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ANATOMY OF A WYOMING APPEAL: A PRACTITIONER'S GUIDE FOR CIVIL CASES

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"You have to learn the rules of the game.
And then you have to play better than anyone else."

—Albert Einstein

Appealing a case to the Wyoming Supreme Court ("Court") is not terribly complicated, but the rules are technical and oft-amended.[1] Consequently, mistakes inevitably occur.[2] This article provides a helpful reference for civil practitioners properly to follow procedure and allow substance to win the day. The overall aim is twofold: first, to provide practitioners with a roadmap for perfecting an appeal to the Court; and second, to give guidance and helpful hints in drafting a successful appellate brief.[3]

I. PROCEDURAL EXERCISE

Perfecting an appeal involves a solicitous review of, and strict adherence to, the Wyoming Rules of Appellate Procedure ("W.R.A.P.").[4] Because the appellate rules are consistently amended, Wyoming practitioners must take the time to read

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[1] Substantial amendments to Wyoming's appellate rules recently went into effect on July 1, 2015. *See* Order Amending the Wyoming Rules of Appellate Procedure (Wyo. 2015), http://www.courts.state.wy.us/Documents/CourtRules/Orders/wrap/wrap_2015040900.pdf [hereinafter *Order*].

[2] The intricacies and potential pitfalls in perfecting an appeal to the Court are nothing new. Indeed, because of the historical problems with compliance, a past Court staff attorney penned a similar article a score and ten years ago. *See* Barbara L. Lauer, *Basic Appellate Practice: A Guide to Perfecting an Appeal in Wyoming*, 20 LAND & WATER L. REV. 537 (1985). While much of the information from Ms. Lauer's article remains relevant, an updated in-depth analysis on perfecting an appeal is warranted.

[3] The W.R.A.P. govern appeals from circuit courts, district courts, and judicial review of administrative agencies. This article focuses on appeals from district courts to the Court.

[4] *See* W.R.A.P. 28.

and understand what is required, especially if they do not often handle appeals.[5] Although most appeals are perfected without incident, there are a surprising number of cases that run into trouble. In some instances, the defect is detrimental. Case in point, the failure to timely file a notice of appeal is jurisdictional and incurable, and leaves the Court with no choice but to dismiss the case.[6]

While other deficiencies related to the notice of appeal may not result in dismissal, the impacts are nevertheless negative. One common sanction occurs when counsel fails to send a copy of the notice of appeal to the clerk of the Court.[7] It is important that the appellant send a copy of the notice of appeal to the Court's clerk because it is the only documentation the Court will have of the appeal, and doing so allows the clerk to open a file. It also serves as a basis for an initial jurisdiction check by the Court.

The 2015 amendment to W.R.A.P. 1.03 broadened the scope of sanctions the Court may impose. Rule 1.03 states:

> (a) The timely filing of a notice of appeal, which complies with Rule 2.07(a), is jurisdictional. The failure to comply with any other rule of appellate procedure, or any order of court, does not affect the validity of the appeal, but is ground only

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[5] As already mentioned, the W.R.A.P. were substantially amended in 2015. *See supra* note 1 and accompanying text. No doubt there will be further amendments in the future, especially in light of technological advances. Therefore, a prudent practitioner must read the rules every time an appeal is taken.

[6] *See* W.R.A.P. 1.03. *See also* Cook v. Swires, 2009 WY 21, ¶ 10, 202 P.3d 397, 400 (Wyo. 2009); Merchant v. Gray, 2007 WY 208, ¶ 4, 173 P.3d 410, 411–12 (Wyo. 2007); Ragsdale v. Hartford Underwriters Ins., 2007 WY 163, ¶¶ 4–8, 169 P.3d 78, 80–81 (Wyo. 2007); Paxton Res., L.L.C. v. Brannaman, 2004 WY 93, ¶ 4, 95 P.3d 796, 798 (Wyo. 2004); Cosco v. Uphoff, 2003 WY 30, ¶¶ 4–5, 66 P.3d 702, 703 (Wyo. 2003); Harding v. Glatter, 2002 WY 124, ¶ 6, 53 P.3d 538, 539 (Wyo. 2002); Tusshani v. Allsop, 1 P.3d 1263, 1265 (Wyo. 2000). *E.g.*, Kantrud v. Dep't of Workforce Services, No. 15-0048 (Wyo. Mar. 3, 2015), https://efiling.courts.state.wy.us/public/caseView.do?csIID=17119.

[7] *See* W.R.A.P. 1.03(b)(1). The 2015 amendment to Rule 1.03(b)(1) now incorporates the potential for sanctions as described in General Order 97-1 (Wyo. 1997). *See infra* Appendix A. Pursuant to the terms of General Order 97-1, the Court has sanctioned many attorneys for monetary sums. *See, e.g.*, Roberts v. Locke, 2013 WY 73, 304 P.3d 116 (2013); Stallman v. State *ex rel.* Wyoming Workers' Safety & Comp. Div., 2013 WY 28, 297 P.3d 82 (Wyo. 2013); Case v. Sink & Rise Inc., 2013 WY 19, 297 P.3d 762 (Wyo. 2013); Barlow Ranch, Ltd. v. Greencore Pipeline Co., 2013 WY 34, 301 P.3d 75 (Wyo. 2013); Jackman Constr., Inc. v. Town of Baggs, 2012 WY 80, 287 P.3d 247 (Wyo. 2012); Shafer v. TNT Well Serv., Inc., 2012 WY 126, 285 P.3d 958 (Wyo. 2012); W. Mun. Constr. Inc. v. Better Living, L.L.C., 2010 WY 92, 234 P.3d 1223 (Wyo. 2010); Judd v. State *ex rel.* Wyoming Workers' Safety & Comp. Div., 2010 WY 85, 233 P.3d 956 (Wyo. 2010); CBM Geosolutions, Inc. v. Gas Sensing Tech. Corp., 2009 WY 113, 215 P.3d 1054 (Wyo. 2009); Duginski v. Teton Cty. Hosp. Dist., No. 15-0150 (Wyo. June 15, 2015), https://efiling.courts.state.wy.us/public/caseView.do?csIID=18310; Schildgen v. Schildgen, No. 15-0075 (Wyo. Mar. 24, 2015), https://efiling.courts.state.wy.us/public/caseView.do?csIID=17164.

> for such action as the appellate court deems appropriate, including but not limited to: refusal to consider the offending party's contentions; assessment of costs; monetary sanctions; award of attorney fees; dismissal; and affirmance.
>
> (b) A party's failure to comply with these rules may result in imposition of sanctions, including but not limited to:
>
> (1) Appellant or cross appellant who fails to provide a notice of appeal to the appellate court as required by Rule 2.01(a), or whose notice of appeal does not include the appendix required by Rule 2.07(b) and (c), may be subject to a monetary sanction when the case is docketed in the appellate court.
>
> (2) A party who fails to file the required designation or certification of record in the trial court contemporaneously with filing the brief in the appellate court may be subject to a monetary sanction upon notification of non-compliance by the clerk of the trial court. See Rule 3.05. For Supreme Court general orders on sanctions, see www.courts.state.wy.us/WSC/Clerk.[8]

To avoid the consequences of noncompliance, a notice of appeal should incorporate several related requirements. What follows is a roadmap to perfect an appeal, concluding with a proposed notice of appeal, which doubles as a checklist for practitioners.

A. Appealable Orders

First things first, ask yourself whether the district court's decision you wish the Court to review is appealable.[9] In 1992, the appellate rules were amended to get rid of the rigid concept of a *final order* and implement the more flexible notion associated with an *appealable order*.[10] Rule 1.05 defines an appealable order as, *inter alia*, "[a]n order affecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment."[11] The Court has

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[8] W.R.A.P. 1.03.

[9] WR.A.P. 1.05; *see In re* Hartmann, 2015 WY 1, ¶ 14, 342 P.3d 377, 381 (Wyo. 2015); Jubie v. Dahlke, 2014 WY 29, ¶ 31, 319 P.3d 116, 124 (Wyo. 2014); Miller v. Beyer, 2014 WY 84, ¶ 20, 329 P.3d 956, 962 (Wyo. 2014).

[10] *See* W.R.A.P. 1.05 (1992) (amended 2015); *see In re* Estate of Hibsman, 2012 WY 139, ¶¶ 12–14, 287 P.3d 757, 760 (Wyo. 2012); FML v. TW, 2007 WY 73, ¶ 5, 157 P.3d 455, 458 (Wyo. 2007); Bd. of Trustees of Mem'l Hosp. v. Martin, 2003 WY 1, ¶¶ 9–16, 60 P.3d 1273, 1275–77 (Wyo. 2003); *see also* Lauer, *supra* note 2, at 543–48 (analyzing the "final order" standard).

[11] W.R.A.P. 1.05(a).

applied this definition on many occasions, stating that an appealable order has "three necessary characteristics . . . . It must affect a substantial right, determine the merits of the controversy, and resolve all outstanding issues."[12] Thus, an order is not appealable if it does not affect a substantial right of either party.[13] The order must also determine the merits of the controversy concerning all parties involved, leaving nothing for future determination.[14] "The purpose of this general rule is to avoid fragmentary appeals and decisions made in a piecemeal fashion."[15] The Court has explained:

> The "appealability" of a particular decision means its ripeness for consideration by an appellate court; that is, whether it is procedurally apt for appeal, as distinguished from "reviewability," which is used as meaning whether, because of its substantive nature, the question is one fit for the appellate court to consider.[16]

With this milieu in mind, an example may be helpful. In *Schwab v. JTL Group, Inc.*, the Court analyzed whether the district court's order, reversing and remanding a matter back to the Office of Administrative Hearings ("OAH"), was an appealable order as contemplated by W.R.A.P. 1.05.[17] The Court found the order was not appealable and explained that on remand the OAH was to hold a contested case hearing, which was more than a ministerial task.[18] "[H]arkening back to the language of W.R.A.P. 1.05(a)," the Court explained that "[w]hile the district court's order may prevent a judgment, [the Court] [was] not convinced that it determined the action because the OAH must still hold a contested case hearing and make a ruling on the merits."[19]

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[12] *In re* E.R.C.K., 2013 WY 160, ¶ 28, 314 P.3d 1170, 1176 (Wyo. 2013) (citation omitted); *see, e.g.*, *Miller*, ¶ 20, 329 P.3d at 962.

[13] *See* Estate of McLean *ex rel.* Hall v. Benson, 2003 WY 78, ¶¶ 7–8, 71 P.3d 750, 753 (Wyo. 2003).

[14] *Id.* ¶¶ 7–11, 71 P.3d at 753–54; *see* Steele v. Neeman, 6 P.3d 649, 653 (Wyo. 2000); Collins v. COP Wyoming, L.L.C., No. 15-0097 (Wyo. May 6, 2015), https://efiling.courts.state.wy.us/public/caseView.do?csIID=18240; Lawrimore v. Redman, No. 13-0041 (Wyo. Apr. 23, 2013), https://efiling.courts.state.wy.us/public/caseView.do?csIID=16169 (the court dismissed the appeal because "a number of claims [had] not been finally resolved by the district court . . . [and] . . . [were] not final, appealable orders because the orders [did] not determine the action or resolve all outstanding issues.").

[15] *Benson*, ¶ 8, 71 P.3d at 753; *see, e.g.*, *Miller*, ¶ 21, 329 P.3d at 962.

[16] Schwab v. JTL Grp., Inc., 2013 WY 138, ¶ 11, 312 P.3d 790, 793 (Wyo. 2013) (quoting 4 AM. JUR. 2d *Appellate Review* § 77 (2007)). *See also Miller*, ¶ 21, 329 P.3d at 962 (stating, "the district court's orders granting a mistrial and awarding costs and fees were not appealable orders.").

[17] *Schwab*, ¶ 11, 312 P.3d at 793.

[18] *Id.* ¶¶ 11–13, 312 P.3d at 793–94.

[19] *Id.* ¶ 13, 312 P.3d at 794; *see also* Bd. of Trustees of Mem'l Hosp. v. Martin, 2003 WY 1, ¶¶ 9–16, 60 P.3d 1273, 1275–77 (Wyo. 2003) (holding "that a judgment of the district court remanding an administrative proceeding to the agency for further proceedings is not an appealable order under W.R.A.P. 1.05.").

Additional orders in civil cases that are commonly understood not to be appealable include: orders denying motions for summary judgment;[20] orders denying motions to dismiss;[21] orders compelling arbitration or consolidating arbitration;[22] orders denying motions for new trial;[23] orders denying motions to alter or amend;[24] orders regarding certain sanctions;[25] jury verdicts;[26] orders

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[20] *See* Irene v. Seneca Ins., 2014 WY 145, ¶ 23, 337 P.3d 483, 492 (Wyo. 2014) (explaining that although there are exceptions, "[t]he denial of a defendant's summary judgment motion is generally not a final appealable order."). *Accord* Creel v. L & L, Inc., 2012 WY 124, ¶ 13, 287 P.3d 729, 734 (Wyo. 2012); Merchant v. Gray, 2007 WY 208, ¶ 5, 173 P.3d 410, 412 (Wyo. 2007); Gilstrap v. June Eisele Warren Trust, 2005 WY 21, ¶ 7, 106 P.3d 858, 861 (Wyo. 2005). The Court has recognized two exceptions to the general rule, however. First, a denial of summary judgment is appealable if it is coupled with the grant of a cross-motion for summary judgment. Second, a denial of summary judgment regarding the issue of qualified or governmental immunity is appealable. *See* Mem'l Hosp. v. Pfeifle, 2014 WY 3, ¶ 12, 317 P.3d 573, 576–77 (Wyo. 2014) (stating "in cases involving the denial of a defendant's claim of qualified immunity . . . . the same rationale that favors an exception to the general rule in qualified immunity cases, also applies to summary judgment denials based on a claim of governmental immunity."). *See, e.g.*, Herling v. Wyoming Mach. Co., 2013 WY 82, ¶ 49, 304 P.3d 951, 963 (Wyo. 2013); Lee v. LPP Mortg. Ltd., 2003 WY 92, ¶ 7, 74 P.3d 152, 157 (Wyo. 2003); McLean v. Hyland Enter., Inc., 2001 WY 111, ¶ 17, 34 P.3d 1262, 1267–68 (Wyo. 2001); Lucero v. Mathews, 901 P.2d 1115, 1118 (Wyo. 1995).

[21] Historically, an order denying a motion to dismiss has been regarded as not appealable. *See* Gooden v. State, 711 P.2d 405, 408 (Wyo. 1985); Stamper v. State, 672 P.2d 106, 106–07 (Wyo. 1983); 4 AM. JUR. 2d *Appellate Review* § 156 (2013). Recently, the Court has indicated otherwise. *See Cook* v. Swires, 2009 WY 21, ¶ 14, 202 P.3d 397, 401 (Wyo. 2009). What is clear is that the "presence or absence of qualified immunity is generally determined by either a motion to dismiss or a motion for summary judgment, and denial of such a motion is appealable." *Lucero*, 901 P.2d at 1118.

[22] *See* Dennis v. Jack Dennis Sports, Inc., 2011 WY 96, ¶¶ 3–8, 253 P.3d 495–96 (Wyo. 2011) (providing that an order compelling arbitration is not an appealable order).

[23] *See In re* GLP, 2007 WY 141, ¶ 3, 166 P.3d 1284, 1285 (Wyo. 2007) (explaining that "[i]n a number of cases, the Court has held that 'an order denying a motion for a new trial is not an appealable order' because 'error lies to the judgment, but not to the decision of the motion; though that decision may be made a ground for the reversal of the judgment.'" (citations omitted)). *See also* Scott v. Sutphin, 2005 WY 38, ¶ 1, 109 P.3d 520 (Wyo. 2005) (stating that the denial of motion for a new trial is not an appealable order).

[24] *See In re GLP*, ¶ 3, 166 P.3d at 1285.

[25] *See, e.g.*, Nw. Bldg. Co. v. Nw. Distrib. Co., 2012 WY 113, ¶¶ 26–27, 285 P.3d 239, 245–46 (Wyo. 2012).

[26] McWilliams v. Wilhelm *ex rel.* Wilhelm, 893 P.2d 1147, 1148 (Wyo. 1995); *c.f.,* Andersen v. Hernandez, 2005 WY 142, ¶ 17, 122 P.3d 950, 952–54 (Wyo. 2005).

denying discovery;[27] accounting and distribution orders;[28] and orders denying a motion to set aside an entry of default.[29]

Whether an order is appealable is not as clear-cut as some would think.[30] As a result, take time to ensure the order meets the standards of appealability. Determine whether all of the claims have been addressed for every party involved,[31] and ask yourself if the order affects a substantial right and effectually determines the entire action.[32] If the order is appealable, a notice of appeal must be filed with the clerk of the trial court within *thirty days* from entry of the appealable order or judgment; as W.R.A.P. 2.01 makes clear, timely filing is jurisdictional.[33] Keep in mind that "[a]s a matter of law, ignorance of the rules of appellate procedure cannot constitute the basis for a claim of excusable neglect in a motion to extend the time for filing a notice of appeal pursuant to W.R.A.P. 2.01(a)(1)."[34]

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[27] Cubin v. Cubin, 685 P.2d 680, 683 (Wyo. 1984) (stating "interlocutory orders denying discovery are not final orders appealable under Rule 1.05, W.R.A.P.").

[28] Woods v. Woods, 2001 WY 131, ¶¶ 8–10, 36 P.3d 1142, 1144–45 (Wyo. 2001); *see also* Evans v. Moyer, 2012 WY 111, ¶ 16, 282 P.3d 1203, 1209 (Wyo. 2012) (holding "the district court's interim accounting and distribution order . . . . not a final appealable order under W.R.A.P. 1.05.").

[29] *See* Lee v. Sage Creek Refining Co., 876 P.2d 997 (Wyo. 1994). In *Lee*, the Court dismissed the appeal and held that the order denying the motion to set aside an entry of default was not an appealable order. *Id.* at 998.

[30] Whether an order is final and appealable is a question of law, which the Court decides *de novo*. *See In re* Hartmann, 2015 WY 1, ¶ 13, 342 P.3d 377, 381 (Wyo. 2015); Waldron v. Waldron, 2015 WY 64, ¶ 14, 349 P.3d 974, 977 (Wyo. 2015).

[31] *See* Estate of McLean *ex rel.* Hall v. Benson, 2003 WY 78, ¶¶ 7–8, 71 P.3d 750, 752–53 (Wyo. 2003). *See also In re* E.R.C.K., 2013 WY 160, ¶ 28, 314 P.3d 1170, 1176 (Wyo. 2013) (stating: "We have held that an appealable order under Rule 1.05(a) has 'three necessary characteristics . . . . It must affect a substantial right, determine the merits of the controversy, and resolve all outstanding issues.'" *Id.* (alteration in original) (citation omitted)).

[32] *In re* Estate of Hibsman, 2012 WY 139, ¶ 17, 287 P.3d 757, 760 (Wyo. 2012) (the court dismissed the appeal because the order did not affect a substantial right of the appellant).

[33] *See* WYO. R. CIV. P. 58(c). Additionally, W.R.A.P. 2.01(a) provides:

> An appeal from a trial court to an appellate court shall be taken by filing the notice of appeal with the clerk of the trial court within 30 days from entry of the appealable order and concurrently serving the same in accordance with the provisions of Rule 5, [WYO. R. CIV. P.], (or as provided in [WYO. R. CRIM. P.] 32 (c)(4)).

See also W.R.A.P. 1.03 (stating: "The timely filing of a notice of appeal, which complies with Rule 2.07(a) is jurisdictional."). Remember, W.R.A.P. 14.03 does not apply in the context of notices of appeal. *See generally* W.R.A.P. 14.03.

[34] Tusshani v. Allsop, 1 P.3d 1263, 1265 (Wyo. 2000). *See also* Chevron U.S.A., Inc. v. Dep't of Revenue, 2007 WY 62, ¶ 10, 155 P.3d 1041, 1044 (Wyo. 2007) ("Some circumstances, however, such as 'ignorance of the provisions of the Wyoming Rules of Appellate Procedure[,]' are not excusable neglect as a matter of law." (alteration in original) (citation omitted)).

If it cannot be determined whether the order or judgment is appealable, and there is concern about possibly missing the deadline to file the notice of appeal, then there is a route that may be of help. Consider filing a notice of appeal and if it turns out the order is not appealable, it may be (1) simply dismissed by the Court, or (2) treated as premature.[35] If the former happens, counsel will have confirmation from the Court that the order is not appealable and can then file when the actual appealable order is entered down the road. If the latter occurs, then W.R.A.P. 2.04 controls. Rule 2.04 provides:

> A notice of appeal filed after the court announces a decision or order—but before entry of the judgment or order—is treated as filed on the date of and after the entry. A premature notice of appeal shall comply with Rule 2.07, to the extent possible. Once the judgment or order is entered, the appellant shall forward a copy of the judgment or order to the clerk of the appellate court for inclusion with the notice of appeal served on the clerk.[36]

This option may prevent a headache in some situations, and will save heartache from failure to file a timely notice of appeal. If the order or judgment is not appealable, but an application to the Court for interlocutory or extraordinary relief is sought, consult W.R.A.P. 13 and consider filing a petition for writ of review.[37]

An interrelated issue is the impact of post-trial motions. Because an appeal arises only from an appealable order, the filing of a post-judgment motion *usually* suspends the appealability of the order until the motion is decided. Be careful, though, that the post-judgment motion is not an improper motion to reconsider because such a motion will not toll the time to file a notice of appeal.[38] Wyoming's

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[35] *See* W.R.A.P. 2.04; *see also* Nw. Bldg. Co. v. Nw. Distrib. Co., 2012 WY 113, ¶¶ 26–28, 285 P.3d 239, 245–46 (Wyo. 2012); Paxton Res., L.L.C. v. Brannaman, 2004 WY 93, ¶ 17, 95 P.3d 796, 802 (Wyo. 2004) ("[I]t must be remembered that litigants may protect themselves against dismissal for late filing by filing 'prematurely,' a practice authorized by W.R.A.P. 2.04.").

[36] W.R.A.P. 2.04. *Compare* W.R.A.P. 2.04 *with* FED. R. APP. 4(a)(2).

[37] *See* C'Hair v. Ninth Judicial District, 2015 WY 116, 357 P.3d 723 (Wyo. 2015); Cheyenne Newspapers, Inc. v. First Judicial District, 2015 WY 113, ¶ 1 (2015); *In re* Hartmann, 2015 WY 1, ¶¶ 16–17, 342 P.3d 377, 381–82 (Wyo. 2015) (converting a notice of appeal concerning a non-appealable order into a petition for writ of review); Schwab v. JTL Grp., Inc., 2013 WY 138, ¶ 14, 312 P.3d 790, 794 (Wyo. 2013) (the Court exercised its discretion to convert the notice of appeal to a petition for writ of review pursuant to W.R.A.P. 13); *see, e.g.*, Smith v. Brito, 2007 WY 191, ¶ 1, 173 P.3d 351, 352 (Wyo. 2007).

[38] *See* Evans v. Moyer, 2012 WY 111, ¶ 11, 282 P.3d 1203, 1208 (Wyo. 2012) ("A post-judgment motion which is otherwise titled but, in actuality, only requests reconsideration of the district court's judgment will be considered an improper motion for reconsideration and will not toll the time for filing a notice of appeal." (citation omitted)); *In re* Estate of Nielsen, 2011 WY 71, ¶ 1, 252 P.3d 958, 959 (Wyo. 2011) ("We conclude that [appellant's] motion for a new trial was actually a void motion for reconsideration, rendering his notice of appeal untimely. This Court,

appellate rules provide that if a party timely files any of the expressly mentioned motions authorized by the Wyoming Rules of Civil Procedure in the district court, the time to appeal is tolled until there is an entry of an order dispensing with the motion or the *deemed denial* of the motion.[39] Rule 2.02 states:

> (a) The time for appeal in a civil case ceases to run as to all parties when a party timely files a motion for judgment under Rule 50(b), [WYO. R. CIV. P.]; a motion to amend or make additional findings of fact under Rule 52(b), [WYO. R. CIV. P.], whether or not alteration of the judgment would be required if the motion is granted; a motion to alter or amend the judgment under Rule 59, [WYO. R. CIV. P.], or a motion for a new trial under Rule 59, [WYO. R. CIV. P.].
>
> (b) The full time for appeal commences to run and is to be computed from the entry of any order granting or denying a motion for judgment; a motion to amend or make additional findings of fact; or a motion to alter or amend the judgment, or denying a motion for a new trial. If no order is entered, the full time for appeal commences to run when any such motion is deemed denied.
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> (c) If a party files a notice of appeal after the court announces or enters a judgment, but before it disposes of any motion listed in Rule 2.02(a), the notice becomes effective to appeal a judgment or order, in whole or in part, upon entry of a final order disposing of the last such remaining motion. If no order is entered, the notice becomes effective when the last such motion is deemed denied. Such an appeal shall not be docketed in the appellate court prior to the notice of appeal becoming effective. If the appealing party also intends to challenge the order disposing of the last remaining motion or the deemed denial of the such motion, that party must

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therefore, has no jurisdiction to consider his appeal."); Ragsdale v. Hartford Underwriters Ins., 2007 WY 163, ¶ 7, 169 P.3d 78, 81 (Wyo. 2007) (the court dismissed an untimely notice of appeal and stated: "As is obvious, what [appellant] titled a Rule 59(e) motion was nothing more than a motion to reconsider."). *See also* Plymale v. Donnelly, 2006 WY 3, 125 P.3d 1022 (Wyo. 2006). In *Donnelly*, the Court held it "will no longer look at the substance of such a motion [for reconsideration] but rather simply declare it a nullity based upon its denomination." *Id.* ¶ 11, 125 P.3d at 1025. The Court explained "[t]he obvious consequence of categorizing a motion for reconsideration as a nullity is that 'all judgments or final orders from said motion are a nullity.'" *Id.* ¶ 10, 125 P.3d at 1025 (citation omitted).

[39] *See, e.g.*, Waldron v. Waldron, 2015 WY 64, ¶¶ 11–13, 349 P.3d 974, 976–77 (Wyo. 2015) (describing the types of motions that will toll the time for filing a notice of appeal).

> file an amended notice of appeal within the time prescribed by Rule 2.01. No additional fee is required to file such amended notice of appeal.[40]

Always be aware of this possibility. Indeed, if you determine an order is appealable and file a notice of appeal, but you file before the district court rules on any of the abovementioned motions, the notice will become effective when the last post-trial motion is disposed of. In other words, the notice of appeal would be premature, and Rules 2.02 and 2.04 would seemingly dovetail together.[41] In this scenario, timing becomes a little tricky, especially with the *deemed denied* rule at play.[42] Also, be conscious of how W.R.A.P. 2.01(c) affects the filing of an amended notice of appeal:

> An amended notice of appeal shall be limited to the correction of clerical errors or omissions in the original notice of appeal. It may not be used for the purpose of appealing an order or judgment entered subsequent to the filing of the original notice of appeal, except as provided in 2.02(c) or when a subsequent order or judgment amends the order or judgment from which the appeal was initially taken.[43]

Having determined that the subject order or judgment is appealable as contemplated by W.R.A.P. 1.05, it is now time to prepare and file the notice of appeal as well as satisfy additional related requirements.

B. Notice of Appeal and Related Requirements

The guts of a notice of appeal are controlled by W.R.A.P. 2.07.[44] Because the contents of a notice of appeal are critically important in perfecting an appeal, studying Rule 2.07(a)–(b) is essential:

> (a) The notice of appeal shall:
>
> (1) Specify the party or parties taking the appeal;

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[40] W.R.A.P. 2.02.

[41] *See* W.R.A.P. 2.02, 2.04; *see also Evans*, ¶ 17, 282 P.3d at 1209 (explaining that a premature notice of appeal is effective upon entry of a final appealable order); Paxton Res., L.L.C. v. Brennaman, 2004 WY 93, ¶ 17, 95 P.3d 796, 800–01 (Wyo. 2004); McWilliams v. Wilhelm *ex rel.* Wilhelm, 893 P.2d 1147, 1148 (Wyo. 1995).

[42] *See Brennaman*, ¶¶ 17–18, 95 P.3d at 802.

[43] W.R.A.P. 2.01(c).

[44] *See* W.R.A.P. 2.07.

(2) Identify the judgment or appealable order,[45] or designated portion appealed; and

(3) Name the court to which the appeal is taken;

(4) Include the certificate required by Rule 2.05(a); and

(5) Appellant(s) shall as clearly as possible indicate either in the body of the notice of appeal or on the certificate of service, alignment of the parties with their respective counsel when there are multiple appellees.

(b) In a civil case, the notice of appeal shall have as an appendix which shall include and be limited to the following:

(1) All pleadings that assert a claim for relief whether by complaint, counterclaim or cross-claim and all pleadings adding parties; and

(2) All orders or judgments disposing of claims for relief and all orders or judgments disposing of all claims by or against any party; and

(3) The judgment or final order and a copy of the trial court's decision letter if one was filed.[46]

First, regarding identification of the parties, the terms *Plaintiff* and *Defendant* should be used in the caption. If a joint appeal is taken, W.R.A.P. 1.06 enters

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[45] The Court has said, "orders entered prior to the final judgment order are subsumed and do not need to separately be appealed from the final order." Big-D Signature Corp. v. Sterrett Properties, L.L.C., 2012 WY 138, ¶ 18, 288 P.3d 72, 77 (Wyo. 2012). Accordingly, in *Big-D Signature*, the

> Court [found] that the *Order Granting Plaintiff's Motion for Partial Summary Judgment and Order on Issues Remaining for Trial* issued by the district court [were] subsumed into the final *Order of Dismissal with Prejudice*. Therefore, the partial summary judgment order [was] properly on appeal, and this Court [had] jurisdiction to consider it.

Id. ¶ 19, 288 P.3d at 77. *See also Evans*, ¶ 18, 282 P.3d at 1209 ("[T]he notice of appeal only perfects an appeal of the order(s) identified in the notice."); Aviat Aircraft, Inc. v. Saurenman, 2009 WY 98, ¶ 1, 213 P.3d 956, 957 (Wyo. 2009) (the Court noted that the "[appellant] actually appealed from a decision of the district court that was made independent of, but which was subsumed into, the above identified 'Judgment.'").

[46] W.R.A.P. 2.07(a)–(b). *See also Big-D Signature*, ¶¶ 18–19, 288 P.3d at 77; *Evans*, ¶ 18, 282 P.3d at 1209 ("W.R.A.P. 2.07 sets forth the requirement for a notice of appeal, including 'identifying the judgment or appealable order that is being appealed and attaching, as an appendix, the order or judgment that is being appealed.'" (citation omitted)).

the picture. Rule 1.06 states: "If two or more parties are entitled to appeal from a judgment or order, and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate notices of appeal."[47] Ensure that all parties jointly appealing are included on the notice of appeal, and consult with W.R.A.P. 2.08 as it explains the party taking the appeal is the *appellant* and the adverse party is the *appellee*.[48] The more detailed the information that a practitioner can provide, the better.

Second, the order or judgment being appealed should be identified with particularity.[49] It should include the title of the order, the date it was entered, and any other detailed information to assist in its identification. Also, make sure the orders, identified in the notice, are attached in the appendix.[50]

As to the third requirement, if the appeal is to the Court, in the body of the notice state: This appeal is taken to the Wyoming Supreme Court.[51] The reason for this requirement is because the W.R.A.P. govern appeals from circuit courts, district courts, and judicial review of administrative agencies.[52]

The fourth requirement has changed critically per the 2015 amendments to the W.R.A.P. Pursuant to W.R.A.P. 2.07(a)(4), the certification of a transcript request must be made within the body of the notice of appeal.[53] No longer can it be separately filed. The corresponding rule concerning the certificate of compliance is Rule 2.05:

> (a) Concurrently with filing the notice of appeal, appellant must order and either make arrangements satisfactory to the court reporter for the payment for a transcript of the portions of the evidence deemed necessary for the appeal or make application for in forma pauperis status as provided in Rule 2.09. *A certificate of compliance with this rule shall be endorsed upon the notice of appeal.* If appellant does not intend to order a transcript, the certificate of compliance shall include a statement indicating whether appellant

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[47] W.R.A.P. 1.06.

[48] *See generally* W.R.A.P. 2.08.

[49] Kruckenberg v. Ding Masters, Inc., 2008 WY 40, ¶¶ 9–13, 180 P.3d 895, 898–99 (Wyo. 2008) (examining W.R.A.P. 2.07(a)(2) regarding the identification of the order being appealed).

[50] *See* W.R.A.P. 2.07(b).

[51] *See* W.R.A.P. 2.07(a)(3).

[52] *See supra* note 3 and accompanying text. For judicial review of administrative action, see W.R.A.P. 12. When an appeal is taken to a district court from an order of a circuit court, review of the district court's order comes to the Court, not as a notice of appeal, but as a petition for writ of review pursuant to W.R.A.P. 13. *See* Kittles v. Rocky Mountain Recovery, Inc., 1 P.3d 1220, 1222 (Wyo. 2000); *see also* Best v. Best, No. 15-0017 (Wyo. Feb. 3, 2015), https://efiling.courts.state.wy.us/public/caseView.do?csIID=17078.

[53] *See* W.R.A.P. 2.07(a)(4); *see also* W.R.A.P. 2.05(a).

> intends to procure a statement of evidence pursuant to Rule 3.03 or an agreed statement pursuant to Rule 3.08.
>
> (b) If counsel certifies that transcripts have been ordered and arrangement for payment has been made, but fails to actually contact the court reporter and follow through on the request, the court reporter or the district court clerk shall notify the supreme court and the supreme court may take any action it deems appropriate pursuant to Rule 1.03.[54]

The 2015 amendments now require what was previously the best practice: to include within the notice of appeal an endorsement that W.R.A.P. 2.05 has been satisfied. Because of the 2015 amendments, a practitioner need not worry about inadvertently forgetting to file a separate certificate of compliance contemporaneously with the notice of appeal.

Turning to the appendix, make sure to follow Rule 2.07(b) in light of the 2015 amendment, which requires that the appendix "include and be limited to" what is expressly provided for under the rule.[55] The reason for the amendment was because in the past, practitioners were either not including enough or including too much in the appendix, thus, placing a substantial burden on the clerks and the courts. Even though including the relevant pleadings, judgments, orders, and decision letters in the appendix of the notice of appeal is a simple task, attorneys incessantly forget this requirement, which results in sanctions.[56] Simply put, although elementary, the appendix is an important undertaking because the correct documents are necessary for docketing the appeal in the Court.

Another related requirement that needs to be satisfied contemporaneously with the filing of the notice of appeal is W.R.A.P. 3.02(b):

> In all cases other than criminal and juvenile matters, if the proceedings in the trial court were reported by an official court reporter, *appellant shall, contemporaneously with the filing of the notice of appeal, file and serve on appellee a description of the parts of the transcript which appellant intends to include in the record and unless the entire transcript is to be included, a statement of the issues appellant intends to present on appeal.* If an appellant intends to assert on appeal that a finding or conclusion is unsupported by

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[54] W.R.A.P. 2.05 (emphasis added). The 2015 amendments added W.R.A.P. 2.05(b) because of the continual failure by counsel to follow through on certifications, which resulted in delays and undue burdens placed upon the clerks of the trial and appellate courts.

[55] *See* W.R.A.P. 2.07(b).

[56] *See* W.R.A.P. 1.03(b)(1); *see also* Allen v. Anderson, 2011 WY 94, 253 P.3d 182 (Wyo. 2011) (the court imposed monetary sanctions for not including attachments to the notice of appeal); Anderson v. State *ex rel.* Wyoming Worker's Safety and Comp. Div., 2010 WY 157, 245 P.3d 263 (Wyo. 2010).

> the evidence or contrary to the evidence, appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. If appellee deems a transcript of other parts of the proceedings to be necessary appellee shall, within [fifteen] days after service of the designation of the partial transcript by appellant, order such parts from the reporter or procure an order from the trial court directing appellant to do so. At the time of ordering, a party must make arrangements satisfactory to the reporter for payment of the cost of the transcript.[57]

The best practice, but unfortunately not the common practice, is to include an endorsement in the notice of appeal stating the requirements of W.R.A.P. 3.02(b) are satisfied. Doing so will remind practitioners of this task and reassure the Court that no issue will arise due to noncompliance with Rule 3.02(b).

Finally, the required filing fees must be paid.[58] Rule 2.09 requires that "[a]t the time of filing the notice of appeal, an appellant shall deliver to the clerk of the trial court the filing fee for docketing the case in the appellate court . . . ."[59] The district court filing fee is $70.00.[60] The Court filing fee is $95.00.[61] Best practice, again not commonly followed, is to include an endorsement in the notice of appeal stating the requirements of Rule 2.09 are satisfied. Although not obligatory, doing this will remind you of the fees courts require and clarify any confusion during the bedlam of filing the notice of appeal.[62] The clerk of the district court will forward the filing fee to the clerk of the Court when the district court clerk submits its notice that the record on appeal is complete. At that point, the case will be docketed in the Court.[63]

If after the notice of appeal is filed counsel uncovers a mistake, W.R.A.P. 2.01(c) comes into play. Notably, as already mentioned, the 2015 amendments limit what can be included in an amended notice of appeal: "An amended notice

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[57] W.R.A.P. 3.02(b) (emphasis added).

[58] *See* W.R.A.P. 2.09. The 2015 amendment to W.R.A.P. 2.09(a) states:

> Except as provided below, a docket fee shall be collected for each notice of appeal pursuant to [WYO. STAT. ANN.] § 5-3-205 and § 5-9-135 and court rule. The fee for filing an appeal or other action in the supreme court shall be set by order of the court and published in Rules of the Supreme Court of Wyoming.

[59] W.R.A.P. 2.09(a).

[60] *See* General Order 10-2 (Wyo. 2010); *see infra* Appendix C.

[61] The fee schedule is located in Rule 3 of the Wyoming Supreme Court Rules. There is also a General Order on the matter. *See* General Order 10-1 (Wyo. 2010); *see infra* Appendix B.

[62] Additionally, if your client desires a stay on appeal or if a stay on appeal is required by law, a bond must be deposited at the time of filing the notice of appeal; W.R.A.P. 4 controls. Rule 4.01 states: "Whenever a bond for costs on appeal is required by law, the bond shall be filed or equivalent security shall be deposited in the trial court with the notice of appeal." W.R.A.P. 4.01. *See also* W.R.A.P. 4.02.

[63] W.R.A.P. 2.09(b)–(e).

of appeal shall be limited to the correction of clerical errors or omissions in the original notice of appeal. It may not be used for the purpose of appealing an order or judgment entered subsequent to the filing of the original notice of appeal."[64] The moral of the 2015 amendment to Rule 2.01(c) is to take considerable care when drafting the notice of appeal to ensure that it includes the orders and judgments you wish to appeal. The time you spend is worth the cost.

C. Bringing It All Together

You know the rules related to the notice of appeal. Now it is time to execute. Remember, a party has *thirty days* from the date the appealable order is filed in the district court to file the notice of appeal.[65] In addition to filing the notice of appeal, you must also contemporaneously serve copies of the notice of appeal and the related requirements on the other parties and on the clerk of the Court.[66] The 2015 amendments added the following to make this point clear: "Contemporaneously with the filing of the notice of appeal with the clerk of the trial court, a copy of the notice of appeal shall also be served on the clerk of the appellate court."[67] It is important to make sure a copy is sent to the Court because that copy is the only documentation the Court initially has to create the file. Failing to serve the Court a copy of the notice of appeal can result in sanctions.[68]

At this point, the interplay between the various appellate rules should be understood, so knowing how to perfect an appeal is on the horizon. A proposed notice of appeal incorporating all of the relevant rules is now warranted.

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[64] W.R.A.P. 2.01(c).

[65] *See* W.R.A.P. 2.01(a); *see also* Evans v. Moyer, 2012 WY 111, ¶ 11, 282 P.3d 1203, 1208 (Wyo. 2012) ("In order to invoke this Court's jurisdiction, a notice of appeal must be filed within thirty days of entry of a final appealable order."). *See, e.g.*, *In re* Estate of Nielsen, 2011 WY 71, ¶ 1, 252 P.3d 958, 959 (Wyo. 2011); Merchant v. Gray, 2007 WY 208, ¶ 1, 173 P.3d 410, 411 (Wyo. 2007); Harding v. Glatter, 2002 WY 124, ¶ 1, 53 P.3d 538 (Wyo. 2002). The W.R.A.P provide for an extension of time to file a notice of appeal if warranted, but the standard is high. *See* W.R.A.P. 2.01(a)(1). Rule 2.01(a)(1) states:

> Upon a showing of *excusable neglect*, the trial court in any action may extend the time for filing the notice of appeal to [forty-five] days from entry of the appealable order, provided the application for extension of time is filed and the order entered prior to the expiration of [forty-five] days from entry of the appealable order.

W.R.A.P. 2.01(a)(1) (emphasis added).

[66] Rule 2.01(a) provides the notice of appeal must be served in "accordance with the provisions of Rule 5, [WYO. R. CIV. P.] (or as provided in [WYO. R. CRIM. P.] 32 (c)(4))." W.R.A.P. 2.01(a).

[67] W.R.A.P. 2.01(a); *see also supra* note 7 and accompanying text; *see infra* Appendix A.

[68] *See supra* note 7 and accompanying text; *see infra* Appendix A. Pursuant to the terms of General Order 97-1, the Court has sanctioned many attorneys for monetary sums for not serving a copy of the notice of appeal to the Wyoming Supreme Court. *See, e.g.*, Roberts v. Locke, 2013 WY 73, 304 P.3d 116 (2013); Stallman v. State *ex rel.* Wyoming Workers' Safety & Comp. Div., 2013 WY 28, 297 P.3d 82 (Wyo. 2013); Case v. Sink & Rise Inc., 2013 WY 19, 297 P.3d 762 (Wyo. 2013); Barlow Ranch, Ltd. v. Greencore Pipeline Co., 2013 WY 34, 301 P.3d 75 (Wyo. 2013).

IN THE DISTRICT COURT AND FOR THE _____ JUDICIAL DISTRICT _____ COUNTY, WYOMING

[NAME],	)	
	)	
Plaintiff,	)	
v.	)	
	)	Civil Action No. CV-20__-___
[NAME],	)	
	)	
Defendant.	)	

NOTICE OF APPEAL

COMES NOW [Plaintiff/Defendant], [Name], by and through undersigned counsel, and hereby gives notice that [Name] is appealing the [Order[s] or Judgment[s]] entered in this matter on _____, 20___. This appeal is taken to the Wyoming Supreme Court.

CERTIFICATION OF TRANSCRIPT REQUEST

Pursuant to W.R.A.P. 2.05(a) and 2.07(a)(4), Appellant, [Name], has ordered and made appropriate arrangements for payment of the transcript(s) to be prepared in this matter.

APPENDIX TO NOTICE OF APPEAL

The appendix to this Notice of Appeal includes the following documents, as required by W.R.A.P. 2.07(b):

1. [All pleadings that assert a claim for relief whether by complaint, counterclaim or cross-claim and all pleadings adding parties];
2. [All orders or judgments disposing of claims for relief and all orders or judgments disposing of all claims by or against any party]; and
3. [The judgment or final order and a copy of the trial court's decision letter if one was filed].

CERTIFICATION OF PAYMENT OF FILING FEE

In accordance with W.R.A.P. 2.09(a), the required filing fee for docketing this appeal with the Wyoming Supreme Court has been delivered to the Clerk of the District Court. Specifically, payment has been made as follows: $70.00 to the District Court; $95.00 to the Wyoming Supreme Court.

DESCRIPTION OF TRANSCRIPT

Pursuant to W.R.A.P. 3.02(b), Appellant, [Name], hereby certifies that contemporaneously with the filing of this Notice of Appeal, Appellant, [Name], has filed and served on Appellee, [Name], a description of the parts of the transcript which Appellant, [Name], intends to include in the record [Unless the entire transcript is to be included, you must also include a statement of the issues you intend to present on appeal].

DATED this ___ day of ____, 20___.

____[Attorney Signature]____
[Attorney Name & Bar No.]
[Law Firm Information]

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of ____, 20____, a true and accurate copy of the foregoing NOTICE OF APPEAL was served via U.S. MAIL, postage prepaid, to the following:

Wyoming Supreme Court	[Opposing Party / Appellee]
Attn: Clerk [name of Clerk, *i.e.*, Carol Thompson]	[Name of Counsel]
2301 Capitol Avenue	[Counsel Information]
Cheyenne, WY 82002	

_____[Signature]_____

D. *The Record on Appeal and Docketing in the Wyoming Supreme Court*

After the notice of appeal is filed and all of the related requirements are satisfied, you must ensure the record is complete.[69] This includes making sure that the court reporter gets the transcript compiled and timely filed with the

[69] *See* Arnold v. Day, 2007 WY 86, ¶ 9, 158 P.3d 694, 697 (Wyo. 2007) ("The record on appeal is fundamental to the exercise of appellate review because 'this court does not act as a fact finder.'" (citation omitted)).

clerk of the district court pursuant to W.R.A.P. 2.06 and 3.01.[70] Because the Court normally will not consider matters outside the record on appeal, this step is significant.[71] The Court recently reiterated: "When an appeal has been filed, '[i]t is the appellant's burden to bring to us a complete record on which to base a decision.'"[72] Rule 3.02(b) states, *inter alia*, "[i]f an appellant intends to assert on appeal that a finding or conclusion is unsupported by the evidence or contrary to the evidence, appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion."[73] While failure to include a transcript of the evidence does not necessitate dismissal of the appeal, the Court's review is "restricted to the allegations of error that do not require a review of the evidence presented before the district court that has been memorialized in the transcript."[74] The Court has succinctly explained:

> When this Court does not have a properly authenticated transcript before it, it must accept the trial court's findings of fact upon which it bases any decisions regarding evidentiary issues. The failure to provide a transcript does not necessarily require dismissal of an appeal, but our review is restricted to those allegations of error not requiring inspection of the transcript. Lacking a transcript, or a substitute for the transcript, the regularity of the trial court's judgment and the competency of the evidence upon which that judgment is based must be presumed.[75]

Thus, without a transcript to prove otherwise, the Court will assume the evidence supports the district court's findings and may summarily affirm.[76]

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[70] *See* W.R.A.P. 2.06, 3.01.

[71] *See* Martin v. DeWitt, 2014 WY 112, ¶ 5, 334 P.3d 123, 126 (Wyo. 2014); *In re* ARF, 2013 WY 97, ¶ 21, 307 P.3d 852, 857 (Wyo. 2013); Steiger v. Happy Valley Homeowners Ass'n, 2010 WY 158, ¶¶ 38–39, 245 P.3d 269, 280–81 (Wyo. 2010) (Voigt, J., concurring).

[72] Golden v. Guion, 2013 WY 45, ¶ 5, 299 P.3d 95, 96 (Wyo. 2013) (alteration in original) (citation omitted); Call v. Thayne, 2012 WY 149, ¶ 13, 288 P.3d 1214, 1217 (Wyo. 2012); Long v. Marlin Oil Co., 2009 WY 97, ¶ 4, 214 P.3d 222 (Wyo. 2009); Nish v. Schaefer, 2006 WY 85, ¶ 6, 138 P.3d 1134, 1137 (Wyo. 2006); Beeman v. Beeman, 2005 WY 45, ¶ 10, 109 P.3d 548, 551 (Wyo. 2005).

[73] W.R.A.P. 3.02(b); *see DeWitt*, ¶ 5, 334 P.3d at 125–26 ("When there is no transcript of the trial proceedings or a settled statement of the evidence, we accept the trial court's findings as the only basis for deciding issues pertaining to the accuracy of those findings or the sufficiency of the evidence."). *See also Golden*, ¶¶ 5–7, 299 P.3d at 96; *Thayne*, ¶ 13, 288 P.3d at 1217; *Long*, ¶ 4, 214 P.3d at 222; *Beeman*, ¶ 10, 109 P.3d at 551.

[74] Golden, ¶ 6, 299 P.3d at 96; *see also* G.C.I., Inc. v. Haught, 7 P.3d 906, 911 (Wyo. 2000).

[75] *Thayne*, ¶ 13, 288 P.3d at 1217 (quoting Jones v. Artery, 2012 WY 63, ¶ 9, 275 P.3d 1244, 1246 (Wyo. 2012) (citations omitted)); Lykins v. Habitat for Humanity, 2010 WY 118, ¶ 11, 237 P.3d 405, 408 (Wyo. 2010).

[76] *See* Knezovich v. Knezovich, 2015 WY 6, ¶¶ 8–9, 340 P.3d 1034, 1036 (Wyo. 2015) (the court summarily affirmed and stated: "Unfortunately, no transcript, relevant exhibits or

Pursuant to W.R.A.P. 2.06(a), the court reporter has sixty days from the time the notice of appeal is filed to file with the district court clerk the transcript or the portions of the transcript that have been ordered.[77] The court reporter must then notify the Court and all parties to the appeal, in writing or electronically, that the transcript was filed in the district court.[78] It is incumbent upon counsel to see that the transcript is timely filed, so be sure to follow-up with the court reporter and keep the lines of communication open.[79]

Regarding the record generally, W.R.A.P. 3.01 sets forth what must be included.[80] Accordingly, counsel, clerks, and courts are expected to know exactly what should be compiled and submitted. Specifically, Rule 3.01 states:

> (a) The *record* shall consist of:
>
> (1) The original papers and exhibits filed in the trial court;
>
> (2) The transcript of proceedings or any designated portion (if the proceedings were not recorded or transcribed in accordance with these rules, the electronic audio recording of the proceedings, or any designated portion); and
>
> (3) A certified copy of the docket entries prepared by the clerk of the trial court.

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settled statement of the evidence has been made part of the record on appeal, and thus there is nothing upon which we may evaluate the district court's decisions."); *Thayne*, ¶ 16, 288 P.3d at 1217; *Long*, ¶ 4, 214 P.3d at 322. *See also, e.g.*, *DeWitt*, ¶ 5, 334 P.3d at 125–26; Barrett-Oliver v. Quast, 2013 WY 71, ¶ 10, 302 P.3d 909, 912 (Wyo. 2013); Chancler v. Meredith, 2004 WY 27, ¶ 5, 86 P.3d 841, 842 (Wyo. 2004) (stating, "because there is nothing in the record to refute the district court's findings on damages, we affirm the award of damages." (quoting *Haught*, 7 P.3d at 911)). Per the 2015 amendments to W.R.A.P. 9.06(a), the Court "by unanimous vote may, sua sponte, enter an abbreviated opinion affirming or reversing the judgment or order of the district court for the reason that it is clear that affirmance or reversal is required . . . ." W.R.A.P. 9.06(a).

[77] *See* W.R.A.P. 2.06(a).

[78] *See* W.R.A.P. 2.06; *see also* W.R.A.P. 3.02(d) ("All transcripts of testimony, evidence and proceedings shall be certified by the official court reporter . . . to be true and correct in every particular, and when certified it shall be received as *prima facie* evidence of the facts, testimony, evidence, and proceedings set forth in the transcript." (emphasis added)).

[79] The 2015 amendment to W.R.A.P. 2.06 added the following:

> If the court reporter is not able to complete the requested transcript in the time allowed, the time for filing may be extended by the trial court for good cause shown. The motion shall state with specificity why the extension is necessary. A copy of the motion and order shall be served on all parties and the clerk of the supreme court.

W.R.A.P. 2.06(b).

[80] *See* W.R.A.P. 3.01.

> (b) The *transmitted record* shall consist of all portions of the record designated by the parties to the appeal for transmission to the appellate court, as described in Rule 3.05 (b), (c) and (d).[81]

Practitioners must understand the difference between subsections (a) and (b) of Rule 3.01, and be cognizant of the Court's aversion to, and the W.R.A.P.'s preclusion of, counsel designating the entire district court file as the record on appeal in civil cases. Invariably there will be filings in the district court that do not bear upon the appeal, and should not be included in the transmitted record. The simple truth is that counsel must spend time deciding what is useful and relevant and what is not. This *truth* is why the rule differentiates between what constitutes the trial court record and what is transmitted to the appellate court after designation. Designating the record is dealt with in more detail later in this article.[82]

There are two surrogates relating to the record that merit mentioning. If the proceeding was not transcribed or the transcript was unavailable, a party ought to consider filing with the district court a *Statement of the Evidence* pursuant to W.R.A.P. 3.03.[83] Alternatively, an *Agreed Statement* "in lieu of designations of the record" may be filed in the district court by the parties pursuant to W.R.A.P. 3.08.[84] If one of these paths is pursued, Rule 2.05(a) requires a practitioner to

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[81] W.R.A.P. 3.01 (emphasis added).

[82] *See infra* notes 131–41 and accompanying text.

[83] Rule 3.03 states:

> [An] appellant may prepare a statement of the evidence or proceedings from the best available means including appellant's recollection. *The statement shall be filed in the trial court and served on appellee within [thirty-five] days of the filing of the notice of appeal.* Appellee may file and serve objections or propose amendments within [fifteen] days after service. The trial court shall, within [ten] days, enter its order settling and approving the statement of evidence, which shall be included by the clerk of the trial court in the record on appeal. If the trial court is unable to settle the record within [ten] days, the judge shall notify the appellate court clerk, trial court clerk, and the parties of the delay and anticipated date of completion.

W.R.A.P. 3.03 (emphasis added). *See, e.g.*, Martin v. DeWitt, 2014 WY 112, ¶ 4, 334 P.3d 123, 125 (Wyo. 2014).

[84] W.R.A.P. 3.08(a). Rule 3.08 provides:

> (a) In lieu of designations of the record, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the trial court, and may set forth those facts averred and proved, or sought to be proved, which are essential for review. *The parties shall notify the clerk of the trial court, pursuant to Rule 2.05, in writing at the time the notice of appeal is filed that an agreed statement will be used as the record.*
>
> (b) The statement shall include: a concise statement of the points on which appellant relies; a copy of the judgment or appealable order; and a copy of the notice of appeal with its filing date. *The statement shall be filed with the*

state the chosen path on the notice of appeal in place of the endorsement for a certification of a transcript request. Doing so will remind the practitioner of his or her obligations under Rules 3.03 and 3.08, and inform the respective courts.

Once the record is assembled, W.R.A.P. 3.05 requires, within three working days, that the district court clerk advise, in writing, the clerk of the Court that the record is complete and certified in compliance with the W.R.A.P.[85] When the Court receives both the district court's notice of completion of the record and required filing fee, the Court will docket the appeal.[86] At that point, the Court will assume jurisdiction,[87] and the clerk of the Court will "serve the parties to the appeal notice that the appeal has been docketed and set forth the briefing schedule."[88]

II. WINNING THE DAY: SUBSTANCE OF AN APPELLATE BRIEF

You have made it. The appeal is perfected and the case is docketed with the Court. Now it is time to employ deductive reasoning and decide what issues to appeal, especially in light of the different standards for appellate review. Remember, knowing and writing within the controlling standard of review is part of what makes an effective appellate attorney. Instead of a handful-of-gravel approach, select solid issues based on legitimate law and focused facts that will allow the Court to confidently rule in favor of your client.[89] Reflect

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> *trial court within [forty-five] days of filing the notice of appeal. The trial court shall, within [fifteen] days, enter its order adopting the statement, or promptly set it for hearing to resolve any disputes. The order and statement shall be included by the clerk of the trial court in the record on appeal.* If the trial court is unable to settle the record within [fifteen] days, the judge shall notify the appellate court clerk, trial court clerk and the parties of the delay and anticipated date of completion.

W.R.A.P. 3.08 (emphasis added).

[85] *See* W.R.A.P. 3.05(a). Currently, all Wyoming courts are transitioning to an e-filing system. It necessarily follows then that someday, in the not too distant future, records will be completely electronic, allowing court clerks to compile and transmit records efficiently and uniformly—perhaps *via* the Cloud.

[86] *See* W.R.A.P. 6.01; W.R.A.P. 2.09 (the district court will forward to the Supreme Court the filing fee of $95.00 that the appellant submitted with the notice of appeal).

[87] *See* W.R.A.P. 6.01(b).

[88] W.R.A.P. 6.01(a).

[89] *See* Smith v. Brito, 2007 WY 191, ¶ 13, 173 P.3d 351, 356 (Wyo. 2007) (the court awards sanctions pursuant to W.R.A.P. 10.05 in "rare circumstances, such as when an appeal lacks cogent argument or there is an absence of pertinent legal authority to support the issues."); Barnes v. Cooney, 2013 WY 105, ¶ 2, 309 P.3d 799 (Wyo. 2013) (summarily affirming the district court and awarding fees and costs, explaining "[t]he brief contains a statement of the standard of review, along with lengthy deposition excerpts. Beyond that, however, it is void of any factual analysis, cogent legal argument, or citation to pertinent authority that might enlighten this Court as to how the appellants were damaged by any conduct of the appellees."). *See also* Sonnett v. First American Title Ins., 2013 WY 106, ¶ 26, 309 P.3d 799, 808 (Wyo. 2013) ("This Court has consistently

on what the Justices will be thinking. For instance, ask yourself: If the Court rules in favor of my client, what are the broad legal implications? Start with the standard of review, craft the issues accordingly, and draft your brief to lend the Justices a vision as to how the opinion ought to be written. Make your points, keep it tight, and remember that redundancy is rejected. Brevity is best. And importantly, accurately cite to the law and include precise citations to the record on factual matters.[90]

A. Structure of an Appellant's Brief

Writing at its core is an inspired exercise, through which creative theories and arguments abound. However, the Court requires some structure and uniformity to assist with an effective review.[91] Rule 7.01 requires "[t]he brief of appellant shall contain under appropriate headings and in the order indicated," the following.[92]

- Title page consisting of (1) appellate court caption and appellate court case number, (2) identification of the party filing the brief, and (3) the name, address, and Wyoming Bar number of counsel preparing the brief;[93]
- Table of contents with page references;[94]
- Table of cases, statutes and other authorities;[95]

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held that it 'need not consider issues which are not supported by proper citation of authority and cogent argument or which are not clearly defined.'" (citation omitted)); Fix v. S. Wilderness Ranch Homeowners Ass'n, 2012 WY 96, ¶ 15, 280 P.3d 527, 531 (Wyo. 2012) (declining to consider an issue because the appellant failed to provide a cogent argument); Davison v. Wyoming Game & Fish Comm'n, 2010 WY 121, ¶ 39, 238 P.3d 556, 568 (Wyo. 2010) (declining to consider an issue and reiterated that "[w]hen a party fails to provide pertinent legal authority, cogent argument, or factual support for an issue, we cannot provide meaningful review.").

[90] *See, e.g.*, Motzko Co. v. A & D Oilfield Dozers, Inc., 2014 WY 5, ¶ 25, 316 P.3d 1177, 1183 (Wyo. 2014); *Davison*, ¶¶ 36–40, 238 P.3d at 567; Shores v. Bucklin, 2009 WY 4, ¶ 13, 199 P.3d 1083, 1087 (Wyo. 2009); Three Way, Inc. v. Burton Enter., Inc., 2008 WY 18, ¶ 15, 177 P.3d 219, 224 (Wyo. 2008); Garrison v. CC Builders, Inc., 2008 WY 34, ¶ 21, 179 P.3d 867, 873 (Wyo. 2008).

[91] *See* W.R.A.P. 7.01–7.03. *See also* Hembree v. State, 2006 WY 127, ¶¶ 8–10, 143 P.3d 905, 907–08 (Wyo. 2006) (explaining the purpose of the required structure is to assist the court); Kost v. Thatch, 782 P.2d 230, 231 (Wyo. 1989); Strang Telecasting, Inc. v. Ernst, 610 P.2d 1011 (Wyo. 1980).

[92] *See* W.R.A.P. 7.01.

[93] W.R.A.P. 7.01(a); *see* Dollarhide v. Bancroft, 2008 WY 113, ¶¶ 7–9, 193 P.3d 223, 225–26 (Wyo. 2008).

[94] W.R.A.P. 7.01(b).

[95] *See* W.R.A.P. 7.01(c). The table of cases must be "alphabetically arranged (in one list or by jurisdiction," and with page references. W.R.A.P. 7.01(c).

- Statement of issues presented for appellate review;[96]

- Statement of the case, which is broken down into the nature of the case, course of proceedings, disposition below, and statement of facts (the statement of facts is usually its own section);[97]

- Argument, which includes the applicable standard of review and summary of the argument.[98] Regarding the former, if there are multiple issues that require different standards of review, each standard of review should be incorporated in the argument section by the issue respectively.[99] As to the latter, although not required, a summary of the argument should always be utilized to provide the Court with a patent path of where you are going and why (take this opportunity to highlight your major points and to educate the Court in a laconic fashion);

- Conclusion that is short and concise and states the precise relief you seek;[100]

- Signature of counsel or pro se party;[101]

- Certificate of service, which reflects electronic service *via* the Court's C-Track Electronic Filing System (CTEF);[102] and

- Appendix that includes (1) a copy of the judgment or final order appealed from, (2) the trial court's decision letter or

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[96] W.R.A.P. 7.01(d).

[97] W.R.A.P. 7.01(e); *see* Long v. Marlin Oil Co., 2009 WY 97, ¶¶ 3–4, 214 P.3d 222 (Wyo. 2009) (failing to include a statement of the facts results, *inter alia*, in sanctions). Additionally, inasmuch as a party is limited in the length of the brief, one should be careful not to waste space talking about facts that are not material to the issues presented. Also make sure to include "citations to the parts of the designated record on appeal relied on." W.R.A.P. 7.01(e)(2).

[98] *See* W.R.A.P. 7.01(f).

[99] *See* W.R.A.P. 7.02(f)(2). Rule 7.02(f)(2) provides: "For each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues)." W.R.A.P. 7.02(f)(2).

[100] *See* W.R.A.P. 7.02(g).

[101] *See* W.R.A.P. 7.02(h). The electronic version filed via the Wyoming Supreme Court's C-Track Electronic Filing System can be signed as follows: s/[Lawyer Name]. *See Wyoming Supreme Court Electronic Filing Administrative Policies and Procedures Manual*, § 12 (2015), http://www.courts.state.wy.us/Documents/EFiling/PnPManual.pdf [hereinafter *Wyoming Supreme Court Electronic Filing*]

[102] *See* W.R.A.P. 7.01(i). *See also Wyoming Supreme Court Electronic Filing*, *supra* note 101, § 9.

> other written and/or oral reasons for judgment, if any, and (3) the statement of costs required by W.R.A.P. 10.01.[103]

These rules provide the framework practitioners must follow.[104] A brief that stands out because of its peculiar structure is not a good thing.[105]

A thorough practitioner will also make sure to review the length and formatting requirements. The appellate rules require that the appellant's principal brief be no more than seventy pages.[106] Practitioners must use eight and a half by eleven inch paper, with margins not less than one inch on all sides.[107] The text, within the body of the brief, must be double-spaced, and in an easy-to-read font no smaller than size thirteen.[108] Try fonts like Garamond or Bodoni MT.[109] If footnotes are necessary, they must be in the same type-size as the text and double-spaced.[110] And of course, paper copies of "[b]riefs shall be bound only at the upper left-hand corner by staple, paper clip or binder clip."[111]

Lastly, the 2015 amendments impose a new requirement when there is a joint appeal. Pursuant to W.R.A.P. 1.06, "Appellants filing jointly shall file only one combined brief and, if applicable, one combined reply brief." So if parties are hitching their wagons, be mindful of this limitation.

Now that the structure and format is sketched out, put away the tracing pencil and break out your best brush; it is time to paint a masterpiece.

B. A Word on Framing the Issues

A statement of the issues, coupled with the applicable standard of review, is fundamentally important for an effective appellate brief. It is almost incon-

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[103] W.R.A.P. 7.01(j). *See infra* Appendix D. Appendix D is a template of the Statement of Costs.

[104] *See* W.R.A.P. 7.01. The Wyoming Supreme Court promulgates the rules of appellate procedure.

[105] *See* Barnes v. Cooney, 2013 WY 105, ¶ 2, 309 P.3d 799 (Wyo. 2013); Witherspoon v. Teton Laser Center, L.L.C., 2007 WY 3, ¶ 2, 149 P.3d 715, 717 (Wyo. 2007).

[106] *See* W.R.A.P. 7.05(a). Although up to seventy pages is permitted, one does not need to reach that number. Remember, counsel is writing a brief, not a novel.

[107] *See* W.R.A.P. 7.05(b)(1).

[108] *See* W.R.A.P. 7.05(b)(2)–(3). Quotations of more than fifty words must be single-spaced in a block quote format. *See* W.R.A.P. 7.05(b)(2).

[109] *See* Ruth A. Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 J. ASS'N LEGAL WRITING DIRECTORS 108 (2004); *see also* MATTHEW BUTTERICK, TYPOGRAPHY FOR LAWYERS (2010).

[110] *See* W.R.A.P. 7.05(b)(4). Quotations of fifty words or more must be single-spaced in block quote format. *See id.*

[111] W.R.A.P. 7.05(c).

ceivable that a party, especially the appellant, would fail to include issues in the brief; however, it has happened.[112] It is enthusiastically encouraged to frame the issues first by incorporating the standard of review. For example, if the standard of review is abuse of discretion, your issue should begin by stating: Did the district court abuse its discretion by . . .? Another example, concerning a different standard of review is: Was the district court's finding that . . . clearly erroneous? It is also common to present issues as a statement rather than a question by utilizing the term *whether*.[113] Whichever way you decide, do not be surprised if the Court rephrases the issues.[114]

Another innovative way to present an issue is the wait-for-it approach, which legal scholar, Bryan Garner coined as a "deep issue."[115] Over the past several years, the Wyoming Attorney General's Office has consistently framed issues using the wait-for-it approach. For example, in *Merit Energy Company v. Department of Revenue*, the parties presented the issues as follows:

> [Appellant] lists three issues on appeal:
>
> 1. The Wyoming State Board of Equalization erred when it dismissed Merit Energy Company's appeal for lack of jurisdiction.
>
> 2. The discrepancy letters sent by the Department of Revenue are not final administrative decisions.
>
> 3. The notice of valuation change sent by the Department of Revenue is a final administrative decision for purposes of appeal.

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[112] Witherspoon v. Teton Laser Center, L.L.C., 2007 WY 3, ¶ 2, 149 P.3d 715, 717 (Wyo. 2007); Montoya v. Navarette-Montoya, 2005 WY 161, ¶ 4, 125 P.3d 265, 268–69 (Wyo. 2005) (imposing sanctions for, *inter alia*, the appellant's failure to set forth a statement of the issues); Cline v. Safeco Ins., 614 P.2d 1335, 1337 (Wyo. 1980).

[113] *See, e.g.*, Gosar's Unlimited Inc. v. Wyoming Pub. Serv. Comm'n, 2013 WY 90, ¶ 3, 305 P.3d 1152, 1154 (Wyo. 2013).

[114] *See, e.g.*, Travelocity.com LP v. Wyoming Dep't of Revenue, 2014 WY 43, ¶ 3, 329 P.3d 131, 136 (Wyo. 2014); Sonnett v. First American Title Ins., 2013 WY 106, ¶ 2, 309 P.3d 799, 801 (Wyo. 2013); *In re* Sands, 2013 WY 60, ¶ 2, 301 P.3d 128, 129 (Wyo. 2013); DiFelici v. Lander, 2013 WY 141, ¶ 3, 312 P.3d 816, 818 (Wyo. 2013); White v. Shane Edeburn Constr., L.L.C., 2012 WY 118, ¶ 2, 285 P.3d 949, 951 (Wyo. 2012); Union Pac. R.R. v. Caballo Coal Co., 2011 WY 24, ¶ 4, 246 P.3d 867, 870 (Wyo. 2011); Mendoza v. Gonzales, 2009 WY 50, ¶ 2, 204 P.3d 995, 996 (Wyo. 2009); Mueller v. Zimmer, 2007 WY 195, ¶ 2, 173 P.3d 361, 362 (Wyo. 2007); Alcorn v. Sauer Drilling Co., 2006 WY 15, ¶ 2, 126 P.3d 924, 925 (Wyo. 2006); Williams Prod. RMT Co. v. State Dep't of Revenue, 2005 WY 28, ¶ 4, 107 P.3d 179, 182 (Wyo. 2005).

[115] BRYAN A. GARNER, *The Winning Brief: 100 Tips for Persuasive Briefing in Trial and Appellate Courts* (2d ed. 2004). *See also Travelocity.com*, ¶ 4, 329 P.3d at 136 ("The Department generally identifies the same issues, although it frames them in the 'deep issue' format recommended by one legal scholar.").

> The [Appellee] rephrases the issue as follows:
>
> > Wyoming taxpayers can appeal final administrative decisions of the Department of Revenue to the State Board of Equalization. But to have jurisdiction, the Board requires an appeal to occur within thirty days of the Department's decision. Merit did not appeal several "take-in-kind" mineral assessments within the thirty-day period but waited until a change in valuation notice was sent to county officials two years later. Did the mineral assessments constitute final administrative decisions so that Merit had to appeal from them within thirty days and, therefore, did Merit's delay divest the Board of jurisdiction to hear its eventual appeal?[116]

As you can see, Appellee, *via* the Wyoming Attorney General's Office, was able to add context before adding details and the definitive question. Bryan Garner explains:

> A "deep" issue is concrete: it sums up a case in a nutshell, and is therefore difficult to frame but easy to understand. By contrast, a "surface" issue is abstract: it requires the reader to know everything about the case before it can be truly comprehended, and is therefore easy to frame but hard to understand.[117]

No matter how you choose to frame the issue, make sure you present it in a clear and cogent manner. A particular case may lend itself to framing the issue with a succinct one-sentence question, while another is better suited for a deep issue; do not get stuck on one style. After all, the more you think through your issues and phrase them accordingly, the less time the Court will have to devote to rephrasing.

C. The Appellee's Brief

The appellee's brief is controlled by W.R.A.P. 7.02, which requires the brief to "conform to the requirements of Rule 7.01, except that a statement of the issues, or of the case, is not required."[118] However, do not forgo an opportunity to reframe the issues correctly for the Court just because a statement of the issues

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[116] Merit Energy Co. v. Dep't. of Revenue, 2013 WY 145, ¶ 2, 313 P.3d 1257, 1258 (Wyo. 2013). *See also* Gheen v. State *ex rel.* Dep't. of Health, 2014 WY 70, ¶ 3, 326 P.3d 918, 920–21 (Wyo. 2014); Delacastro v. State *ex rel.* Wyoming Workers' Safety & Comp. Div., 2014 WY 40, ¶ 3, 321 P.3d 327, 329 (Wyo. 2014).

[117] Bryan A. Garner, *The Deep Issue: A New Approach to Framing Legal Questions*, 5 SCRIBES J. LEGAL WRITING 1, 3 (1996).

[118] W.R.A.P. 7.02.

is not required. In rare circumstances will the appellant frame the issues exactly right. Rest assured, you are allowed to restate the issues; it is common practice.[119] Do not simply regurgitate what the appellant says, rather craft your issues clear and complimentary to your client's case.

A comment is warranted regarding arguments made in an appellee's brief versus those that should be made in a cross-appeal; the latter is controlled by W.R.A.P. 2.01(a)(2). The Court addressed this difference in *GOB, L.L.C. v. Rainbow Canyon, Inc.*, in which the appellant asserted that the appellees were precluded from raising their issue presented because they did not file a cross-appeal.[120] The appellant claimed that, as a result, the appellees waived their right to make any argument premised on the issue raised. The Court disagreed and elucidated the difference:

> "The distinction between arguing in brief and cross-appealing generally is that a cross-appeal is required to win a change in the judgment, while arguments to support the judgment can be made without a cross-appeal." A survey of cases before this Court involving cross-appeals bears out this distinction.
>
> . . . .
>
> [Appellant's] position is also contrary to our clearly established rule that we may affirm the judgment of the court below for any reason supported by the record. [Appellant's] insistence that Appellees are precluded from raising an argument in support of the judgment is contrary to this rule. Moreover, W.R.A.P. 7.03 states: "[T]he reply brief shall precisely and concisely set forth on the first page *those new issues and arguments raised by the brief of the appellee* which are addressed in the reply brief." W.R.A.P. 7.03 plainly contemplates that an appellee, in its brief, may raise additional "issues and arguments." We find no merit in [Appellant's] contention that Appellees were required to file a cross-appeal in order to raise the issue they now present.[121]

The Court's analysis in *GOB* provides helpful guidance not only for what arguments to make in the appellee's brief, but also for what arguments must be

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[119] *See, e.g., Merit Energy*, ¶ 2, 313 P.3d at 1258; Beall v. Sky Blue Enter., Inc., 2012 WY 38, ¶ 2, 271 P.3d 1022, 1025 (Wyo. 2012); Reed v. Cloninger, 2006 WY 37, ¶ 2, 131 P.3d 359, 360 (Wyo. 2006); Brown v. Arp & Hammond Hardware Co., 2006 WY 107, ¶ 2, 141 P.3d 673, 675 (Wyo. 2006); Trabing v. Kinko's, Inc., 2002 WY 171, ¶ 3, 57 P.3d 1248, 1251 (Wyo. 2002).

[120] *See* GOB, L.L.C. v. Rainbow Canyon, Inc., 2008 WY 157, ¶¶ 9–12, 197 P.3d 1269, 1271–72 (Wyo. 2008); Campbell Cty. Sch. Dist. v. Catchpole, 6 P.3d 1275, 1280 (Wyo. 2000).

[121] *GOB*, ¶¶ 10, 12, 197 P.3d at 1271–72 (third alteration in original) (citations omitted).

made through a cross-appeal.[122] It is best to learn how the Court distinguishes between an appellee's brief and a cross-appeal when the appellant files the notice of appeal. That way, if a cross-appeal is required, the procedures set forth in W.R.A.P. 2.01(a)(2) can be followed, and the appellee/cross-appellant can file a timely notice of appeal.[123]

D. Reply Briefs

It is axiomatic that a reply brief is limited to new issues and arguments presented in the appellee's brief. Reply briefs are controlled by W.R.A.P. 7.03(a), which requires that the appellant "precisely and concisely set forth on the first page those new issues and arguments raised by the brief of the appellee which are addressed in the reply brief."[124] Failure to comply with Rule 7.03(a) will subject the party to sanctions—usually the court will disregard the reply brief or parts thereof.[125]

Although the rule is clear, parties nevertheless violate its patent requirements. For instance, in *Travelocity.com LP v. Wyoming Department of Revenue*, the Court found "that, contrary to W.R.A.P. 7.03, Appellants' reply brief [was] improper, at least in part, because it [was] not 'limited to such new issues and arguments' that [were] 'raised by the brief of appellees.'"[126] It further found the brief "contrary to W.R.A.P. 7.03, [because] the reply brief [did] not 'precisely and concisely set forth on the first page those new issues and arguments raised by the brief of the appellee which [were] addressed in the reply brief.'"[127] As a result, the Court declined to grant the appellant's leave to file a statement of the issues and disregarded the improper portions of the reply brief.[128]

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[122] *See generally* GOB, L.L.C. v. Rainbow Canyon, Inc., 2008 WY 157, 197 P.3d 1269 (Wyo. 2008); *see also* McTiernan v. Jellis, 2013 WY 151, ¶ 25, 316 P.3d 1153, 1161 (Wyo. 2013).

[123] *See GOB*, ¶ 10, 197 P.3d at 1271. *See also* Capshaw v. Osbon, 2008 WY 95, ¶ 10 n.1, 190 P.3d 156, 158 n.1 (Wyo. 2008); Wallop v. Wallop, 2004 WY 46, ¶ 1, 88 P.3d 1022, 1023 (Wyo. 2004).

[124] W.R.A.P. 7.03(a).

[125] *See* W.R.A.P. 7.03(a).

[126] Travelocity.com LP v. Wyoming Dep't of Revenue, No. 13-0078 (Wyo. Oct. 29, 2013), https://efiling.courts.state.wy.us/public/caseView.do?csIID=16207 (citation omitted). *See, e.g.*, Evansville Police Dep't. v. Porter, 2011 WY 86, ¶ 3, 256 P.3d 476, 477 (Wyo. 2011); Scherer, II v. Laramie Reg'l Airport Bd., 2010 WY 105, ¶ 3, 236 P.3d 996, 998 (Wyo. 2010); Budd-Falen Law Offices, P.C. v. Rocky Mountain Recovery, Inc., 2005 WY 77, ¶¶ 14–17, 114 P.3d 1284, 1288–89 (Wyo. 2005); Ultra Res., Inc. v. McMurry Energy Co., 2004 WY 121, ¶ 11, 99 P.3d 959, 963 (Wyo. 2004); Pine Bar Ranch, L.L.C. v. L-Heart Ranch, L.L.C., No. 12-0050 (Wyo. 2012), http://ctrack/ctrack/cases/caseMaintenance.do?csNameID=15738.

[127] Travelocity.com LP v. Wyoming Dep't of Revenue, No. 13-0078 (Wyo. Oct. 29, 2013), https://efiling.courts.state.wy.us/public/caseView.do?csIID=16207 (citation omitted).

[128] *See id.*

Reply briefs are limited to twenty pages and motions to extend time will not be considered absent extraordinary circumstances.[129] Read the rules, consult this article, and no doubt you will understand what is required. Do not overlook what is expected because the Court won't.

E. A Ditty on Designating the Record

Designating the record is controlled by W.R.A.P. 3.05.[130] Logistically, counsel must obtain the docket sheet for the case from the district court clerk. The sheet must then be marked to designate the documents the clerk will physically send to the Court. It is very important to get the docket sheet because it will have the consecutive numbering that the clerk of the district court only puts on trial court documents for an appeal. Designating the record is controlled by Rule 3.05(b):

> Appellant shall, contemporaneously with filing its brief in the appellate court and service of that brief upon appellee, file with the clerk of the trial court and serve on all parties and the appellate court clerk a designation for transmission of all parts of the record, without unnecessary duplication, to which appellant intends to direct the appellate court in its brief.[131]

It is essential to file a designation of the record because the appellant has "the burden of providing this Court with a complete record on which to base a decision."[132] Because the record provides support for all arguments made, when the required portions are not designated, the appellant is subject to sanctions for not presenting cogent arguments.[133] Make sure the designation is also filed at the same time the brief is filed.[134] When a party fails to designate the record with filing the brief, the Court may sanction counsel for noncompliance.[135] Accordingly,

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[129] *See* W.R.A.P. 7.05(a)(1); W.R.A.P. 7.10(c).

[130] *See* W.R.A.P. 3.05. *See infra* Appendix E. Appendix E is a template for designating the record.

[131] W.R.A.P. 3.05(b). *See, e.g.*, Long v. Marlin Oil Co., 2009 WY 97, ¶ 2, 214 P.3d 222, 222 (Wyo. 2009).

[132] Orcutt v. Shober Inv., Inc., 2003 WY 60, ¶ 9, 69 P.3d 386, 389 (Wyo. 2003). *See, e.g.*, Parsons v. Parsons, 2001 WY 62, ¶ 11, 27 P.3d 270, 272–73 (Wyo. 2001); G.C.I., Inc. v. Haught, 7 P.3d 906, 911 (Wyo. 2000).

[133] *Orcutt*, ¶ 13, 69 P.3d at 389.

[134] *See* W.R.A.P. 3.05(b).

[135] *See* W.R.A.P. 1.03(b)(2); *see also* Steiger v. Happy Valley Homeowners Ass'n, 2010 WY 158, ¶¶ 38–39, 245 P.3d 269, 280–81 (Wyo. 2010); Shores v. Bucklin, 2009 WY 4, ¶ 14, 199 P.3d 1083, 1086–87 (Wyo. 2009); Bingham v. Bingham, 2007 WY 145, ¶¶ 8–9, 167 P.3d 14, 17 (Wyo. 2007); Rodriguez v. State *ex rel.* Wyoming Workers' Safety & Comp. Div., 2006 WY 146, ¶¶ 2–4, 146 P.3d 487, 487–88 (Wyo. 2006); Seherr-Thoss v. Seherr-Thoss, 2006 WY 111, ¶ 26, 141 P.3d 705, 716 (Wyo. 2006); Laughter v. Bd. of Cty. Comm'rs, 2005 WY 54, ¶ 10, 110 P.3d 875, 879 (Wyo. 2005); *Orcutt*, ¶ 13, 69 P.3d at 389–90.

your checklist ought to have a spot for designating the required portions of the record to ensure that the designation is out the door the day you file the brief.[136]

If the appellee wishes to designate additional parts of the record, not designated by the appellant, the appellee must "file with the clerk of the trial court and serve upon all parties and the appellate court clerk a designation of those parts of the record desired by appellee" contemporaneously when filing appellee's brief.[137] An appellee no longer needs to make a certification if the appellee does not wish to designate additional parts of the record.[138]

Importantly, in civil cases, parties cannot simply designate the entire record. The applicable rule states:

> Unless the case is a criminal proceeding, no party shall designate the entire record for transmission without an order of the appellate court. Unless specifically relevant to the issue(s) on appeal, record papers, including, but not limited to, setting notices, subpoenas and documents relating to discovery shall not be designated for transmission to the appellate court. Any party who designates unnecessarily duplicative pleadings or other papers not relevant to the appeal may be subject to sanction as provided in Rule 1.03.[139]

If a party designates the entire record in a civil case without an order from the Court, counsel will assuredly be sanctioned for a minor monetary sum.[140]

Do not make designating the record a disaster. Keep the supporting materials clear and concise for the Court. After all, a carefully designated record aids in presenting a clear and cogent argument.

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[136] *See supra* notes 71–80 and accompanying text.

[137] W.R.A.P. 3.05(c). Like an appellant, sanctions may be imposed if portions of the record are not timely designated by the appellee. *See* W.R.A.P. 1.03(b)(2); *c.f.* Zaloudek v. Zaloudek, 2010 WY 169, ¶¶ 15–16, 245 P.3d 336, 341–42 (Wyo. 2010) (finding that a violation of the rule in appellee's untimely filing of the designation of record did not warrant sanctions).

[138] The 2015 amendment to W.R.A.P. 3.05(c) eliminated the following requirement: "If appellee does not wish to designate additional portions of the trial court record, then such a certification shall be made to the clerk of the trial court." *See Order*, *supra* note 1, at W.R.A.P. 3.05(c).

[139] W.R.A.P. 3.05(e).

[140] *See* Samiec v. Hopkins, No. 15-0028 (Wyo. June 11, 2015), https://efiling.courts.state.wy.us/public/caseView.do?csIID=17092; Schwab v. JTL Grp., Inc., No. 13-0057 (Wyo. July 18, 2013), https://efiling.courts.state.wy.us/public/caseView.do?csIID=16185. *See also* Shores v. Bucklin, 2009 WY 4, ¶¶ 11–14, 199 P.3d 1083, 1086–87 (Wyo. 2009).

F. A Quick Word on Citation Format

The Court has issued two General Orders concerning citations to Wyoming law. While most Wyoming practitioners adhere to these requirements, some do not even know they exist. In 2000, the Court issued an *Order Adopting A Public Domain or Neutral-Format Citation.*[141] The General Rule was promulgated "in recognition of the increasing level of research being conducted via the Internet and other electronic resources, to adopt a public domain, neutral-format citation which will support the use of legal sources in both traditional book and electronic formats."[142] The General Order was amended in 2005, changing pinpoint citations to correspond with both the public domain neutral and West Pacific Reporter formats.[143] Pursuant to the Court's General Orders, citation formats differ depending on when the opinion was issued. The following are examples of proper citations to the Court's opinions:

Cases decided before January 1, 2001:

- Primary citation—*Jon v. Doe*, 989 P.2d 472, 475 (Wyo. 1997).
- Subsequent short citation with pinpoint cite—*Jon*, 989 P.2d at 475.

Cases decided on or between January 1, 2001 through December 31, 2003:

- Primary citation—*Jon v. Doe*, 2001 WY 12, ¶ 44, 989 P.2d 1312, 1320 (Wyo. 2001).
- Subsequent short citation with pinpoint cite—*Jon*, ¶¶ 44–45.

Cases decided on or after December 31, 2003:

- Primary citation—*Jon v. Doe*, 2001 WY 12, ¶ 44 (Wyo. 2001), or *Jon v. Doe*, 2001 WY 12, ¶ 44, 989 P.2d 1312, 1320 (Wyo. 2001).
- Subsequent short citation with pinpoint cite—*Jon*, ¶¶ 44–45.

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[141] *See* Order Adopting a Public Domain or Neutral-Format Citation (Wyo. Oct. 2, 2000); *see infra* Appendix F.

[142] Order Adopting a Public Domain or Neutral-Format Citation (Wyo. Oct. 2, 2000); *see infra* Appendix F.

[143] *See* Order Amending Citation Format (Wyo. Aug. 19, 2005); *see infra* Appendix G.

Although it is not stated in the General Order, it is common practice to short-cite Wyoming cases as follows: *Jon*, ¶¶ 44–45, 989 P.2d at 1320.[144]

Incorrect citation format is not cataclysmic, and frankly sometimes not noticeable. That said, practitioners should strive to adhere to the citation rules and General Orders. The Court's reception will no doubt be complimentary.

G. Electronic Filing and Hard Copies of Briefs

How do I file? How many copies are required? What types of signatures are required? When should I file? At first blush, these questions seem to call for simple and clear answers, but a deeper look at the W.R.A.P., and the *Electronic Filing Administrative Policies and Procedures Manual* ("Manual"), provide somewhat more complicated answers and create concerning circumstances for the unwary.[145] By way of example, with the advent of the Court's C-Track Electronic Filing System (CTEF), one would think that the paperless era has arrived. Well, sort of.

Rule 1.01 now provides a clear indication that electronic filing is the general rule.[146] Rule 1.01(a) states: "Except as noted below, all briefs, motions and other pleadings shall be filed electronically in the supreme court using C-Track Electronic Filing System (CTEF), and the electronic version shall be the officially filed document in the case."[147] Unfortunately, there are exceptions to this rule. In addition to filing briefs electronically, one original paper copy and six paper copies of the brief must be filed with the Court.[148] The seven paper copies of the brief submitted for filing must be identical to the electronically filed brief with the exception of the original handwritten signature.[149] Thus, the Court requires conventional filing in addition to electronic filing of all documents "[u]ntil otherwise ordered."[150]

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[144] *See, e.g.*, Sonnett v. First American Title Ins., 2013 WY 106, ¶ 10, 309 P.3d 799, 807 (Wyo. 2013); Trump v. State *ex rel.* Wyoming Workers' Safety & Comp. Div., 2013 WY 140, ¶ 21 n.2, 312 P.3d 802, 809 n.2 (Wyo. 2013); Schwab v. JTL Grp., Inc., ¶¶ 12–16, 312 P.3d 790, 794 (Wyo. 2013); Vogt v. State *ex rel.* Dep't of Transp., 2013 WY 123, ¶¶ 16–18, 310 P.3d 899, 906 (Wyo. 2013); Leavitt v. State *ex rel.* Wyoming Workers' Safety & Comp. Div., 2013 WY 95, ¶¶ 17–21, 307 P.3d 835, 840 (Wyo. 2013); Roberts, v. Locke, 2013 WY 73, ¶15, 304 P.3d 116, 120 (Wyo. 2013).

[145] *See* Morse v. University of Wyoming, No. 10-0249 (Wyo. Jan. 13, 2011), https://efiling.courts.state.wy.us/public/caseView.do?csIID=15095 (rejecting the appellant's brief for failure to timely file the brief). *See also* W.R.A.P. 7.11.

[146] *See* W.R.A.P. 1.01.

[147] W.R.A.P. 1.01(a).

[148] *See* W.R.A.P. 1.01(c)(1).

[149] *See* W.R.A.P. 7.05(e).

[150] W.R.A.P. 1.01(c). *See Wyoming Supreme Court Electronic Filing*, *supra* note 101, § 6.

That is right, a total of seven hard copies must be filed along with an electronic copy. The original paper version resides with the clerk of the Court. The copies are distributed to each Justice and the senior staff attorney. It remains unclear how long this rule will be in place due to the advent of electronic devices and other technological advances, but as the next generation of lawyers begin to warm seats on the bench, the reasonable assumption is that this archaic requirement will someday be superfluous.

Turning back to electronic filing, since 2008, the Court requires all briefs by Wyoming attorneys to be e-filed.[151] Before you can electronically file a brief, you must complete a training course and pass the ensuing test.[152] The training course takes about one hour and the test consists of thirty multiple choice questions; a score of 100% is required. Avoid waiting until the eleventh hour to take the test and file the brief. If counsel is not already a CTEF user, prudence suggests taking the training course and test when the notice of appeal is filed.

There are several requirements for electronically filing documents in the Manual that compliment the W.R.A.P.[153] For example, section 9 of the Manual states:

> (a) A notice of el Court's electronic filing system constitutes service of the filed document on CTEF users (with the exception of sealed filings, or other filings required to be filed by conventional means). Every email address listed by the attorney will receive system generated notices. Parties and/or attorneys who are not CTEF users must be served with a copy of any document filed electronically in accordance with [WYO. R. CIV. P.] 5, [WYO. R. CRIM. P.] 40, and the [W.R.A.P.] A non-registered filing party who files by conventional means must serve paper copies on all parties to the case.
>
> (b) Each registered user of the CTEF system is responsible for assuring that his or her email account is current, is monitored regularly, and that email notices are opened in a timely manner.
>
> (c) A certificate of service is required when a user electronically files a document.

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[151] *See infra* Appendix H.

[152] *See infra* Appendix H.

[153] *See Wyoming Supreme Court Electronic Filing*, *supra* note 101, § 9.

> The certificate must state the manner in which service (through the CTEF or by manual service, such as mail, hand delivery, [etc.]) was accomplished on each party and should be signed as "s/name" by the attorney or an authorized agent who made the service. The NEF generated by the Court's electronic filing system does not replace the certificate of service required by the rules of procedure. When using "cut and paste" from another document, proofread the dates and document name. W.R.A.P. 14.03, which allows three additional days to respond to service by mail, will apply to electronic service as well.
>
> (d) In addition to the service requirements of the Wyoming Court Rules, users must certify that all required privacy redactions have been made and, with the exception of those redactions, every document submitted in digital form or scanned .pdf is an exact copy of the written document filed with the Clerk, and that the document has been scanned for viruses and is free of viruses.
>
> (e) Notification of the filing of all Court orders and opinions related to cases will be served electronically through the CTEF to all registered counsel of record and email addresses added for receipt of system generated notices. Notice of electronic filing generated by the CTEF system constitutes service of Court orders. All counsel who intend to participate in a case should become registered users as soon as possible upon the docketing of an appeal in order to receive notification of the filing of Court orders. The orders will be uploaded to the docket page and may be viewed on the public docket.[154]

Although a lengthy block quote, do not allow your eyes to glaze over because the information contained within is very important. It is necessary for practitioners to fully comprehend what the Manual requires, because the Court surely does. In turn, W.R.A.P. 14.01 builds from the Manual's requirements. Rule 14.01(c)–(d) states:

> (c) For all cases filed through CTEF, the notice of electronic filing that is automatically generated constitutes service of the document on CTEF users and the additional service of a hardcopy is not necessary. Each registered user of the CTEF

[154] *Wyoming Supreme Court Electronic Filing*, *supra* note 101, § 9.

> system is responsible for assuring that their email account is current, is monitored regularly, and that email notices are opened in a timely manner. The notice of electronic filing generated by CTEF does not replace the certificate of service on the document being filed.
>
> (d) The registered user's name and password required to submit documents to the CTEF serve as the user's signature on all electronic documents filed with the Court. An electronically filed document shall contain a signature line in the following manner: s/ Attorney's Name.[155]

An example of a certificate of service that meets the requirements for electronic filing is as follows:

> I hereby certify that a true and correct copy of the foregoing [document] was served electronically via the Wyoming Supreme Court C-Track Electronic Filing System (CTEF) to the following:
>
> [Opposing Counsel]
>
> The original paper copy plus six copies of the [document] were sent to the Wyoming Supreme Court by U.S. mail, first class, postage pre-paid this ____ day of ____, 20___.
>
> I have accepted the terms for e-filing and hereby certify the foregoing document, as submitted in electronic form, is an exact copy of the written document filed with the Wyoming Supreme Court Clerk and has been scanned for viruses and is free of viruses. Additionally, I certify all required privacy redactions have been made, and with the exception of those redactions, every document submitted in digital form is an exact copy of the written document filed with the Wyoming Supreme Court Clerk.
>
> s/ [Your Name]

It is important that practitioners make all necessary redactions and ensure the certificate accurately reflects the same. Indeed, W.R.A.P. 1.01(a)(2) makes this point clear:

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[155] W.R.A.P. 14.01(c)–(d).

> When documents filed do not comply with the rules (such as the Rules Governing Redaction from Court Records), the document will be removed from the public docket and counsel will immediately be notified by email and instructed to re-file the pleading within a specified amount of time. If the pleading is not correctly re-filed within the required time, it shall not be considered timely filed.[156]

Regarding the filing of the requisite paper copies, the original must have an actual handwritten signature and the six additional copies must reflect the same.[157] According to the Manual, "the signed paper original accepted for filing plus six copies are required to be filed within three days of electronic filing."[158]

As for timing, W.R.A.P. 7.06 and 14.03 govern. The appellant's brief must be filed within forty-five days after service of the notice that the case has been docketed in the Court. The appellee's brief must be filed within forty-five days after service of the appellant's brief. With respect to reply briefs, the deadline is fifteen days after service of the appellee's brief. Make sure your brief is timely filed, otherwise it will not be accepted by the Court absent a showing of excusable neglect.[159] If the deadline simply cannot be met, consult W.R.A.P. 7.10 and consider seeking an extension with the Court.[160] Be sure to recognize the need

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[156] W.R.A.P. 1.0

[157] *See* W.R.A.P. 7.05(e). *See also Wyoming Supreme Court Electronic Filing*, *supra* note 101, § 12.

[158] *Wyoming Supreme Court Electronic Filing*, *supra* note 101, § 12(a). The requirement for an actual handwritten signature ought to go by the wayside in the near future: Once a brief is electronically filed, the system will automatically generate a file-stamped copy so the parties can simply print and submit seven copies of the e-file stamped brief. The next logical step in the evolution of the rules should be to eliminate the requirement that counsel must submit paper copies. Instead, the Court should review the briefs electronically. Many appellate court judges already read briefs electronically, and some Justices on the Court are currently following the trend.

[159] *See, e.g.*, Sabatka v. Bd. of Trustees of the Freemont Cty. Pub. Library Sys., No. 14-0062 (Wyo. Sep. 3, 2014), https://efiling.courts.state.wy.us/public/caseView.do?csIID=16594 (denying *Motion for Extension of Time for Filing of Appellee's Brief After Filing Time is Expired* because the appellee did not establish excusable neglect).

[160] Rule 7.10 controls extensions to file a brief. *See* W.R.A.P. 7.10. The rule states:

> (a) An extension of time in which to file briefs may only be obtained from the appellate court upon a motion certifying good cause made before the time to file the brief expires. A motion for extension of time shall be filed at least [three] working days before the brief is due. If the motion is filed less than [three] working days before the brief is due, then the motion shall detail why the party was unable to make the request in a timely manner. Motions filed in the district court must be accompanied by an order in the proper form.
>
> (b) Good cause, as used in this rule, includes such things as a death in counsel's immediate family, serious illness, or other unanticipated circumstances which justify delay of the appellate process. Generalities such as "counsel is too busy" are not a sufficient reason for granting an extension.

for an extension before the deadline because the rule requires a motion for an extension be filed before the brief is due.[161]

A word of caution: W.R.A.P. 14.03(a) allows three additional days to respond to service by mail, which includes electronic service,[162] when filing is permitted or required within a prescribed period from or after the service of a brief, notice or paper by mail, or by delivery to the clerk. The three additional days must be computed as part of the original time period.[163]

For example, if the Court serves its docketing notice (by mail or electronically) on February 1, 2015, pursuant to W.R.A.P. 7.06(a), the appellant has forty-five days from February 1, 2015, to file his or her brief. Under W.R.A.P. 14.03 and section 9(c) of the Manual, the appellant is permitted to extend the forty-five day period by three days.[164] Thus, the appellant has forty-eight days from February 1, 2015, within which to file his or her brief. Counting the three additional days as part of the original period is significant when the forty-five-day deadline falls on an exempted day pursuant to W.R.A.P. 14.02. Suppose the forty-fifth day lands on a Saturday. Under the correct calculation, as part of the original period, the three additional days would put the deadline on that Tuesday. Under an incorrect calculation, calculating the time separately, the forty-five-day deadline would be carried over to the next day that is not a Saturday, Sunday, or legal holiday according to W.R.A.P. 14.02. Therefore, the forty-five-day deadline would be extended to that Monday. Then, adding the three additional days, would put the deadline on that Thursday. This scenario is a grave mistake, possibly resulting in the appeal's dismissal.[165]

While W.R.A.P. 14.03(a) retains the three-day mailing rule, the 2015 amendment to Rule 14.03(b) limits its applicability. Rule 14.03(b) now provides

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> (c) Absent extraordinary circumstances, motions to extend the time to file reply briefs will not be considered.

W.R.A.P. 7.10.

[161] *Id.*

[162] *See* W.R.A.P. 14.03. *See also Wyoming Supreme Court Electronic Filing*, *supra* note 101, § 9(c) ("W.R.A.P. 14.03, which allows three additional days to respond to service by mail, will apply to electronic service as well.").

[163] *Compare* Morse v. University of Wyoming, No. 10-0249 (Wyo. Jan. 13, 2010), https://efiling.courts.state.wy.us/public/caseView.do?csIID=15095 (rejecting appeal for failure to timely file brief of appellant), *with* Sellers v. Emp't. Security Comm'n, 760 P.2d 394 (Wyo. 1988). Comments to W.R.A.P. 14.03 overrule *Sellers*, and make clear the three additional days must be computed as part of the original period. The Supreme Court adopted this comment in 1997. *See infra* Appendix I. Appendix I is a copy of the *Order Adopting Revised Appellate Rules re Rule 14.03*.

[164] *See Wyoming Supreme Court Electronic Filing*, *supra* note 101, § 9(c); *see also supra* note 162 and accompanying text.

[165] *See* W.R.A.P 7.11; *see also* Morse v. University of Wyoming, No. 10-0249 (Wyo. Jan. 13, 2010), https://efiling.courts.state.wy.us/public/caseView.do?csIID=15095.

that "when a party is required to take action within a prescribed period after filing or a date certain," *e.g.*, a petition for rehearing or an order granting an extension of time, the three-day mailing rule does not apply.[166]

There are two valuable resources to confirm your calculations. The first is the CTEF system, which has *Pending Ticklers* showing what the Court understands the due dates to be. Simply visit the Court's public docket site, type in the case information, and violà.[167] The second is Appendix 1 to the W.R.A.P., which provides a useful timetable. Although the Appendix is unofficial, it is updated to take into account the 2015 amendments.

H. Oral Argument

The appeal has been perfected, the briefs correctly filed, and the matter is set for oral argument pursuant to W.R.A.P. 8.01(a)(2). Well done. Now you must start preparing those vocal chords. Each side has thirty minutes to argue.[168] The appellant goes first, and may reserve part of the allotted time for rebuttal. On the day of the argument, a check-in sheet will be at the front desk of the clerk's office for counsel to sign and state how much time they need for their arguments. Once checked in, counsel will then head to the courtroom and wait for their case to be called and to be given instructions from the Court. When the case is called, the appellant and the appellee will take designated spots at the counsel tables.

Recently, the Court created a helpful reference for practitioners during oral arguments called the *Practitioner's Guide to Oral Argument Before the Wyoming Supreme Court.*[169] Additionally, at counsel table during oral argument there is a sheet that provides abbreviated information and instructions concerning the same.[170] As both sources explain, *inter alia*, clients are not allowed to sit at counsel table with their attorney, but must observe from the gallery.[171] Additionally, because the arguments are being recorded and streamed live to the public, it is

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[166] *See* W.R.A.P. 14.03(b).

[167] The Court's public docket is found on its homepage at http://www.courts.state.wy.us/. Once there, select the "Public Docket" tab on the left. Alternatively, the Court's public docket site is also found at https://efiling.courts.state.wy.us/public/caseSearch.do.

[168] *See* W.R.A.P. 8.02(a). Because an attorney is limited in the length of his or her oral argument, counsel should be careful not to squander time talking about immaterial facts. If the model of RV your client was driving on a trip to Deadwood, South Dakota is not material to the claims at issue, there is no need to discuss such a fact.

[169] *See infra* Appendix J. Appendix J is a copy of the *Practitioner's Guide to Oral Argument Before the Wyoming Supreme Court*.

[170] *See infra* Appendix K. Appendix K contains a copy of the oral argument information sheet for counsel.

[171] *See infra* Appendix K.

unwise to wander away from the podium or stand too far from it because doing so may prevent your words from being recorded or heard by the listening audience.[172]

The podium, where counsel argues, has a traffic light indicator system to provide a reference for counsel concerning the time remaining for argument. The green light will remain on until counsel has five minutes remaining. The yellow light will then flicker and remain on until there is no time. When time runs out, the terrible—or perhaps saving grace—red light appears. For appellants, when the red light comes on it means their argument-in-chief is finished, but appellants can use their reserved rebuttal time if desired.[173] In the end, when no time is left and the red light shines, the Court will assuredly let you know, so, make sure you start to conclude your argument during the yellow-it-out period.

A few more things related to oral argument: right out of the chute, counsel must state his or her name and the party he or she represents. Then, counsel must begin educating the Court why their client should win. Counsel should keep in mind what the great John Marshall once said: "To listen well is as powerful a means of communication and influence as to talk well." During the argument, the Court will frequently ask questions—which is a good thing—so listen carefully and answer the question when asked. If you do not know the answer, say so, it is okay. Do not try to shoot from the hip and inadvertently misstate something, as the record and law will eventually be solicitously reviewed by the Court and any distortion will be uncovered.

Simply put, oral argument is not really an argument; rather, it is a conversation among legal minds in furtherance of finding answers to questions created by clients. When counsel is comfortable having a conversational dialogue with the Justices, rather than stuck on an outline or notes, the process is much more productive and enjoyable for everyone. Embrace this exhilarating experience, which is both intellectual and pragmatic. Once the argument is over, it is time to wait for an opinion. So take time to decompress, say twenty minutes, and then move on to the stack of cases waiting back at your office.

I. Judicial Opinions

In 2013, the Court issued an *Order Adopting the Wyoming Supreme Court Internal Operating Procedures, as Amended* ("Order").[174] Pursuant to the Order, "[w]ithin [ninety] days after assignment of an opinion to a justice for writing,

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[172] *See infra* Appendix K.

[173] *See infra* Appendix K.

[174] *See* Order Adopting the Wyoming Supreme Court Internal Operating Procedures, as Amended (Wyo. July 18, 2013), http://www.courts.state.wy.us/Documents/Administration/WscInternalOperatingProcedure.pdf [hereinafter *Internal Operating Procedures*].

an initial draft shall be prepared and shall be circulated to the other justices."[175] Then, other justices must respond to the proffered majority opinion within ten calendar days, indicating a decision to concur, dissent, or specially concur.[176] "After all justices have responded to a circulated opinion, thus causing that circulated opinion to be ready for publication, the opinion shall be published within [twenty] days."[177] Of course, there is an exception to these timelines which allows extensions for up to thirty days and "[i]n exceptional cases, such as death penalty cases, or cases involving many issues, or very complex issues, the Court may entirely waive the applicability of this schedule."[178] The moral is, if your client wants to know exactly when the Court will come down with an opinion, answer accordingly: In four months or so, but it could be a little sooner or perhaps a little longer. However, it is noteworthy that the Court is very devoted to being timely, issuing numerous opinions well before the deadlines set out in the Order.

III. CONCLUSION

Learn the rules of appellate procedure. Timely perfect the notice of appeal. Bust out a brief that is clear, cogent, and captures the Court's attention. Have a collegial conversation with the Justices at oral argument. Play the game better than anyone else.

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[175] *Internal Operating Procedures*, *supra* note 174, at Rule 3(b)(i).

[176] *Internal Operating Procedures*, *supra* note 174, at Rule 3(b)(ii).

[177] *Internal Operating Procedures*, *supra* note 174, at Rule 3(d).

[178] *Internal Operating Procedures*, *supra* note 174, at Rule 3(b)(v).

APPENDIX A: GENERAL ORDER 97-1

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1996

IN THE SUPREME COURT
STATE OF WYOMING
FILED
JAN 29 1997
JUDY PACHECO, CLERK

In the Matter of the Imposition of Sanctions for Failure to Mail a Copy of the Notice of Appeal to the Clerk of the Supreme Court Simultaneously with the Service and Filing thereof in the Trial Court	)))))	*General Order 97-1*

ORDER IMPOSING SANCTIONS FOR FAILURE TO COMPLY WITH WYO. R. APP. P. 2.01(a)

THE COURT having taken notice, in connection with review of those cases appealed to this Court, of the frequent failure of appellate practitioners to comply with that portion of WYO. R. APP. P. 2.01(a) which requires mailing of a copy of the **Notice of Appeal**, as more fully described at WYO R. APP. P. 2.07, to the Clerk of the Supreme Court simultaneously with the filing thereof in the trial court and concurrent service in accordance with provision of Rule 5, W.R.C.P. (or as provided in Rule 32(c)(4), W.R.CR.P.); wherefore,

THE COURT finds that less stringent efforts to resolve the aforementioned problem have only served to create additional work for the Clerk of this Court and the clerks of the various district courts without relieving the problem or reforming the offending practitioners; and,

THE COURT finds that WYO. R. APP. P. 1.03 sanctions upon those appellate practitioners who persist in failing to mail a copy of the **Notice of Appeal**, as described at WYO. R. APP. P. 2.07, to the Clerk of the Supreme Court, simultaneously with the filing thereof in the trial court and concurrent service, afford the best means of solving the problem. It is, therefore

ORDERED, effective February 1, 1997, appeals docketed in the Wyoming Supreme Court wherein counsel for appellant has neglected, failed or refused to mail a copy of the **Notice of Appeal**, as described at WYO. R. APP. P. 2.07, to the Clerk of the Court simultaneously with the filing thereof in the trial court and service in accord with the requirements of WYO. R. APP. P. 2.01(a), shall be sanctioned in the amount of one hundred and fifty dollars ($150.00) payable to the Clerk of the Supreme Court pursuant to the following terms and conditions:

1. The Clerk of the Supreme Court shall, at the time of docketing any appeal wherein the **Notice of Appeal**, as described at WYO. R. APP. P. 2.07, has not been mailed to the said Clerk simultaneously with the filing thereof in the trial court and service in accord with the requirements of WYO. R. APP. P. 2.01(a), notify the Chief Justice of the Supreme Court of counsel's failure to fully comply with WYO. R. APP. P. 2.01(a);

APPENDIX A: GENERAL ORDER 97-1, CONTINUED

2. Upon receipt of the foregoing notification from the Clerk of Court, the Chief Justice shall, pursuant to authority of WYO. R. APP. P. 1.03, cause an order to be made and entered in the said appeal, sanctioning counsel for the appellant in the amount of one hundred and fifty dollars ($150.00) payable to the Clerk of the Supreme Court from counsel for the appellant; and

3. Upon issuance of the order aforesaid, counsel for the appellant shall have thirty (30) days from the entry of said order to remit the one hundred and fifty dollar ($150.00) sanction to the Clerk of the Supreme Court, and this counsel shall not omit, under penalty of dismissal of the underlying appeal; and it is, finally

ORDERED that this general order shall remain in full force and effect until such time, if any, as it may be amended by the Court.

DATED this 28th day of January, 1997.

FOR THE COURT:

William A. Taylor
Chief Justice

- General Order 97-1 Page 2 -

APPENDIX B: GENERAL ORDER 10-1

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 2010

IN THE MATTER OF SETTING OF	)	
DOCKET AND SERVICE FEES IN THE	)	**General Order 10-1**
WYOMING SUPREME COURT	)	

ORDER SETTING DOCKET AND SERVICE FEES FOR THE WYOMING SUPREME COURT

THIS MATTER came before the Court upon its own motion in connection with consideration of amendments to this Court's General Order 00-1, entered on May 9, 2000. In accordance with W.R.A.P. 2.09(b), W.S. Sections 5-2-120, 5-2-202, and 5-2-121, the Court finds that General Order 00-1 should be vacated and the contents of this order shall serve in its place. It is therefore

ORDERED that effective July 1, 2010, General Order 00-1 is vacated in its entirety; and it is

FURTHER ORDERED that the following docket and service fees to be collected by the Clerk of the Wyoming Supreme Court, be and they are hereby, established effective July 1, 2010, as follows:

1. For the docketing of an appeal or any original proceeding, including any matters brought to the supreme court by the certification process or the writ of review, $95.00, $10.00 of which shall be deposited into the judicial systems automation account established by W.S. Section 5-2-120; and $10.00 of which shall be deposited into the indigent civil legal services account established by W.S. Section 5-2-121.

2. The sum of $5.00 for issuing certified court documents and certification of records.

3. The sum of $10.00 for certificates of good standing of attorneys.

4. The sum of $.50 per page for reproducing any document, record or other paper.

5. The sum of $10.00 for replacement, duplication, or renewal of admission certificate.

6. For notary service, fee as set by W.S. Section 32-1-112.

IT IS FURTHER ORDERED that this general order shall remain in full force and effect until such time as it may be amended by the Court.

DATED this 22nd day of April, 2010.

BY THE COURT:

Barton R. Voigt
Chief Justice

APPENDIX C: GENERAL ORDER 10-2

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 2010

IN THE MATTER OF THE SETTING OF APPELLATE FILING AND DOCKETING FEES IN THE DISTRICT COURTS, CIRCUIT COURTS, AND MUNICIPAL COURTS	)))))	**General Order 10-2**

ORDER SETTING APPELLATE FILING AND DOCKETING FEES IN THE DISTRICT COURTS, CIRCUIT COURTS, AND MUNICIPAL COURTS

THIS MATTER came before the Court upon its own motion in connection with consideration of amendments to this Court's General Order 00-2, entered on June 27, 2000, and in further consideration of the need to set uniform filing and docketing fees for various appellate filings, other than those filed in the Supreme Court. The Court finds that such uniform fees as set out below should be adopted. It is therefore

ORDERED that effective July 1, 2010, General Order 00-2 is vacated in its entirety; and it is

FURTHER ORDERED that the following filing and docketing fees shall be collected by the various courts as set out more fully below. These fees shall be effective July 1, 2010, as follows:

I. District Courts

1. For all transcripts and records in cases appealed or certified to the Supreme Court, including certificates, seals and transmission, $70.00, of which $10.00 shall be for court automation and $10.00 shall be for indigent civil legal services and both shall be remitted as provided in Wyo. Stat. Ann. §5-3-205.
2. For docketing a petition for review from an administrative agency, $70.00, of which $10.00 shall be for court automation and $10.00 shall be for indigent civil legal services and both shall be remitted as provided in Wyo. Stat. Ann. §5-3-205.
3. For docketing an appeal from a circuit court or municipal court, $70.00, of which $10.00 shall be for court automation and $10.00 shall be for indigent civil legal services and both shall be remitted as provided in Wyo. Stat. Ann. §5-3-205.

II. Circuit Courts and Municipal Courts

1. For the preparation of the record on appeal to the district court, including the certified copy of the docket entries, the sum of $20.00 to be paid at the time of filing of the notice of appeal by the appellant.

IT IS FURTHER ORDERED that this general order be published in the advance sheets of the Pacific Reporter; the Wyoming Court Rules Volume; and be made available online at the Wyoming Judicial Branch's website, http://www.courts.state.wy.us. This general order shall remain in full force and effect until such time as it may be amended by the Court.

DATED this 25th day of May, 2010.

BY THE COURT:

Barton R. Voigt
Chief Justice

APPENDIX D: STATEMENT OF COSTS

IN THE SUPREME COURT, STATE OF WYOMING

[NAME],	)	
Appellant (Plaintiff),	)	
v.	)	
	)	
[NAME],	)	S -__-____
Appellee (Defendant).	)	
	)	

STATEMENT OF COSTS

The Appellant, by and through undersigned counsel, and pursuant to W.R.A.P. 10.01, itemizes the Appellant's costs herein as follows:

1. The Appellant paid the Clerk of the District Court $70.00 upon filing the Notice of Appeal.

2. The Appellant paid the Clerk of the Supreme Court $95.00 upon filing the Notice of Appeal (the Clerk of the District Court forwarded this payment to the Clerk of the Supreme Court pursuant to W.R.A.P. 2.09).

3. The Appellant paid the court reporter, [name of court reporter], a fee of [$1st payment] on [date], [$2nd payment, etc.] on [date], for preparation of the original [names of transcripts], by [check, credit card, gold bullion, etc.].

4. To date, the total cost incurred by the Appellant for this appeal is: $ -----.--. Such amount has been paid in full by the Appellant.

DATED this ___ day of ____, 20___.

[LAW FIRM NAME]
[Attorney Name & Bar No.]
[Address]

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of ____, 20____, a true and accurate copy of the foregoing STATEMENT OF COSTS was served via [Wyoming Supreme Court C-Track Electronic Filing System (CTEF) or attachment to e-filed brief] to the following:

Wyoming Supreme Court
Attn: Clerk [name of clerk, *i.e*, Carol Thompson]
2301 Capitol Avenue
Cheyenne, WY 82002

[Opposing Party]

I have accepted the terms for e-filing and hereby certify the foregoing document has been scanned for viruses and is free of viruses. Additionally, I certify all required privacy redactions have been made.

s/ [SIGNATURE]

APPENDIX E: DESIGNATION OF RECORD

IN THE DISTRICT COURT AND FOR THE _____ JUDICIAL DISTRICT _____ COUNTY, WYOMING

[NAME],	)	
	)	
Plaintiff (Appellant)	)	
v.	)	
	)	Civil Action No. CV-20__-___
[NAME],	)	
	)	
Defendant (Appellee)	)	

APPELLANT'S DESIGNATION OF RECORD FOR TRANSMISSION TO THE WYOMING SUPREME COURT

TO: The Clerk of the Above-Captioned District Court

The Appellant, [Name], hereby designate the following portions of the Record in the above-captioned matter for transmission to the Wyoming Supreme Court pursuant to W.R.A.P. 3.05.

Volume I

[Name of Document(s)] Indexed Pages: [numbers]

Volume II

[Name of Document(s)] Indexed Pages: [numbers]

Volume III

[Name of Document(s)] Indexed Pages: [numbers]

DATED this ___ day of ____, 20___.

[LAW FIRM NAME]
[Attorney Name & Bar No.]
[Address]

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of ____, 20____, a true and accurate copy of the foregoing was served via U.S. MAIL, postage prepaid, to the following:

Wyoming Supreme Court
Attn: Clerk [name of clerk, *i.e*, Carol Thompson]
2301 Capitol Avenue
Cheyenne, WY 82002

[Opposing Party / Appellee]

__[SIGNATURE]__

APPENDIX F: ORDER ADOPTING A PUBLIC DOMAIN OR NEUTRAL-FORMAT CITATION

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM A.D. 2000

IN THE SUPREME COURT
STATE OF WYOMING
FILED

OCT - 2 2000

JUDY PACHECO, CLERK

In the Matter of Adopting)
A Public Domain, Neutral-Format Citation Format)

ORDER ADOPTING A PUBLIC DOMAIN OR NEUTRAL-FORMAT CITATION

This Matter came before the Court by direction of the Board of Judicial Policy and Administration, in recognition of the increasing level of legal research being conducted via the Internet and other electronic resources, to adopt a public domain, neutral-format citation which will support use of legal sources in both the traditional book and electronic formats. Accordingly, IT IS ORDERED that, from and after January 1, 2001:

(1) At the time of issuance, this Court shall assign to all opinions and to those orders designated by this Court for publication (hereinafter referred to as substantive orders) a citation which shall include the calendar year in which the opinion or substantive order is issued followed by the Wyoming U.S. Postal Code (WY) followed by a consecutive number beginning each year with "1" (for example, 2001 WY 1). This public domain, neutral-format citation shall appear on the title page of each opinion and on the first page of each substantive order issued by this Court. All publishers of Wyoming Supreme Court materials are requested to include this public domain, neutral-format citation within the heading of each opinion or substantive order they publish.

(2) Beginning with the first paragraph of text, each paragraph in every such opinion and substantive order shall be numbered consecutively beginning with a ¶ symbol followed by an Arabic numeral, flush with the left margin, opposite the first word of the paragraph. Paragraph numbers shall continue consecutively throughout the text of the majority opinion or substantive order and any concurring or dissenting opinions or rationale. Paragraphs within footnotes shall not be numbered nor shall markers, captions, headings or Roman numerals, which merely divide opinions or sections thereof. Block-indented single-spaced portions of a paragraph shall not be numbered as a separate paragraph. All publishers of Wyoming Supreme Court materials are requested to include these paragraph numbers in each opinion or substantive order they publish.

(3) In the case of opinions which are not to be cited as precedent (per curium opinions) and in the case of all substantive orders (unless otherwise specifically designated by this Court), the consecutive number in the public domain or neutral-format citation shall be followed by the letter "N" to indicate that the opinion or substantive order is not to be cited as precedent in any brief, motion or document filed with this Court or elsewhere (for example, 2001 WY 1N).

(4) In the case of opinions or substantive orders which are withdrawn or vacated by a subsequent order of this Court, the public domain, neutral-format citation of the withdrawing or vacating order shall be the same as the original public domain, neutral-format citation but followed by a

APPENDIX F: ORDER ADOPTING A PUBLIC DOMAIN OR NEUTRAL-FORMAT CITATION, CONTINUED

letter "W" (for example, 2001 WY 1W). An opinion or substantive order issued in place of one withdrawn or vacated shall be assigned the next consecutive number appropriate to the date on which it is issued.

(5) In the case of opinions or substantive orders which are amended by a subsequent order of this Court, the public domain, neutral-format citation of the amending order shall be the same as the original public domain, neutral-format citation but followed by a letter "A" (for example, 2001 WY 1A). Amended paragraphs shall contain the same number as the paragraph being amended. Additional paragraphs shall contain the same number as the immediately preceding original paragraph but with the addition of a lower case letter (for example, if two new paragraphs are added following paragraph 13 of the original opinion, the new paragraphs will be numbered ¶13a and ¶13b). If a paragraph is deleted, the number of the deleted paragraph shall be skipped in the sequence of paragraph numbering in any subsequently published version of the amended opinion of substantive order, provided that at the point where the paragraph was deleted, there shall be a note indicating the deletion of that paragraph.

(6) For cases decided between January 1, 2001, and December 31, 2003, for documents filed with the Court, a proper citation shall also include the volume and initial page number of the West Pacific Reporter in which the opinion is published. For cases decided after December 31, 2003, reference to the volume and initial page number of the West Pacific Reporter in which the opinion is published shall be optional in documents filed with the Court. The Wyoming Reporter will remain the official reporter of this Court's opinions and, where West Pacific Reporter citations are available at the time an opinion is issued, this Court will continue to cite to the West Pacific Reporter in addition to the public domain, neutral-format citation in all of its opinions.

(7) The following are examples of proper citations to Wyoming Supreme Court opinions:

For cases decided before January 1, 2001:
Primary cite:
Roe v. Doe, 989 P.2d 472 (Wyo. 1997).
Primary cite with pinpoint cite:
Roe v. Doe, 989 P.2d 472, 475 (Wyo. 2001).
Pinpoint cite alone:
Roe, 989 P.2d at 475.

For cases decided from and after January 1, 2001 to December 31, 2003:
Primary cite:
Doe v. Roe, 2001 WY 12, 989 P.2d 1312 (Wyo. 2001).
Primary cite with pinpoint cite:
Doe v. Roe, 2001 WY 12, ¶44, 989 P.2d 1312, ¶44 (Wyo. 2001).
Pinpoint cite:
Doe, ¶¶44-45.

APPENDIX F: ORDER ADOPTING A PUBLIC DOMAIN OR NEUTRAL-FORMAT CITATION, CONTINUED

For cases decided from and after December 31, 2003:
Primary cite:
Doe v. Roe, 2001 WY 12
or
Doe v. Roe, 2001 WY 12, 989 P.2d 1312 (Wyo. 2001).
Primary cite with pinpoint cite:
Doe v. Roe, 2001 WY 12, ¶¶44-45.
or
Doe v. Roe, 2001 WY 12, ¶44, 989 P.2d 1312, ¶44 (Wyo. 2001).
Pinpoint cite:
Doe, ¶44-45.

DATED this 2 day of October, 2000.

BY THE COURT:

LARRY J. LEHMAN
Chief Justice
Chairman, Board of Judicial
Policy and Administration

APPENDIX G: ORDER AMENDING CITATION FORMAT

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM A.D. 2005

In the Matter of Adopting A Public)
Domain, Neutral-Format Citation Format)

IN THE SUPREME COURT
STATE OF WYOMING
FILED

AUG 19 2005

JUDY PACHECO, CLERK
Carol Thompson
by DEPUTY

ORDER AMENDING CITATION FORMAT

THIS MATTER having come before the Court upon its own motion, the Court finds:

1. By Order dated October 2, 2000, the Court adopted a public domain neutral-format citation, with pinpoint citations to be as follows:

Doe v. Roe, 2001 WY 12, ¶ 44, 989 P.2d 1312, ¶ 44 (Wyo. 2001)

2. Experience indicates that inclusion of the West Pacific Reporter page number, rather than repetition of the paragraph number, would enhance legal research efforts. It is therefore

ORDERED that the Order Adopting A Public Domain or Neutral-Format Citation dated October 2, 2000, be and it is hereby amended to provide that pinpoint citations shall be in the following format:

Doe v. Roe, 2001 WY 12, ¶ 44, 989 P.2d 1312, 1320 (Wyo. 2001)

DATED this 19TH day of August, 2005.

BY THE COURT:
William U. Hill
William U. Hill
Chief Justice

APPENDIX H: E-FILING NOTICE TO COUNSEL

E-FILING NOTICE TO COUNSEL

The Wyoming Supreme Court instituted mandatory electronic filing July 1, 2008. As a Wyoming lawyer, you are required to review the training materials and pass the test to become a user of the C-Track Electronic Filing system (CTEF) prior to electronically filing documents in the Court.

If you are not registered as an electronic filer in CTEF, you will not be sent any electronic notice by the Supreme Court of filings including orders entered by the Court.

On November 1, 2010, the Court began serving and posting all orders regarding cases electronically. The electronic notice constitutes service and no paper copies will be mailed. Wyoming attorneys participating in Supreme Court cases should take the training as soon as possible to guarantee service of orders and briefs.

The manuals and test are found by going to the Court's website at http://www.courts.state.wy.us. After you have read the E-filing Manual and Policies and Procedures, you may take the test and submit it to the Clerk's office for review and approval.

The Court will consider a motion to be excused from electronic filing for good cause shown if filed prior to the due date for filing of briefs. Good cause may be not having access to the Internet, but would not include such things as not having time to take the training course. One hour of CLE credit will be earned for completion of the test, and may be submitted to the Wyoming State Bar for credit.

Please feel free to contact the Clerk's office at 777-7316, or cthompson@courts.state.wy.us if you have any questions or concerns.

APPENDIX I: ORDER ADOPTING REVISED APPELLATE RULES RE RULE 14.03

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 1997

IN THE SUPREME COURT
STATE OF WYOMING
FILED

JUN 13 1997

Judy Pacheco
JUDY PACHECO, CLERK

In the Matter of the Adoption)
of Amendments to the Wyoming)
Rules of Appellate Procedure)

ORDER ADOPTING REVISED WYOMING RULES OF APPELLATE PROCEDURE

The members of the Permanent Rules Advisory Committee, Appellate Division have submitted amendments to the Wyoming Rules of Appellate Procedure. The Court finds those amendments should be adopted; it is therefore

ORDERED that the amendments to the Wyoming Rules of Appellate Procedure, a copy of which is attached hereto, are adopted and that those amendments be published in the advance sheets of the Pacific Reporter and in the Wyoming Reporter. The amendments shall become effective 60 days after their publication in the advance sheets of Pacific Reporter and thereafter shall be spread at length upon the journal of this court.

DATED this 13th day of June, 1997.

BY THE COURT:

William A. Taylor

William A. Taylor
Chief Justice

APPENDIX I: ORDER ADOPTING REVISED APPELLATE RULES RE RULE 14.03, CONTINUED

~~the 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 this rule "legal holiday" includes any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the chief justice of the Wyoming Supreme Court.

Rule 14.03. Additional time after service by mail.

Whenever a party has the right, or is required to do some act or take some proceedings within a prescribed period from or after the service of a brief, notice or other paper upon that party, and the brief, notice or other paper, is served upon the party by mail or by delivery to the clerk, three days shall be added to the prescribed period.

[Comments: The three additional days for mailing shall be computed as part of the original period and not as a separate period (overruling Sellers v. Employment Sec. Comm'n, 760 P.2d 394 (Wyo. 1988).

APPENDIX J: PRACTITIONER'S GUIDE TO ORAL ARGUMENT

PRACTITIONER'S GUIDE TO ORAL ARGUMENT BEFORE THE WYOMING SUPREME COURT

The Court offers this guide as a means of assisting practitioners to effectively represent their clients in oral argument. Attorneys and parties to appeals will also find useful information in the Supreme Court timeline at the end of this guide. This guide is intended to supplement, and not to replace, those portions of the Wyoming Rules of Appellate Procedure governing oral argument before the Court. All references to rules in this guide are to the Wyoming Rules of Appellate Procedure, and any conflicts should be resolved by referring to the Rules, which govern.

LOCATION & SECURITY

The Supreme Court and Clerk's Office are located at 2301 Capitol Avenue, Cheyenne, Wyoming. There is no dedicated parking for visitors or attorneys appearing before the Court. Visitor parking is located on the north side of the State Museum Building east of the Supreme Court Building. Counsel and visitors must use the main entrance on Capitol Avenue and will be subject to security screening.

ORAL ARGUMENT SCHEDULE

Oral arguments are usually held every month except July and September, although the Court may hold arguments in conjunction with the State Bar Convention in September, depending on where the convention is held. Oral argument calendars are posted on the Court's Web site www.courts.state.wy.us. Cases are set for argument approximately five to six weeks prior to argument. A case may be set any time after the brief of the Appellee or Respondent is filed. The Court conducts oral argument at the University of Wyoming College of Law in the fall, and when invited to do so, it may also hear oral argument in communities around the State of Wyoming to afford citizens the opportunity to see the Court in session. If counsel are scheduled to appear at a location other than the Supreme Court Building, they will be so advised in advance.

WHO MAY ARGUE

Any attorney who plans to argue before the Supreme Court of Wyoming must be a member of the bar and appear as an attorney of record. Counsel who are uncertain whether they have entered an appearance in a case should confirm that they have done so with the Clerk of Court by reviewing the Court's electronic docket before any scheduled argument. Counsel not admitted to the Wyoming Bar must comply with the rules regarding admission pro hac vice, and local Counsel must be present unless excused by the Court before argument.

An amicus curiae who has been authorized to file a brief may not participate in oral argument without prior leave of the Court. Leave should be sought as soon as possible after the case is set for oral argument.

PREPARATION

APPENDIX J: PRACTITIONER'S GUIDE TO ORAL ARGUMENT, CONTINUED

Counsel should be fully prepared for the presentation and judicial dialogue that constitutes oral argument. Inexperienced attorneys would be well advised to confer with an experienced lawyer for tips on how to proceed. It is often beneficial for Counsel to attend an argument session or listen to the streamed audio of an argument before they are to appear before the Court. Attorneys, parties, and any other interested person may connect to the streamed audio through the Supreme Court website if the case being argued is not confidential.

ARRIVING AT COURT

The Court typically schedules three to five cases for argument each day it is in session. All cases to be heard on a given day are set at 9 a.m. unless indicated otherwise on the setting. Counsel must report to the Clerk's office no later than fifteen minutes prior to the start of oral arguments (normally 8:45). They must provide an estimate of the time they will need for their argument. The Appellant/Respondent may reserve time for rebuttal. When the Court hears an appeal and cross appeal, both parties may reserve time for rebuttal. Counsel for all cases must be in the courtroom when Court is opened (normally 9 a.m.) for docket call. The Chief Justice will advise counsel in all cases set on a given day when they must return to the courtroom, although counsel, parties, and the public are welcome to remain in the courtroom except for those cases which are confidential (for example, juvenile proceedings and adoptions). Counsel should advise the Clerk of Court in advance of any special accommodation that they or the parties may require. Hearing-assistive devices are available.

TIME

Unless the Court orders otherwise in advance of argument, the total time allocated to all parties in a given matter is 60 minutes. The Appellant and the Appellee are each allotted a total of 30 minutes for oral argument, regardless of the number of parties in each category. Division of time among Appellants or Appellees is the responsibility of counsel for those parties.

Counsel for Appellant argues first. If he or she exceeds the time requested for the opening portion of the argument, the additional time used will be taken from time for rebuttal. If more than one attorney participates in the argument for Appellant or Appellee, and one of the attorneys exceeds the agreed-upon time, the excess will be deducted from the other attorney's time. Counsel who are sharing argument time are encouraged to inform the Court of their plan for argument. For example, the Appellant's Counsel might say, "I will address the --- issues, and counsel for [the other Appellant] will address the --- issues."

MANAGING TIME:

The Court uses a "traffic light" for oral argument. When counsel goes to the podium, a green light will be lit. When five minutes is left in the argument, the light will change to yellow and when that time is up, the light will change to red. If you are answering a question posed by the Court and your time expires, you should promptly complete the answer and be seated. When counsel for Appellant has reserved time for rebuttal, the lights are set to the amount of time reserved for the opening portion of the argument. For example, if Appellant reserved 10 minutes for rebuttal, the yellow light will go on at the 15 minute mark, and the red light at the 20 minute mark. Attorneys in that situation may continue after the red light is lit if they wish, and the

APPENDIX J: PRACTITIONER'S GUIDE TO ORAL ARGUMENT, CONTINUED

additional time used will be deducted from that available for rebuttal. Counsel may ask the Clerk of Court how much time remains when beginning rebuttal if they are uncertain as to how much time they have used. Counsel should be attentive to the lights and should not require the Chief Justice to advise them that their time has expired.

The time allotted for argument passes quickly, especially when members of the Court ask numerous questions. Counsel should be prepared to present argument concerning the most significant aspects of the case concisely. The Court does not measure the persuasive force of an argument by its duration.

COURTROOM ETIQUETTE

Dignified behavior, appearance, and attitude are required in any Wyoming court, including the Supreme Court. Counsel should wear business attire suitable for argument before the state's highest court.

Personal computers and other electronic devices required for argument may be used only at counsel table during argument. Counsel must ensure, however, that those devices do not create any visual or audio disturbance. Court Security does not take electronic devices from clients or members of the public, but they must be turned off in the courtroom. There is an attorney conference room across the atrium from the courtroom, and attorneys and parties are welcome to use their devices in that room or the atrium if they wish.

The Justices enter the courtroom through an entrance behind the bench. They sit in order of seniority, with the Chief Justice in the middle, most senior Justice to his right, second in seniority to his left and so forth.

Counsel for the Appellant should sit at the counsel table to the right of the bench as one faces the bench, and counsel for the Appellee should sit to the left. Seating at counsel tables and in the well is limited to participating Counsel and critical support personnel. Parties attending argument are not allowed to sit at counsel table, but are welcome to sit in the gallery. Additional attorneys affiliated with counsel presenting argument may also be seated at the appropriate table or in the chairs in front of the bar.

Counsel must argue from the lectern. The microphone for the sound system is on the lectern, as is the light which advises attorneys of the time remaining for argument. For the record and for the benefit of those listening to the audio stream, attorneys should introduce themselves and identify the party on whose behalf they appear. It is customary to open an argument by acknowledging the Court: "Chief Justice and Justices of the Supreme Court," "May it please the Court," or a similar respectful form of address. Counsel should refer to the members of the Court as "Justice" or "Your Honor." It is improper to refer to the Court as "you guys" or with some other similar colloquial phrase.

If counsel wish to use physical exhibits or demonstrative materials in argument, the Court prefers they provide a photocopy for each Justice and the opposing attorneys. The configuration of the courtroom and the need to compile an accurate audio record of oral argument pose challenges to those who use charts, photographic blow-ups or other large physical exhibits. If

APPENDIX J: PRACTITIONER'S GUIDE TO ORAL ARGUMENT, CONTINUED

physical exhibits are used, they must be positioned to the side of the lectern so counsel do not have to move away from the microphone because of the need to use the sound system for the benefit of the gallery and those listening to the streaming audio. Photocopies of materials to be used must be provided to the Clerk before argument for distribution to the justices. Counsel should not enter the area between the lectern and the bench while the Court is on the bench unless granted leave to do so by the Chief Justice.

Counsel should be mindful that the argument is being streamed live and should not disclose any information that would be subject to the Redaction Rules, such as a minor child's name, an account number, or other personal information.

Computer-assisted presentations can be quite helpful in argument, but as of the date this guide is written, the courtroom is not set up well for that mode of presentation. If counsel believe that they need to utilize a computer-assisted presentation, they should advise the Clerk of the equipment to be used and where it will be positioned. The Clerk may confer with the Chief Justice, who will decide whether such a presentation will be helpful and possible given the current configuration. Computer-assisted presentations have proven quite effective at other locations, such as the College of Law.

PRESENTING AN EFFECTIVE ORAL ARGUMENT

Treatises have been written on the art of appellate advocacy, and the limited information presented here certainly cannot be anywhere near so exhaustive. The Court offers a few tips, however. Counsel may safely assume that all of the Justices have read the briefs filed in the case, and that their staff attorneys may have also reviewed all or part of the transmitted record. Whether or not it is helpful to attempt to delve deeply into the facts of a case will depend upon the nature of the issues on appeal. It is often not particularly helpful to plan on restating the facts at length. It is generally a better practice to refer to relevant facts during legal argument. Counsel can expect that justices who have questions about facts will ask them.

Argument should focus on the questions presented by the appeal. Counsel should also anticipate that any ruling the Court makes will impact many other cases, and should be prepared to assist the Court in evaluating the overall implications of any ruling it is being asked to make.

Oral argument is a dynamic exchange between Counsel and the Court. Members of the Court hope to resolve questions they perceive to be important, and to clarify positions, facts, and contentions. Counsel should not plan on reading from a prepared script or assume that the Court will address issues in the same order that they were presented in briefing.

Counsel should avoid overwrought oratory and remember that the Supreme Court is not a jury. A well-reasoned, logical, and conversational presentation should be the appellate attorney's goal. Counsel should take special care to avoid unprofessional, emotional, or impolite written or oral statements or conduct disparaging of other attorneys, parties, the trial courts, or citizens. The Court expects the highest degree of civility in argument.

Counsel should ensure that specialized terms are adequately defined in the briefs and clarified in oral argument as needed. Attorneys should be familiar with the record and the

APPENDIX J: PRACTITIONER'S GUIDE TO ORAL ARGUMENT, CONTINUED

procedural history of the case. Justices frequently ask if particular matters are in the record. It is helpful if Counsel can provide the volume and page where the information can be found.

Counsel should avoid making assertions of facts which are not in the record. If a member of the Court asks a question that would require reference to matters not in the record, Counsel should begin his or her answer by so stating and then proceed to respond to the question unless directed to do otherwise. Unless Counsel has complied with Rule 7.04 of the Wyoming Rules of Appellate Procedure governing the use of additional authorities, Counsel should refer during argument only to cases or other authorities cited in the briefs.

RESPONDING TO QUESTIONS

Oral argument allows the Justices to explore questions they have after reviewing the briefs, to sharpen their understanding of the rules the parties are advocating, to explore the implications of a ruling, and to determine whether the parties may agree on certain issues. Counsel should expect questions from the Court and answer them directly. Counsel should not fear answering questions with "yes," "no," or "I don't know." Candor is essential. It is wise for attorneys to remember that a question is an opportunity – if the question is not asked or is not answered in argument, it may become a topic of discussion in conference or the formulation of the opinion, when counsel will not be able to address it.

It is rarely wise to defer or delay answering a question a Justice has posed. The argument may be completed before the attorney can return to it. When being addressed by a Justice, Counsel should avoid interrupting the Justice.

MISCELLANEOUS

The Clerks' Office will answer questions about procedure and protocol on an ex parte basis. All requests for permission to deviate from normal procedure should be submitted in writing prior to the argument.

MEDIA

Print and broadcast media representatives may be present during oral argument. Counsel are advised to respect the setting and nature of the occasion in any comment they may offer. Further information regarding electronic devices in the Courtroom can be found at www.courts.state.wy.us, Rules of the Supreme Court of Wyoming, Rule 5.

SUPREME COURT TIMELINE

Attorneys and their clients often have questions for the Clerk's Office regarding the process of appeals. A variety of factors can affect the time from docket to disposition, including delays in production of the transcripts; extension of time to file a brief; and stays. Once under advisement, it will not be first in, first out; cases involving children take priority and a complex case will take more time than an issue that the Court has previously decided. What follows are the steps in the appeal process.

APPENDIX J: PRACTITIONER'S GUIDE TO ORAL ARGUMENT, CONTINUED

Filing Notice of Appeal: After entry of the final order, judgment & sentence, a party has 30 days from the date the order was **filed** in the District Court to file a Notice of Appeal.

Trial Court Record: It is critical that Appellant have a record for the Supreme Court to review. Transcripts, statement of the evidence or agreed statement are to be filed 60 days after the Notice of Appeal is filed. If redactions are necessary, that will add another 30 or more days.

Docketing and Briefing: After the previous steps are complete, the case is docketed in the Supreme Court and notice goes to the parties. Appellant has 45 days after service of this notice to file its opening brief. Appellee has 45 days after service of Appellant's brief to file its brief. Appellant has 15 days after service of Appellee's brief to file a reply brief to respond to a new issue or argument raised by Appellee. Three additional days for service will be added to each period.

Oral Argument/Briefs Only Docket: The case will be assigned to one of these dockets and will go before the Court as soon as possible.

Under Advisement: Once an appeal is taken under advisement by the Court, an initial vote will be taken on the outcome of the case and it will be assigned to a Justice to write the opinion on behalf of the Court. Within 90 days the initial draft will be circulated to the other Justices who will then have 10 days to respond. If a Justice chooses to write a dissent or concurrence, it will be circulated within 30 days and the other Justices will then have 5 days to respond. Any of these timeframes may be extended for up to 30 days. After all responses have been submitted, the opinion will be published within 20 days. In extraordinary cases such as a death penalty appeal, this schedule may be waived.

Filing of Notice of Appeal:	30 days
Record Completion:	60 days
Docketing:	5 days
Briefing:	115 days
Oral Argue/Briefs Only	35 days
Under Advisement	120 days
	365 days*

***This illustration is for informational purposes and does not reflect the actual number of days any of the events may take for completion in the appeals process. Delays in filing transcripts, extensions of time, or staying proceedings may significantly extend the time from filing the notice of appeal to publication of the Supreme Court's opinion.**

APPENDIX K: ORAL ARGUMENT INFORMATION FOR COUNSEL

ORAL ARGUMENT INFORMATION FOR COUNSEL

1. Oral argument is being broadcast to the public by a live audio stream via the internet. Please state your name and who you represent for the record at the beginning of your argument. Confidential cases are excluded from broadcast.

2. Your clients are welcome in the courtroom gallery, but may not sit at counsel table with you.

3. If you have handouts for the justices, please give them to the clerk when you check in prior to argument. They will be placed on the bench prior to the start of your argument.

4. If you need an easel for poster exhibits, one is available in the courtroom. Please place the easel as near to the lectern as possible so that you do not have to leave the recording area.

5. Your argument is being recorded as well as streamed to the public. The microphones are fairly sensitive, but please do not wander from the lectern or stand too far from it since this may prevent portions of your argument from being recorded or heard by the listening audience.

6. If you are arguing as an appellant and have reserved time for rebuttal, you may continue your argument after the red light appears in your main argument, but be aware that the time is being deducted from what you reserved for rebuttal. Whether arguing as an appellant or appellee, you may always finish your thought, or finish answering a question from a justice.

   Thank you for your cooperation. If you have any questions, or need anything else for presentation of your argument, please do not hesitate to ask the clerk.