and time the defendant must appear in court; and~~

~~(E) Whether a court appearance may be avoided by paying a fine and costs or forfeiture of bail.~~

~~The citation shall be signed by the citing officer and must contain a place for the defendant to sign a promise to appear in court on a date and at a time certain.~~

### **Rule 3. Indictment, information or citation.**

(a) *In general.* -- Prosecution of all offenses shall be prosecuted by indictment, information or by citation when a citation is authorized by law and shall be carried on in the name and by the authority of the State of Wyoming, and all indictments, informations and citations shall conclude "against the peace and dignity of the State of Wyoming".

(b) *Nature and contents.*

(1) **Information In General.** -- The information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the state. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The information shall state:

(A) The name of the court where it was filed;

(B) The names of the state and the defendant if the defendant is known, and, if not, then any names or description by which the defendant can be identified with reasonable certainty; and

(C) For each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated.

(2) Citation. -- Except as provided in W.S. 14-6-203 (d) and (f), a citation as authorized by law may be issued as a charging document for any misdemeanor for which the issuing officer has probable cause to believe was committed by the person to whom the citation was issued, for a violation of certain statutes and city and town ordinances. A citation may be issued by any peace officer authorized to do so by statute or ordinance. Such citation shall contain a reference to the statute or ordinance violated and a concise statement of the alleged offense. The citation shall be signed by the issuing officer but need not be under oath. The citation must state:

(A) The name of the court where it is to be filed;

(B) The names of the state or municipality and the defendant;

(C) For each count, a reference to the statute, ordinance, rule, regulation or other provision of law which the defendant is alleged to have violated;

(D) The date and time the defendant must appear in court; and

(E) Whether a court appearance may be avoided by paying a fine and costs or forfeiture of bail.

The citation must contain a place for the defendant to sign a promise to appear in court on a date and at a time certain.

(c3) Harmless Error. -- Error in the citation of a statute or its omission shall not be grounds for dismissal of the information or citation or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(de) Surplusage. -- The court on motion of the defendant may strike surplusage from the information or citation.

(ed) Amendment of information or citation. -- Without leave of the court, the attorney for the state may amend an information or citation until five days before a preliminary examination in a case required to be tried in district court or until five days before trial for a case not required to be tried in district court. The court may permit an information or citation to be amended; at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(1) With the defendant's consent, at any time before sentencing.

(2) Whether or not the defendant consents:

(A) At any time before trial if substantial rights of the defendant are not prejudiced.

(B) At any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

**Rule 3.1. Use of citations; bail.**

(a) *Where filed Jurisdiction.* -- Citations shall be filed in the county court, justice of the peace court or municipal court in the county or municipality where the offense allegedly occurred.

(b) *When citation may issue.* -- A person arrested and taken into custody for any crime shall be brought before a judicial officer as provided in Rule 5, except:

(1) A ~~person~~ ~~peace officer~~ who has been stopped, detained or arrested ~~any person~~ for a misdemeanor may, then or after further investigation, be issued a citation to avoid further detention ~~of the person~~. If the person to whom the citation is issued signs a promise to appear in court on a date and time certain to answer to the offense charged in the citation the person shall then be released from custody; and

(2) A person arrested and taken into custody for a "forfeit" offense (as later defined in this rule) must be taken before a judicial officer within ~~12~~ six hours. If the person is not taken before a judicial officer within ~~12~~ six hours, the person must be issued a citation and released from custody, but only if the person signs makes a written promise to appear in court on a date and time certain to answer to the offense charged in the citation. A judicial officer may, but is not required to, hold an initial appearance hearing for forfeit offenses other than during the regular business hours of the court.

(c) *Appearance in court.* -- The peace officer issuing the citation shall specify on the citation the name and address of the court in which the citation will be filed and a date and time when the person cited must appear in that court. The time specified must be at least five days after the alleged violation unless the person cited consents to demands an earlier hearing. A person to whom a citation has issued must appear ~~in court~~ on the day and at the time and place specified in the citation, unless:

(1) The appearance is continued or excused by a judicial officer of that court; or

(2) The citing officer checks the box "MAY FORFEIT BOND IN LIEU OF APPEARANCE" on the citation.

(d) *Payment of fines and costs or forfeiture of bail in lieu of appearance.* -- A citing officer may require any person to appear in court on a date and time certain to answer to the offense charged in the citation by checking the "MUST APPEAR" box on the citation. If the citing officer checks the "MAY FORFEIT BOND IN LIEU OF APPEARANCE" box on the citation the offense may be dealt with as follows:

(1) A person may satisfy a promise to appear in court by paying to the court, or to another authorized by that court to accept bond for misdemeanor offenses, on or before the appearance date the amount of the fine and court costs as listed on the uniform bail schedules adopted and published by the Wyoming Supreme Court and set forth in Appendix I to this rule;

(2) By paying fines and costs into court (by mail or otherwise) or, when permitted, by posting bond and failing to appear as promised a person elects:

(A) To waive appearance before the court;

(B) To waive a trial; and

(C) Not to contest the offense charged (*nolo contendere*).

(e) *Warrant for failure to appear.* -- The court may issue a warrant for the arrest of any person who fails to appear as ordered by the court. The court may also issue a warrant for any person who fails to appear as promised:

(1) When "MUST APPEAR" is checked on the citation; or

(2) When the person fails to pay the fine and costs to the court (or post bond in lieu thereof) prior to the promised appearance date when "MAY FORFEIT BOND IN LIEU OF APPEARANCE" is checked on the citation.

(f) *Disposition of citations.* -- Every citation filed or deposited with the court must be accounted for and disposed of by that court. Disposition may include forfeiture of bail.

(g) *Definitions.*

(1) "Forfeit offenses" are those misdemeanor offenses listed as forfeit offenses on the uniform bail schedules adopted and promulgated by the Wyoming Supreme Court and set forth in Appendix I to this rule. A citing officer may not

check the box "MAY FORFEIT BOND IN LIEU OF APPEARANCE" on the citation for any offense other than a forfeit offense; and

(2) "Must appear offenses" are those misdemeanor offenses for which a citation has issued and the citing officer has checked the "MUST APPEAR" box on the citation.

**Rule 5. Initial appearance.**

(a) *Initial appearance before a judicial officer.* -- A person arrested and in custody shall be taken without unnecessary delay ~~but in any event within 48 hours~~ before a judicial officer of the court from which the warrant issued or if no warrant has issued before a judicial officer of the court where the charging document will be filed. ~~A person arrested without a warrant shall be released from custody after 48 hours unless probable cause for the arrest is established to the satisfaction of a judicial officer.~~ When a person arrested without a warrant is brought before a judicial officer an information or citation shall be filed at or before the initial appearance and, ~~unless a judicial officer has previously found probable cause for the arrest, probable cause shall be established by affidavit or sworn testimony.~~ When a person, arrested with or without a warrant or given a summons, appears initially before the judicial officer, the judicial officer shall proceed in accordance with the applicable subdivision of this rule.

(b) *Offenses not required to be tried triable in district court.* -- If the charge against the defendant is not one which is ~~required to must be tried in district court, no preliminary examination shall be held. The defendant may be arraigned at the initial appearance or at a later time. and a preliminary examination will not be required.~~ The defendant shall be given a copy of the indictment, information or citation and the court shall read it to the defendant before the defendant is called upon to plead. Arraignment shall be conducted in open court and shall consist of reading the information or citation to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the information or citation and any supporting affidavits before being called upon to plead. In addition ~~to the requirements of Rule 10,~~ the judicial officer shall inform the defendant of the following:

(1) The defendant's right to retain counsel and, unless the defendant is charged with an offense for which appointment of counsel is not required, of the right to appointed counsel;

(2) That the defendant is not required to make a statement and that any statement made may be used against the defendant;

(3) Of the defendant's right to a trial by jury; and

(4) If the defendant is in custody, of the general circumstances under which pretrial release may be secured.

(c) ~~Offenses charged by information or citation and required to be tried triable in district court.~~ -- If the charge against the defendant is required to be tried triable in district court, the defendant shall not be called upon to plead until arraignment in district court.

~~At the initial appearance, the defendant shall be given a copy of the information or citation and any supporting affidavits. The judicial officer shall read inform the defendant of the information or citation to against the defendant or state to the defendant the substance of the charge and of any affidavit filed therewith, and shall explain of the defendant's right to retain counsel or to request the assignment of counsel if the defendant is unable to obtain counsel, and of the general circumstances under which the defendant may secure pretrial release. The judicial officer shall inform the defendant that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant. The judicial officer shall also inform the defendant of the right to a preliminary examination. The judicial officer shall allow the defendant reasonable time and opportunity to consult counsel and shall detain or conditionally release the defendant as authorized by statute or in these rules.~~

A defendant is entitled to a preliminary examination, unless waived, when charged by information or citation with any offense required to be tried triable in the district court. If the defendant waives preliminary examination, the case shall be transferred to the district court. If the defendant does not waive the preliminary examination, the judicial officer shall schedule a preliminary examination. Such examination shall be held within a reasonable time but in any event not later than 10 days following the initial appearance if the defendant is in custody and not later than 20 days if the defendant is not in custody, provided, however, that the preliminary examination shall not be held if the defendant is indicted before the date set for the preliminary examination. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this subdivision may be extended one or more times by a judicial officer. In the absence of such consent by the defendant, time limits may be extended by a judicial officer only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

~~Rule 5(c) does not apply to offenses for which a grand jury has issued an indictment.~~

**Rule 5.1. Preliminary examination.**

(a) *Right.* -- In all cases ~~required to be tried~~ ~~triable~~ in the district court, except upon indictment, the defendant shall be entitled to a preliminary examination in the county court or justice of the peace court. The defendant may waive preliminary examination but the waiver must be written or on the record. If the preliminary examination is waived, the case shall be transferred to district court for further proceedings.

(b) *Probable cause finding.* -- If from the evidence it appears that there is probable cause to believe that the charged offense or lesser included offense has been committed and that the defendant committed it, the judicial officer shall enter an order so finding and the case shall be transferred to district court for further proceedings. The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross-examine adverse witnesses and may introduce evidence. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in Rules 12 and 41(g).

(c) *Discharge of defendant.* -- If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the judicial officer shall dismiss the information and discharge the defendant. The discharge of the defendant shall not preclude the state from instituting a subsequent prosecution for the same offense.

(d) *Record of proceedings.* -- On timely application to the court, counsel for the parties shall be given an opportunity to have the recording of the hearing made available for their information in connection with any further proceedings or in connection with their preparation for trial. The court may appoint the time, place and conditions under which such opportunity is afforded counsel.

**Rule 11. Pleas.**

(a) *Alternatives.*

(1) *In General.* -- A defendant may plead not guilty, not guilty by reason of mental illness or deficiency, guilty, or nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(A) *Nolo Contendere.* -- A defendant may plead nolo contendere only with the consent of the court. Such a plea shall be accepted by the court only after due

consideration of the views of the parties and the interest of the public in the effective administration of justice.

(B) Mental Illness or Deficiency. -- A plea of "not guilty by reason of mental illness or deficiency" may be pleaded orally or in writing by the defendant or the defendant's counsel at the time of the defendant's arraignment or at such later time as the court may for good cause permit. Such a plea does not deprive the defendant of other defenses and may be coupled with a plea of not guilty.

(2) Conditional Pleas. -- With the approval of the court and the consent of the attorney for the state, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to seek review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

(b) Advice to Defendant. -- Except for forfeitures on citations (Rule 3.1) and pleas entered under Rule 43(c)(2), before accepting a plea of guilty or nolo contendere to a felony or to a misdemeanor when the defendant is not represented by counsel, the court must address the defendant personally in open court and, unless the defendant has been previously advised by the court on the record and in the presence of counsel, inform the defendant of, and determine that the defendant understands, the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law and other sanctions which could attend a conviction including, when applicable, the general nature of any mandatory assessments (such as the surcharge for the Crime Victim Compensation Account), discretionary assessments (costs, attorney fees, restitution, etc.) and, in controlled substance offenses, the potential loss of entitlement to federal benefits. However,

(A) Disclosure of specific dollar amounts is not required;

(B) Failure to advise of assessments or possible entitlement forfeitures shall not invalidate a guilty plea, but assessments, the general nature of which were not disclosed to the defendant, may not be imposed upon the defendant unless the defendant is afforded an opportunity to withdraw the guilty plea; and

(C) If assessments or forfeitures are imposed without proper disclosure a request for relief shall be addressed to the trial court under Rule 35 before an appeal may be taken on that issue.

(2) The defendant has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent the defendant;

(3) The defendant has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury and at that trial the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses, the right to court process to obtain the testimony of other witnesses, and the right against compelled self-incrimination;

(4) If a plea of guilty or nolo contendere is accepted by the court there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial; and

(5) If the court intends to question the defendant under oath, on the record, and in the presence of counsel, about the offense to which the defendant has pleaded guilty, that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

(c) *Waiver of Advisements.* -- A misdemeanor defendant represented by counsel may waive the advisements required in subdivision (b).

(d) *Insuring that plea is voluntary.* -- The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the state and the defendant or the defendant's attorney.

(e) *Plea agreement procedure.*

(1) *In General.* -- The attorney for the state and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser related offense, the attorney for the state will do any of the following:

(A) Agree not to prosecute other crimes or move for dismissal of other charges; or

(B) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

(C) Agree that a specific sentence is the appropriate disposition of this case.

The court shall not participate in any such discussions.

(2) Disclosure of Agreement; Decision of Court. -- If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, *in camera*, at the time the plea is offered. If the agreement is of the type specified in subdivision (e)(1)(A) or (e)(1)(C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subdivision (e)(1)(B), the court shall advise the defendant that if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) Acceptance of Agreement. -- If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) Rejection of Agreement. -- If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, *in camera*, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw the plea, and advise the defendant that if the defendant persists in a guilty plea or plea of *nolo contendere* the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) Notification to Court. -- Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(6) Inadmissibility of Pleas, Offers of Pleas, and Related Statements.

(A) Except as otherwise provided in this paragraph, evidence of the following is not, in any civil or criminal proceeding against the defendant, admissible against the defendant who made the plea or was a participant in the plea discussions:

(i) A plea of guilty, which was later withdrawn;

(ii) A plea of nolo contendere;

(iii) Any statements made in the course of any proceedings under this rule regarding either of the foregoing pleas; or

(iv) Any statement made in the course of plea discussions with an attorney for the state which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

(B) However, such a statement, is admissible

(i) In any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it; or

(ii) In a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(7) *Pre-Sentence Investigation.* -- A pre-sentence investigation may not be waived by plea agreement for any felony.

(f) *Determining accuracy of plea.* -- Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

(g) *Record of proceedings.* -- A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea.

(h) *Harmless error.* -- Any variance from the procedures required by this rule which does not affect substantial rights shall be disregarded.

**Rule 15. Depositions.**

(a) *When taken.* -- Whenever due to exceptional circumstances of the case, it is in the interest of justice that the testimony of a prospective witness of a party be taken ~~and preserved for use at trial, or any proceedings subsequent to trial,~~ the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place. If a witness is detained pursuant to statute or rule the court on written motion and upon notice to the parties may direct that the witness's deposition be taken. After the deposition has been subscribed, the court may discharge the witness.

(b) *Notice, place and process.*

(1) *Notice of Taking.* -- The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce the defendant at the examination and keep the defendant in the presence of the witness during the examination, unless, after being warned by the court that disruptive conduct will cause the defendant's removal from the place of the taking of the deposition, the defendant persists in conduct which is such as to justify exclusion from that place. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the court, but a failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(2) *Subpoena.* -- An order to take a deposition authorizes the clerk of court to issue subpoenas for the persons named or described therein.

(3) *Place.* -- The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court, taking into account the convenience of the witness and the parties.

(c) *Payment of expenses.* -- Whenever a deposition is taken at the instance of the state, or whenever a deposition is taken at the instance of a defendant who is indigent, the court may direct that the expense of travel and subsistence of the defendant and the defendant's attorney for attendance at the examination, and the cost of the transcript of the deposition be paid by the public defender's office.

(d) *How taken.* -- Subject to such additional conditions as the court shall provide, a deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these rules, provided that:

(A) In no event shall a deposition be taken of a party defendant without that defendant's consent; and

(B) The scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. The state shall make available to the defendant or the defendant's counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the state and to which the defendant would be entitled at the trial.

(e) *Use.* -- At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, as unavailability is defined in Rule 804(a), W.R.E., or the witness gives testimony at the trial or hearing inconsistent with that witness's deposition. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering of all of it which is relevant to the part offered and any party may offer other parts.

(f) *Objections to deposition testimony.* -- Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) *Deposition by agreement.* -- Nothing in this rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the court.

#### **Rule 17. Subpoena.**

(a) *For attendance of witnesses; form; issuance.* -- Upon the filing of a precipe therefore, a subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the

court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served.

(b) *Applicability of other provisions.* -- Except as otherwise provided, the provisions of the Wyoming Rules of Civil Procedure, the Wyoming Rules of Evidence and the Wyoming Statutes, relative to or compelling the attendance and testimony of witnesses, their examination and the administering of oaths and affirmations, and proceedings for contempt, to enforce the remedies and protect the rights of the parties, shall extend to criminal cases, so far as they are in their nature applicable.

(c) *Allowable fees and expenses.*

(1) *Non-expert Fees.* -- In addition to actual costs of travel, meals and lodging each non-expert witness shall be paid a witness fee of \$30.00 for each full day and \$15.00 for each half day necessarily spent traveling to and from the proceeding and in attendance at the proceeding.

(2) *Expert Fees.* -- In addition to actual costs of travel, meals and lodging each expert witness employed by appointed counsel other than the public defender paid from public funds shall be allowed a fee approved by the court before the subpoena is issued.

(d) *For production of documentary evidence and of objects.* -- A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or other objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents, objects, and portions thereof, to be inspected by the parties and their attorneys.

(e) *Service.* -- A subpoena may be served by the sheriff, or by any other person, over the age of 19 years, not a party to the action, appointed for such purpose by the clerk. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to that person the fee for one day's attendance and the mileage allowed by law. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the state or an indigent defendant.

(f) *Place of service.* -- A subpoena requiring the appearance of a witness at a hearing or trial may be served at any place within the jurisdiction of the state of Wyoming.

(g) *Contempt.* -- Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

(h) *Information not subject to subpoena.* -- Statements made by witnesses or prospective witnesses may not be subpoenaed from the state or the defendant under this rule, but shall be subject to production only in accordance with the provision of Rule 26.2.

(i) *Inability to pay fees and expenses.* -- Upon an *ex parte* application of a defendant and a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense, the court shall order that a subpoena be issued for service on a named witness and that the fees and expenses incurred therefore be paid by the public defender's office. If the court orders the subpoena to be issued at public expense for the actual costs incurred by the witness for travel, meals and lodging shall be paid by the public defender's office, but such costs may not exceed the amounts authorized for state employees in W.S. 9-3-103 and 104.

#### **Rule 18. Place of prosecution and trial.**

Except as otherwise permitted by statute or by these rules, the prosecution shall take place ~~be had~~ in the county in which the offense is alleged to have been committed, or in the municipality whose ordinance is alleged to have been violated, ~~or, for violation of a municipal ordinance, in the municipality against which the offense is alleged to have been committed.~~ The court shall fix the place of trial with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

#### **Rule 21.1. Change of judge.**

(a) *Peremptory disqualification.* -- A ~~district~~ judge may be peremptorily disqualified from acting in a case in which a felony is charged by the filing of a motion so requesting. A party may exercise the peremptory disqualification only one time and against only one judge. The motion shall be filed by the state at the time the indictment, ~~or~~ information ~~or citation~~ is filed in the district court, designating the judge to be disqualified. The motion shall be filed by ~~the~~ a defendant in open court represented by counsel at arraignment, designating the judge to be disqualified, ~~following the entry of a plea, if a plea is entered, or in the case of~~ except

that a defendant who is not represented by without an attorney at arraignment may file the motion within 10 days after the arraignment, designating the judge to be disqualified. After a judge has been peremptorily disqualified upon the motion of a party, the opposing party may file a motion for peremptory disqualification within five days of being notified of the identity of the judge to whom the case has been assigned. Upon the filing of a motion for peremptory disqualification the disqualified judge shall take no further action except to conduct the arraignment and to assign the case to another judge. A party may exercise the peremptory disqualification only one time and against only one judge.

(b) *Disqualification for cause.* -- Promptly after the grounds for such motion become known, the state or the defendant may move for a change of judge on the ground that the presiding judge is biased or prejudiced against the state, the attorney for the state, the defendant or the defendant's attorney. The motion shall be supported by affidavits stating sufficient facts to demonstrate such bias or prejudice. Prior to a hearing on the motion other affidavits may be filed. The motion shall be referred to another judge, or a court commissioner, who shall rule on the motion, and if granted shall immediately assign the case to a judge other than the disqualified judge. A ruling on a motion for a change of judge is not an appealable order, but the ruling shall be made a part of the record, and may be assigned as error in an appeal of the case or on a bill of exceptions.

### **Rule 23. Trial by jury or court.**

(a) *Trial by jury.* -- Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial with the approval of the court and the consent of the state. A waiver of jury shall be made in writing or on the record. There shall be no right to a jury trial, except when a statute or ordinance so provides, when the offense charged is driving under the influence of alcoholic beverages or controlled substances, or when the offense charged is one for which the statute or ordinance alleged to have been violated provides for incarceration as a possible punishment.

(b) *Number of jurors.* -- Juries shall be of 12 for felonies and six for misdemeanors but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12 or less than six as the case may be, or that a valid verdict may be returned by a jury of less than 12 or less than six should the court find it necessary to excuse one or more jurors for any just cause after trial commences.

(c) *Trial without a jury.* -- In a case tried without a jury the court shall make a general finding and shall in addition, on request made before the trial begins, find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient that the findings of fact appear therein.

**Rule 26. Taking of testimony.**

(a) *In general.* -- In all trials, the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute, or by these rules, by the Wyoming Rules of Evidence, or by other rules adopted by the Supreme Court of Wyoming.

(b) *Testimony by electronic means.* -- The court may permit a witness to testify by electronic means at any hearing or, if substantial rights of the defendant are not prejudiced thereby, at a trial. This section does not apply to previously recorded testimony. The party proposing to have a witness testify by electronic means shall give five days written notice of the request to the opposing party, unless the time is shortened by the court for good cause. An oath or affirmation administered by a judicial officer to a witness who will testify by electronic means shall be done in the same manner and shall have the same effect as an oath or affirmation administered in open court.

**Rule 26.2 Production of statements of witnesses.**

(a) *Order for production.* -- Upon order of the court, the attorney for the state or the defendant and the defendant's attorney shall produce for the examination and use of the other party, any written or recorded statement of a witness other than the defendant in their possession or which they may reasonably obtain and which relates to the subject matter about which the witness has testified or will testify and:

(1) Upon demand of the other party, the court shall order the statement to be produced after a witness has testified; and

(2) Upon motion of a party or upon its own motion, the court may require the statement to be produced at any time before trial ~~before a prospective witness testifies, before the trial begins or at a pretrial conference.~~

(b) *Production of entire statement.* -- If the entire contents of the statement relate to the subject matter of the witness's testimony, the court shall order that the statement be produced.

(c) *Production of excised statement.* -- If a party claims that the statement contains matter that does not relate to the

subject matter of the witness's testimony, the court shall order that it be delivered to the court *in camera*. Upon inspection, the court shall excise the portions of the statement that do not relate to the subject matter of the witness's testimony, and shall order that the statement, with such material excised, be produced. Any portion of the statement that is withheld over objection shall be preserved by the court, and, in the event of an appeal by the defendant or a bill of exceptions by the state, shall be made available to the appellate court for the purpose of determining the correctness of the decision to excise portions of the statement.

(d) *Recess for examination of statement.* -- After delivery of the statement to the other party, the court, upon application of that party, may recess proceedings in the trial for the examination of the statement and for preparation for its use in the trial.

(e) *Failure to comply with order.* -- If a party elects not to comply with an order to deliver a statement, the court shall order:

(1) That the witness not be permitted to testify; or

(2) That the testimony of the witness be stricken from the record and that the trial proceed; or

(3) If it is the attorney for the state who elects not to comply, shall declare a mistrial if required in the interest of justice.

(f) *Definition.* -- As used in this rule, a "statement" of a witness means:

(1) A written statement that is signed or otherwise adopted or approved by the witness or an oral statement ~~made by the witness and~~ contained in a stenographic, mechanical, electrical, or other recording ~~made by the witness~~, or a transcript thereof; or

(2) A substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or

(3) A statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury.

Statement does not include the work product of attorneys.

## **Rule 32. Judgment and sentence.**

(a) *Presentence investigation.*

(1) When Made. -- In every felony case the Department of Probation and Parole shall conduct a presentence investigation and submit a report to the court. The court may order an investigation and report in misdemeanor cases. In felony cases the investigation and report may not be waived but, with the parties consent, the court may permit the report to be filed after sentencing. Otherwise, it shall be considered by the court before the imposition of sentence or the granting of probation. Except with the written consent of the defendant, the report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty.

(2) Report. -- The report of the presentence investigation shall contain:

(A) Information about the history and characteristics of the defendant, including prior criminal record, if any, financial condition, and any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant;

(B) Verified information stated in a nonargumentative style containing an assessment of the financial, social, psychological, and medical impact upon, and cost to, any individual against whom the offense has been committed and attaching a victim impact statement as provided in W.S. 7-21-103 if the victim chooses to make one in writing. In any event the report shall state that the victim was advised of the right to make such a statement orally at the defendant's sentencing or in writing. If the victim could not be contacted, the report shall describe the efforts made to contact the victim;

(C) Unless the court orders otherwise, information concerning the nature and extent of non-prison programs and resources available for the defendant; and

(D) Such other information as may be required by the court.

(3) Disclosure.

(A) At least 10 days before imposing sentence, unless this minimum period is waived by the defendant, the court shall provide the defendant and the defendant's counsel with a copy of the report of the presentence investigation, including the information required by subdivision (a)(2). The court shall afford the defendant and the defendant's counsel an opportunity to comment on

the report and, in the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in it.

(B) Any material which may be disclosed to the defendant and the defendant's counsel shall be disclosed to the attorney for the state.

(C) If the comments of the defendant and the defendant's counsel or testimony or other information introduced by them allege any factual inaccuracy in the presentence investigation report or the summary of the report or part thereof, the court shall, as to each matter controverted, make:

(i) A finding as to the allegation; or

(ii) A determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. A written record of such findings and determinations shall be appended to and accompany any copy of the presentence investigation report thereafter made available to penal institutions.

(b) *Judgment.*

(1) Except for forfeit offenses for which citations have issued (Rule 3.1), other misdemeanors where the penalty imposed does not exceed a fine of \$200.00, and pleas entered under Rule 43(c)(2), judgment of conviction upon a plea of guilty or nolo contendere shall include:

(A) The plea, including the name and statute number of each offense to which the defendant pleaded and whether such offense was a felony or a misdemeanor.

(B) Findings that:

(i) The defendant was competent to enter a plea;

(ii) The defendant was represented by competent counsel with whom the defendant was satisfied including the name of the attorney (or that the defendant knowingly waived such right);

(iii) The defendant was advised as required by Rule 11 and understood those advisements; and

(iv) The plea was voluntary, and not the result of force or threats or of promises apart from a plea agreement;

(C) A statement as to whether the plea was the product of a plea agreement and, if so, that the plea agreement was fully disclosed and accepted by the court as required by Rule 11(d);

(D) An adjudication as to each offense; and

(E) Any other advisements required by law or that the court deems appropriate.

(2) Except for forfeit offenses for which citations have issued, other misdemeanors where the penalty imposed does not exceed a fine of \$200.00, and pleas entered under Rule 43(c)(2), a judgment of conviction after a trial shall include:

(A) The plea and the verdict for each offense for which the defendant was tried;

(B) A statement as to whether the defendant testified and whether or not the defendant was advised by the court with respect to the defendant's right to testify or not to testify;

(C) An adjudication as to each offense including the name and statute number for each convicted offense and whether such offense is a felony or a misdemeanor; and

(D) The name of the defendant's attorney or a statement that the defendant appeared *pro se*.

(3) If the defendant is found not guilty or for any reason is entitled to be discharged, judgment shall be entered accordingly.

(4) The judgment shall be promptly signed by the judge and entered by the clerk.

(c) *Sentence.*

(1) *Imposition.* -- Sentence shall be imposed without unnecessary delay, but the court may, when there is a factor important to the sentencing determination that is not then capable of being resolved, postpone the imposition of sentence for a reasonable time until the factor is capable of being resolved. Prior to the sentencing hearing, the court shall provide the counsel for the defendant and the attorney for the

state with a copy of the probation officer's report. Pending sentence, the court may continue or alter the defendant's bail or may confine the defendant. At the sentencing hearing, the court shall afford the counsel for the defendant and the attorney for the state an opportunity to comment upon the probation officer's report and on other matters relating to the appropriate sentence. Before imposing sentence, the court shall also:

(A) Determine that the defendant and defendant's counsel have had the opportunity to read and discuss the presentence investigation report made available pursuant to subdivision (a)(3)(A);

(B) Afford counsel for the defendant an opportunity to speak on behalf of the defendant; and

(C) Address the defendant personally and determine if the defendant wishes to make a statement and to present any information in mitigation of the sentence.

The attorney for the state shall have an equivalent opportunity to speak to the court. Upon a motion that is jointly filed by the defendant and by the attorney for the state, the court may hear *in camera* such a statement by the defendant, counsel for the defendant, or the attorney for the state.

(2) Contents. -- A written sentence shall be signed by the judge and entered by the clerk of court without delay. The sentence may be included in the judgment or separately entered. Except for forfeit offenses for which citations have issued, other misdemeanors where the penalty imposed does not exceed a fine of \$200.00, and pleas entered under Rule 43(c)(2), aAs a minimum ~~it~~ the sentence shall:

(A) State each offense for which sentence is imposed, including the statute number and whether the offense is a felony or a misdemeanor;

(B) State the sentence imposed for each convicted offense including for felonies the minimum and maximum term and state whether multiple sentences are to run concurrently or consecutively;

(C) State whether the sentence is to run concurrently with or consecutive to any other sentence being served or to be served by the defendant;

(D) If probation is not granted, state whether probation was considered by the court;

(E) Include a finding of all time served by the defendant in presentence confinement for any sentenced offense;

(F) State the extent to which credit for presentence confinement is to be given for each sentenced offense;

(G) Include an assessment for the victims of crime compensation fund as required by W.S. 1-40-119; and

(H) Include a finding as to whether the defendant is able to make restitution and if restitution is ordered fix the reasonable amount owed to each victim resulting from the defendant's criminal acts.

(3) Advisement of Right to Appeal. -- After imposing sentence in a case which has gone to trial, the court shall advise the defendant of:

(A) The defendant's right to appeal, including the time limits for filing a notice of appeal; and

(B) The right of a person who is unable to pay the cost of an appeal to apply for leave to appeal *in forma pauperis*, to have appointed counsel represent the defendant on appeal, and to have the clerk of the court file a notice of appeal.

There shall be no duty on the court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere.

(4) Notice of Appeal. -- If the defendant so requests, the clerk of the court shall prepare and serve forthwith a notice of appeal in accordance with the Wyoming Rules of Appellate Procedure on behalf of the defendant.

(d) *Plea withdrawal.* -- If a motion for withdrawal of a plea of guilty or nolo contendere is made before sentence is imposed, the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. At any later time, a plea may be set aside only to correct manifest injustice.

(e) *Probation.* -- After conviction of an offense not punishable by death or by life imprisonment, the defendant may be placed on probation if permitted by law.

**Rule 39. Revocation or modification of probation.**

(a) *Revocation.* -- Proceedings for revocation of probation shall be initiated by a petition for revocation filed by the attorney for the state, setting forth the conditions of probation which are alleged to have been violated by the probationer and the facts establishing the violation.

(1) *Process.* -- If it appears from a verified petition to revoke probation, or from an affidavit or affidavits filed with the petition, that there is probable cause to believe the probationer violated the terms of probation, the court shall order the probationer to appear before the court on a date and time stated to answer to the allegations in the petition. Upon the written request of the attorney for the state demonstrating good cause therefor, the court may issue a warrant for the probationer. A copy of the petition for revocation shall be served upon the probationer along with the order to appear or warrant.

(2) *Appearance.* -- A probationer arrested on a warrant and taken into custody shall be taken before a judicial officer without unnecessary delay, ~~but in any event within 48 hours of arrest.~~

(3) *Advice to Probationer.* -- At the probationer's first appearance before the court, the court shall advise the probationer of the allegations of the petition for revocation and of the contents of any affidavits and shall further advise the probationer:

(A) Of the probationer's right to retain counsel and, where applicable, the right to appointed counsel;

(B) That the probationer is not required to make a statement and that any statement made could be used against the probationer;

(C) Of the right to a hearing before a judge without a jury;

(D) Of the state's burden of proof;

(E) Of the probationer's right to confront adverse witnesses, to call other witnesses and have court process to obtain the testimony of reluctant witnesses and to present other evidence at the hearing; and

(F) If the probationer is in custody, of the general circumstances under which release may be secured pending a hearing.

(4) *Plea.* -- The probationer shall be given a copy of the petition for revocation of probation before being called

upon to plead. The probationer shall be called upon to admit or deny the allegations of the petition for revocation. If the probationer admits the allegations of the petition, the court may proceed immediately to disposition, or may set a future date for disposition. If the petitioner denies the allegations of the petition, or declines to admit or deny, the court shall set the matter for hearing.

(A) If further proceedings are to follow the first appearance, the court may commit or release the probationer as provided in Rule 46.2.

(B) A hearing on the petition shall be held within the following time limits:

(i) If the probationer is in custody because of the probation revocation proceedings, a hearing upon a petition for revocation of probation shall be held within 15 days after the probationer's first appearance before the court following the filing of the petition. If the probationer is not in custody because of the probation revocation proceedings, a hearing upon the petition shall be held within 30 days after the probationer's first appearance following the filing of the petition. For good cause the time limits may be extended by the court.

(ii) Where it appears that the alleged violation of conditions of probation consists of an offense with which the probationer is charged in a criminal proceeding then pending, the court may continue the probation revocation proceedings until the termination of the criminal proceeding if the probationer consents, or regardless of consent, if the probationer is not in custody because of the probation revocation proceedings.

(5) Hearing. -- At the hearing upon the petition for revocation of probation, the state must establish the violation of the conditions of probation alleged in the petition by a preponderance of the evidence.

(A) The probationer shall have the right to appear in person and by counsel, and to confront and examine adverse witnesses.

(B) The Wyoming Rules of Evidence shall apply to the adjudicative phase of probation revocation hearings, but not to the dispositional stage.

(6) Findings. -- If the court finds a violation of conditions of probation and revokes probation, it shall enter an order reciting the violation and the disposition.

(b) *Modification.* -- Proceedings for modification of conditions of probation may be initiated by a petition for modification filed by the attorney for the state, a probation agent or the probationer, setting forth the proposed modification and a statement of the reasons therefor. A copy of the petition shall be served upon the adverse party; if made by a probation officer it shall also be served upon the attorney for the state and, unless the attorney for the state consents, no action may be taken for five days without a hearing. Thereafter, the adverse party shall have 20 days to respond to the petition for modification of probation. If the adverse party consents to the requested modification or fails to respond to the petition, the court may act upon the requested modification with or without a hearing. If the adverse party responds by opposing the requested modification the court may hold a hearing. The Wyoming Rules of Evidence shall not apply at the modification hearing; all relevant, probative evidence may be received if the adverse party is given a fair opportunity to rebut the evidence. Within a reasonable time, the court shall grant or deny the requested modification in whole or in part.

**Rule 41. Search and seizure.**

(a) *Authority to issue warrant.* -- Upon the request of the attorney for the state or a federal, state, or local peace officer, a search warrant authorized by this rule may be issued by a judicial officer. If issued by a judicial officer other than a district judge it shall be by a judicial officer for the jurisdiction wherein the property sought is located.

(b) *Property or persons which may be seized with a warrant.*  
-- A warrant may be issued under this rule to search for and seize any:

(1) Property that constitutes evidence of the commission of a criminal offense; or

(2) Contraband, the fruits of crime, or things otherwise criminally possessed; or

(3) Property designed or intended for use or which is or has been used as the means of committing a criminal offense; or

(4) Person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) *Issuance and contents of warrant.* -- A warrant shall issue only on affidavit sworn to before a person authorized by law to administer oaths and establishing the grounds for issuing the warrant. If the judicial officer is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, the judicial officer shall issue a warrant particularly identifying the property or person to be seized and naming or describing the person or place to be searched. Before ruling on a request for a warrant the judicial officer may require the affiant to appear personally and may examine under oath the affiant and any witnesses the affiant may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. The warrant shall be directed to any officer authorized to enforce or assist in enforcing the state law. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person or place named for the property or person specified. The warrant shall direct that it be served between 6 a.m. and 10 p.m., unless the issuing authority, by appropriate provision in the warrant, and reasonable cause shown, authorizes its execution at other times. It shall designate the judicial officer to whom it shall be returned.

(d) *Execution of warrant and return with inventory.* -- The warrant may be executed ~~and returned~~ only within 10 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken, a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken. The return shall be made within five days after execution unless the time is extended for good cause and in writing by the judicial officer issuing the warrant and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judicial officer shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) *Motion for return of property.* -- A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the court in which charges are pending or if charges have not been filed the court from which the warrant issued for the return of the property on the ground that such person is entitled to lawful possession of the property. The court shall receive evidence on any issue of fact necessary to the decision of the

motion. If the motion is granted, the property shall be returned to the movant, although reasonable conditions may be imposed to protect access and use of the property in subsequent proceedings. If a motion for return of property is made or comes on for hearing after criminal charges have been filed, it shall be treated also as a motion to suppress under Rule 12.

(f) *Filing of papers with clerk.* -- The judicial officer who has issued a search warrant shall attach to the warrant the copy of the return, inventory and all of the papers in connection therewith and shall file them with the clerk of the district, county court or justice of the peace in the county in which the property was seized.

(g) *Motion to suppress.* -- A motion to suppress evidence may be made in the court where the case is to be tried as provided in Rule 12.

(h) *Scope and definition.* -- This rule does not modify any law inconsistent with it, regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made. The term "property" is used in this rule to include documents, books, papers and any other tangible objects.

(i) *Confidentiality of information.* -- All information filed with the court for the purpose of securing a warrant for a search, including but not limited to an application, affidavits, papers and records, shall be a confidential record until such time as a peace officer has executed the warrant and has made return thereon. During the period of time the information is confidential, it shall be sealed by the court, and the information contained therein shall not be disseminated to any person other than a peace officer, judge, court commissioner or another court employee, in the course of official duties.

#### **Rule 44. Right to assignment of counsel.**

(a) *When right attaches.* -- ~~Every defendant who is unable to obtain counsel is entitled to be represented by assigned counsel at every stage of the proceedings from the filing of an indictment, information or citation through appeal, unless that right is waived.~~

(1) Any person financially unable to obtain adequate representation who is charged with a crime for which violation, incarceration as a punishment is a practicable possibility or with juvenile delinquency is entitled to appointed counsel. The right extends from the first appearance in the court through appeal.

(2) Any adult probationer or adjudged delinquent juvenile who is alleged to have violated the terms of a probation order, for which violation incarceration is a practicable possibility, and who is financially unable to obtain adequate representation is entitled to appointed counsel if, after being informed of the right to request appointed counsel, the probationer makes a request based upon a timely and colorable claim that the probationer did not violate probation terms or that, if the violation is a matter of public record or admitted, there are substantial reasons which justified or mitigated the violation, making revocation inappropriate and the reasons are complex or difficult to develop or present. In deciding whether to appoint counsel, the judicial officer should consider the probationer's ability to think clearly and speak effectively. If appointment of counsel is denied, the grounds for refusal must be succinctly stated in the record.

(3) A fugitive has a limited right to be represented in extradition proceedings as provided in W.S. 7-3-210.

(b) *Procedure.* -- The procedures for implementing the right set out in subdivision (a) shall be those provided by W.S. 7-6-101 et seq. law and by these rules of the court establishing a standard for indigence adopted pursuant to W.S. 7-6-103(e). The appointment of counsel for delinquency cases is governed by W.S. 14-6-222 and, fees, costs and expenses for delinquency cases are governed by W.S. 14-6-235.

(1) The determination of a defendant's eligibility for appointed counsel is a judicial function. An attorney should be appointed at the earliest time after a defendant makes a request, but only after appropriate inquiry into the defendant's financial circumstances and a determination of eligibility.

(2) A defendant requesting appointed counsel must submit a financial affidavit or provide sworn testimony on the record detailing income, expenses, assets and liabilities and may be required to update the affidavit or testimony from time to time.

(3) The judicial officer shall advise any defendant who has requested appointed counsel that, to the extent of ability to do so, the defendant will be required to contribute to the cost of representation. At the time counsel is appointed, the judicial officer shall determine the defendant's ability to make monthly or other periodic payments and require the defendant to make such payments to the clerk of the court as a condition of the appointment.

(4) If at any time after appointment it appears to a judicial officer that a defendant is financially able to make payment, in whole or in part, for legal services, the judicial officer shall require such payments or terminate the appointment.

(5) A separate order of appointment shall be entered as part of the record by the court for each defendant.

(6) After a hearing, a judicial officer may permit a defendant to withdraw a request for appointed counsel.

(7) If appointed counsel obtains information that a client is financially able to make payment in whole or in part for legal services in connection with his or her representation and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court and as that the person be required to contribute to the cost of representation or that the appointment be terminated.

(8) Appointed counsel shall represent the defendant at every stage from initial appearance through appeal; however, the appellate section of the public defender's office may be substituted for trial counsel to handle an appeal.

(c) *Joint representation.* -- Whenever two or more defendants have been charged with offenses arising from the same or related transactions and are represented by the same retained or assigned counsel or by retained or assigned counsel who are associated in the practice of law, the court shall promptly inquire with respect to such joint representation and shall personally advise each defendant of the right to the effective assistance of counsel, including separate representation. Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court shall order separate representation.

(d) *Rules establishing standard of indigency.* -- Rule 44(d) is adopted as required by W.S. 7-6-103(c). A person is entitled to the appointment of counsel if, at the time counsel is needed, the person is unable to provide for the full payment of an attorney and all other necessary expenses of representation. In making a determination of eligibility, the judicial officer shall consider:

(1) The probable cost of representation given the number and severity of the offenses charged and the factual and legal complexity of the case.

(2) The defendant's income from all sources and the defendant's capacity to earn income.

(3) The expenses of the defendant's household and whether a spouse or roommate contributes or ought to contribute to those expenses.

(4) The defendant's responsibility for the support of others.

(5) The defendant's assets whether held individually or with others.

(6) The defendant's debts and the periodic payments due on the debts.

(7) The defendant's capacity to borrow money.

Uncertainty as to a defendant's eligibility for appointed counsel should be resolved in the defendant's favor. An erroneous determination of eligibility may be corrected at any time.

*(e) Compensation and expenses of appointed counsel.*

(1) District, juvenile, county and justice of the peace courts shall generally appoint the public defender's office to represent indigent persons, but may, for good cause, appoint private counsel. Unless otherwise provided by ordinance, municipal courts shall appoint private counsel to be paid by the municipality.

(2) Private counsel designated by the public defender's office or by a judicial officer may be compensated at a rate not to exceed fifty dollars (\$50.00) per hour for the time expended in court and a rate not more than fifty dollars (\$50.00) per hour and not less than twenty-five dollars (\$25.00) per hour for time reasonably expended out of court in preparation or research.

(A) Payment of private counsel designated by the public defender's office shall be made by that office and approval by a judicial officer shall be neither requested nor required. Transcripts and other extraordinary expenses and expert witness fees must be approved by the public defender's office prior to being incurred. Counsel shall make known to the public defender's office those cases which will be extended or complex.

(B) Payment for private attorneys appointed by the court must be approved by a judicial officer before being submitted to the public defender's office for payment. Vouchers (which are available in the public defender's office) and a supporting invoice detailing the services provided and expenses incurred must be submitted to the court for review. The judicial officer shall approve

fees at the rates provided in this section for time necessarily expended and expenses necessarily incurred. Transcripts and other extraordinary expenses and expert witness fees must be approved by the court prior to being incurred. Counsel shall make known to the court and to the public defender's office those cases which will be extended or complex.

(3) If travel is necessary as part of the attorney's compensation, the court or the public defender's office must be immediately notified. Travel expenses may be allowed and shall be paid according to the state per diem rates.

**Rule 45. Time.**

(a) *Computation.* -- In computing any period of time, the day of the act or event 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 in court, 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. Except for the time periods prescribed in Rules 5, 6, 12.1, 12.2, 12.3, 21, 32 and 46.1, when a 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 these rules, "legal holiday" includes New Year's Day, ~~Birth~~day of Martin Luther King, Jr./Wyoming Equality Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and 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 an act is required or allowed to be done at or within a specified time, the court, 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 if the failure to act was the result of excusable neglect, but the court may not extend the time for taking any action under Rules 29, 33, 34 and 35 except to the extent and under the conditions stated in them.

(c) *Motions and affidavits.* -- A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than one day before the hearing unless the court permits them to be served at a later time.

(d) *Additional time after service by mail.* -- Whenever a party has a right or is required to do an act within a prescribed period after the service of a notice or other paper upon that party and the notice or other paper is served upon that party by mail, three days shall be added to the prescribed period.

(e) *Continued existence or expiration of term of court.* -- The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any criminal action which has been pending before it.

**Rule 46. Release from custody.**

(a) *Prior to trial.* -- Eligibility for release prior to trial shall be in accordance with Rule 46.1 and 46.3.

(b) *During trial.* -- A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the court determines that other terms and conditions or termination of release are necessary to assure such person's presence during the trial or to assure that such person's conduct will not obstruct the orderly and expeditious progress of the trial.

(c) *Pending sentence and notice of appeal.* -- Eligibility for release pending sentence or pending notice of appeal or expiration of the time allowed for filing notice of appeal, shall be in accordance with Rule 46.2. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(d) *Pending determination of a petition to revoke probation.* -- When a petition to revoke probation has been filed, the court may, in its discretion, admit the defendant to bail pending a hearing.

(e) *Justification of sureties.* -- Every surety, except a corporate surety which is approved as provided by law, shall justify by affidavit and may be required to describe in the

affidavit the property by which the surety proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged and all the other liabilities of the surety. No bond shall be approved unless the surety thereon appears to be qualified.

(e) *Forfeiture of bail.*

(1) Declaration. -- If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail.

(2) Setting Aside. -- The court may direct that a forfeiture be set aside in whole or in part, upon such conditions as the court may impose, if a person released upon execution of an appearance bond with a surety is subsequently surrendered by the surety into custody or if it otherwise appears that justice does not require the forfeiture.

(3) Enforcement. -- When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. By entering into a bond, the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Obligor's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses.

(4) Remission. -- After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2).

(f) *Exoneration of obligors.* -- When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(g) *Supervision of detention pending trial.* -- The court shall exercise supervision over the detention of defendants and witnesses within its jurisdiction pending trial for the purpose of eliminating all unnecessary detention. Each Monday and Thursday, or if Monday or Thursday is a holiday, the first working day following, the custodial officer shall make a report to the court listing each defendant and witness who has been in custody pending initial appearance, extradition proceedings, or a probation revocation hearing for a period in excess of 48 hours. The sheriff shall make a biweekly report to the court listing each defendant

and witness who has been held in custody pending, arraignment or trial for a period in excess of 10 days. As to each witness so listed the attorney for the state shall make a statement of the reasons why such witness should not be released with or without the taking of a deposition pursuant to Rule 15(a). As to each defendant so listed the attorney for the state shall make a statement of the reasons why the defendant is still held in custody.

**Rule 46.1. Pretrial release .**

(a) *Applicability of rule.* -- All persons shall be bailable by sufficient sureties, except for capital cases when the proof is evident or the presumption great. Excessive bail shall not be required. When a person charged with the commission of a crime is brought before a court or has made a written application to be admitted to bail, a judicial officer shall order that such person be released or detained pending judicial proceedings, under this rule.

(1) Request for Release. -- Within four hours after a person is confined to jail, the custodial officer shall advise the person of the right to file a written request with the court to be granted pretrial release admitted to bail. The custodial officer shall provide the necessary writing materials.

(A) No particular form of request for pretrial release bail shall be required and the request may be hand-written.

~~(B) If a request for bail is presented to the court before criminal charges have been filed, it shall be docketed as a criminal case and if criminal charges are later filed they shall be filed in the same case.~~

(BE) The custodial officer shall endorse the date and time upon deliver any written request for pretrial release bail and deliver it to the court:

(i) Immediately, if made during the court's regular hours; and

(ii) Without unnecessary delay, but in no event more than 48 hours, if made other than during the court's regular hours.

(CB) All persons in custody who have made a request for pretrial release shall have the request considered by a judicial officer, with or without a hearing, within 48 hours of the request. If the decision upon the request was made without a hearing and does not result in the

person's release from custody, the judicial officer shall hold a hearing within 48 hours of the request to reconsider the release decision. The confined person or the confined person's attorney shall have an opportunity to participate in the hearing. ~~Notwithstanding the foregoing, a judicial officer may consider written petitions for bail presented during non-business hours.~~

(D) If a request for pretrial release is presented to the court before criminal charges have been filed, it shall be docketed as a criminal case and if criminal charges are later filed they shall be filed in the same case.

(E) Rule 46.1(a)(1) does not apply to persons in custody upon a petition to revoke probation.

(2) Appearance Before Court. -- Upon a person's first appearance before the court, the judicial officer shall order that, pending trial or the filing of charges, the person be:

(A) Released on personal recognizance or upon execution of an unsecured appearance bond, under subdivision (b); and

(B) Released on a condition or combination of conditions under subdivision (c).

(b) *Release on personal recognizance or unsecured appearance bond.* -- The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a federal, state, or local crime during the period of release, unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) *Release on conditions.*

(1) If the judicial officer determines that the release described in subdivision (b) will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person:

(A) Subject to the condition that the person not commit a federal, state, or local crime during the period of release; and

(B) Subject to the least restrictive further condition, or combination of conditions, will reasonably

assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person:

(i) Remain in the custody of a designated person who agrees to assume supervision and to report any violation of a release condition to the court if the designated person is able reasonably to assure the judicial officer that the person will appear as required, and will not pose a danger to the safety of any other person or the community;

(ii) Maintain employment, or if unemployed, actively seek employment;

(iii) Maintain or commence an educational program;

(iv) Abide by specified restrictions on personal associations, place of abode, or travel;

(v) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) Report on a regular basis to a designated law enforcement agency, or other agency;

(vii) Comply with a specified curfew;

(viii) Refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) Refrain from the use of alcohol, or controlled substances, as defined in W.S. 35-7-1002, *et seq.*, without a prescription by a licensed medical practitioner;

(x) Undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(xi) Execute an agreement to forfeit upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court such indicia of ownership of the property or such percentage of the money as the judicial officer may specify;

(xii) Execute a bail bond with solvent sureties in such amount as is reasonably necessary to assure the appearance of the person as required;

(xiii) Return to custody for specified hours following release for employment, schooling, or other limited purposes;

(xiv) Execute a waiver of extradition; and

(xv) Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

(2) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) *Factors considered.* -- The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning:

(1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;

(2) The weight of the evidence against the person;

(3) The history and characteristics of the person including:

(A) The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) Whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal, state, or local law; and

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

(e) *Contents of release order.* -- In a release order issued under subdivision (b) or (c), the judicial officer shall:

(1) Include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) Advise the person of the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest.

(f) *Presumption of innocence.* -- Nothing in this rule shall be construed as modifying or limiting the presumption of innocence.

**Rule 54. Applicability of rules.**

(a) *In general.* -- Except as noted in division (b), these rules shall apply to all criminal actions in all courts. Rules 6 and 9 and ~~21.1~~ do not apply in county or justice of the peace courts. Rules 6, 9, 20, and 21 and ~~21.1~~ do not apply in municipal courts. In proceedings to hold to security of the peace and for good behavior, proceedings for the extradition and rendition of fugitives, and the collection of fines and penalties, these rules shall apply unless in conflict with existing statutes.

(b) *Juvenile proceedings.* -- Unless inconsistent with the Juvenile Court Act these rules shall apply in all juvenile cases involving allegations that a child is in need of supervision or delinquent.

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(b) *Juvenile proceedings.* -- Unless inconsistent with the Juvenile Court Act these rules shall apply in all juvenile cases involving allegations that a child is in need of supervision or delinquent.

**Rule 61. Laws superseded.**

From and after February 11, 1969, the sections of the Wyoming Statutes, 1977, Republished Edition, 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:

7-1-104 through 7-1-105  
7-7-101 through 7-7-103  
7-8-102 through 7-8-103  
7-10-101 through 7-10-102  
7-10-104 through 7-10-105  
7-11-103  
7-11-202 through 7-11-203  
7-11-403  
7-11-407  
7-11-501 through 7-11-502  
7-12-101  
7-12-301  
7-13-407 through 7-13-409