

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1994

In the Matter of Amendments to Rules)
4, 12, 40 and 68, Wyoming Rules of)
Civil Procedure; Rule 601, Uniform)
Rules for District Courts of the)
State of Wyoming; and the Adoption)
of Forms 1A and 1B, Civil Forms)

IN THE SUPREME COURT
STATE OF WYOMING
FILED

JAN 11 1995

JUDY PACHECO, CLERK
Carol Thompson
by DEPUTY

**ORDER AMENDING RULES 4, 12, 40 and 68, WYOMING RULES OF
CIVIL PROCEDURE; RULE 601, UNIFORM RULES FOR DISTRICT COURTS OF
THE STATE OF WYOMING; AND THE ADOPTION OF
FORMS 1A AND 1B, CIVIL FORMS**

The members of the Permanent Rules Advisory Committee, Civil Division, having submitted to the court proposed amendments to Rules 4, 12, 40 and 68, Wyoming Rules of Civil Procedure; Rule 601, Uniform Rules for District Courts of the State of Wyoming; and the adoption of Forms 1A and 1B, Civil Forms, as attached hereto, and the court having reviewed the proposed amendments and finding it advisable and proper to adopt the proposed amendments; it is therefore

ORDERED that the amendments to Rules 4, 12, 40 and 68, Wyoming Rules of Civil Procedure; Rule 601, Uniform Rules for District Courts of the State of Wyoming; as attached hereto, shall be, and they are hereby, adopted by the court; it is further

ORDERED that the Civil Forms 1A and 1B, attached hereto, shall be, and they are hereby, adopted; and it is further

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

Dated this 11th day of January, 1995.

BY THE COURT:

Michael Golden

Michael Golden
Chief Justice

AMENDMENTS TO RULES 4, 12, 40, AND 68, W.R.C.P.;
AND RULE 601, U.R.D.C.; AND ADOPTION OF
NEW CIVIL FORMS 1-A AND 1-B

Rule 4. Process.

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

* * * * *

(3) Upon a partnership, or other unincorporated association, by delivery of copies to one or more of the partners or associates, or a managing or general agent thereof, or agent for process, or by leaving same at the usual place of business of such defendant with any employee then in charge thereof;

* * * * *

(o) *Waiver of service; duty to save costs of service; request to waive.*

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

(2) An individual, corporation, or partnership or other unincorporated association that is subject to service under subdivision (d) (1), (d) (3), or (d) (4) and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request:

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

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

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

(D) Shall inform the defendant, by means of a text prescribed in an official form promulgated pursuant to Rule 84, of the consequences of compliance and of a failure to comply with the request;

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

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

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

If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

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

(4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under subdivision (d)(1), (d)(3), (d)(4), (e), (f), (g), or (l), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

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

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

* * * * *

Rule 40. Assignment of cases for trial or alternative dispute resolution.

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

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Rule 68. Offer of judgment settlement.

At any time more than 1060 days after service of the complaint and more than 30 days before the trial begins, any party defending against a claim may serve upon the adverse party an offer, to allow judgment to be taken against him denominated as an offer under this rule, to settle a claim for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. As used herein, "costs" does not include attorney's fees. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment settlement under this rule, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

Form 1-A.

Notice of lawsuit and request for waiver of service of summons.

To: (name of individual defendant or other addressee)
[as (title, or other relationship of addressee to corporate
or other entity defendant of (name of corporate or other enti-
ty defendant]

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the District Court for the _____ Judicial District of the State of Wyoming and has been assigned civil action docket number _____.

This is not a formal summons or notification from the court, but, rather, my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (at least 30, or 60 if the addressee is located in a foreign country) days after the date designated below as the date on which this notice and request is sent. I enclose a stamped, addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in the manner authorized by the Wyoming Rules of Civil Procedure and will then, to the extent authorized by those rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that regard, please read the statement concerning the duty of parties to waive the service of the summons which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of _____, 19 _____.

(signature, title, and address of
plaintiff's attorney or
unrepresented plaintiff)

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

UNIFORM RULES FOR THE DISTRICT COURTS
OF THE STATE OF WYOMING

Rule 601. Deposition abuses.

(a) *Directions not to answer.*

~~(1) Repeated directions to a witness not to answer questions calling for non privileged answers are symptomatic that the deposition is not proceeding as it should. When direction is given to a witness not to answer, it should be made only on the ground of privilege.~~

(2) Where a direction to a witness not to answer such a deposition question is given pursuant to Rule 30(d)(1), W.R.C.P., and honored by the witness, either any party may seek an immediate ruling as to the validity of such direction.

(3) If a prompt ruling cannot be obtained, the direction not to answer made on grounds of privilege may stand and the deposition should continue until:

- (A) a ruling is obtained; or
- (B) the problem resolves itself;

but a direction not to answer on any ground except privilege not specified in Rule 30(d)(1), W.R.C.P., shall not stand and the witness shall answer.

~~(4) If the validity of the direction not to answer is thereafter sustained, the witness' answer may be stricken. If the witness refuses to answer questions calling for non-privileged answers and the attorney giving such direction does not withdraw such direction, the court may require the attorney to pay all costs for retaking the deposition.~~

(b) *Suggestive objections.* -- ~~If the objection to a deposition question is one that can be obviated or removed if presented at the time, the proper objection is "objection to the form of the question."~~ If the objection to a deposition question is on the ground of privilege, the privilege shall be expressly stated and established as required by Rule 26(b)(5), W.R.C.P. If the objection is on another ground, the proper objection is "objection," stating briefly the specific ground of objection. Objections in the presence of the witness which are used to suggest an answer to the witness are presumptively improper.

(c) *Conferences between deponent and attorney.* -- An attorney for a deponent shall not initiate a private conference with the deponent during the actual taking of deposition, except for the purpose of determining whether a privilege should be asserted.

(d) *Claim of privilege.* -- Where a claim of privilege is asserted during a deposition and information is not provided on the basis of such assertion, the attorney asserting the privilege shall identify during the deposition the privilege being claimed. In addition to work product, the privileges set forth at W.S. 1-12-101, the privilege for psychologists at W.S. 33-27-103, and any other privilege recognized by law, including a claim that the information sought is proprietary and thereby should be protected, may be asserted and identified as the privilege being claimed.

(e) This rule, and Rules 26(b)(5), 30(d)(1), and 30(d)(2), W.R.C.P., are equally applicable to all attorneys participating in depositions, whether such attorneys are appearing on behalf of a party or a non-party deponent.