

*IN THE SUPREME COURT, STATE OF WYOMING*

*April Term, A.D. 2007*

*In the Matter of the Adoption of  
Rule 21 of the Wyoming  
Rules of Appellate Procedure*

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IN THE SUPREME COURT  
STATE OF WYOMING  
FILED

MAY 23 2007

  
JUDY PACHECO, CLERK

**ORDER ADOPTING RULE 21 OF THE WYOMING RULES OF  
APPELLATE PROCEDURE**

The Permanent Rules Advisory Committee, Appellate Division, has recommended that the Court amend the Wyoming Rules of Appellate Procedure by adopting the Committee's proposed Rule 21, which is attached hereto. The Court, having examined proposed Rule 21, finds that the rule should be adopted. It is, therefore,

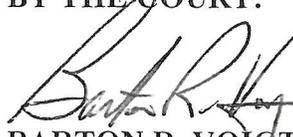
**ORDERED** that the Wyoming Rules of Appellate Procedure should be, and hereby are, amended to include Rule 21, attached hereto; and it is further

**ORDERED** that Rule 21 shall become effective on September 1, 2007; and it is further

**ORDERED** that Rule 21 of the Wyoming Rules of Appellate Procedure, attached hereto, shall be published in the advance sheets of the Pacific Reporter, the Wyoming Reporter, and in the Wyoming Court Rules; and that Rule 21 of the Wyoming Rules of Appellate Procedure shall thereupon be spread at length upon the journal of the Court.

**DATED** this 23rd day of May, 2007.

**BY THE COURT:**

  
**BARTON R. VOIGT**  
Chief Justice

**~~Rules 21 through 26. [Reserved].~~**

**Rule 21. Motion to remand for hearing on ineffective assistance of counsel claim.**

(a) An appellant in a criminal case, following the docketing of an appeal, may move to remand the case to the trial court for a hearing on a claim of ineffective assistance of counsel. Such remand shall be available only if the motion is accompanied by affidavits containing nonspeculative allegations of facts, not fully appearing in the record on appeal, which, if true, could support a determination that counsel's representation was deficient and prejudiced the appellant. The motion shall also be accompanied by a proposed order of remand that identifies the ineffectiveness claims and specifies the factual issues relevant to each such claim to be addressed on remand. A copy of the motion for remand shall be served upon all trial counsel.

(b) The motion shall be filed prior to the filing of the appellant's brief. A response may be filed within 15 days after the motion is served. Upon a showing of extraordinary circumstances, a motion may be filed after the filing of appellant's brief, but in no event shall the court permit a motion to be filed after the case has been taken under advisement.

(c) The appellate court may, within 30 days of the filing of the motion, order that the case be temporarily remanded to the trial court for a hearing on a claim of ineffective assistance of counsel. The order of remand shall identify the ineffectiveness claims and specify the factual issues relevant to each such claim to be addressed by the trial court. The order shall also direct the trial court to complete the proceedings on remand and file its findings of fact and conclusions of law in the trial court within 90 days of issuance of the order of remand, absent a finding by the trial court of good cause for a delay of reasonable length.

(d) Deadlines for filing of briefs shall be stayed upon the filing of a motion to remand under this rule until further order of the appellate court.

(e) Upon remand the trial court shall promptly conduct hearings and take evidence as necessary to enter its findings of fact and conclusions of law on the claim of ineffective assistance of counsel. Any claims of ineffectiveness not identified in the order of remand shall not be considered by the trial court on remand unless the trial court determines that the interests of justice or judicial efficiency require consideration of issues not specifically identified in the order of remand. The burden of proving a fact shall be upon the proponent of the fact by a preponderance of the evidence. The trial court shall enter written findings of fact and conclusions of law concerning the claimed deficient performance by counsel and the claimed prejudice suffered by appellant as a result, in accordance with the order of remand. Errors claimed to have been made during the trial court proceedings conducted pursuant to this rule are reviewable under the same standards as the review of errors in other appeals.

(f) At the conclusion of all proceedings before the trial court, the clerk of the trial court and the court reporter shall immediately prepare and file the record of supplemental proceedings as required by these rules. The clerk of the trial court shall notify the clerk of the appellate court when the record of these proceedings is complete and provide a copy of the order on remand.

(g) Upon receipt of the notification from the trial court that the record of the proceedings is complete, the clerk of the appellate court shall notify the parties of the new briefing schedule.

**Rules 22 through 26. [Reserved].**