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Civil Procedure and Supreme Court Rules

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CIVIL PROCEDURE AND SUPREME COURT RULES

In the October term of the Wyoming Supreme Court, the following Wyoming Rules of Civil Procedure and Rules of the Wyoming Supreme Court were adopted and amended. The effective date of the new Wyoming Rules of Civil Procedure, 71.1, 72.1 and Form 29, and amended Wyoming Rules of Civil Procedure, 1, 6, 50, 51, 52, 59, 72, 73, 75, 81 and 87 was March 21, 1966. The effective date of amended Wyoming Rule of Civil Procedure 76 and amended Rules of the Wyoming Supreme Court, 2, 9, 12 (b) and 12 (c) (4) was March 22, 1966.

NEW WYOMING RULES OF CIVIL PROCEDURE

Rule 71.1 Condemnation of Property.

(a) *Applicability of Other Rules.* The Wyoming Rules of Civil Procedure govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this rule.

(b) *Joinder of Properties.* The plaintiff may join in the same action any number of separate parcels of property, rights or interests situated in the same county and the compensation for each shall be assessed separately by the same or different appraisers as the court may direct.

(c) *Complaint.*

(1) *Caption.* The complaint shall contain a caption as provided in Rule 10(a).

(2) *Contents.* The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property, a designation of the defendants who have been joined as owners thereof of some interest therein, together with their residences, if known, and whether the plaintiff demands immediate possession or desires to continue in possession. Upon the commencement of the action the plaintiff shall join as defendants those persons having or claiming an interest in the property as owner, lessee or encumbrancer whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property as owner, lessee or encumbrancer whose names can be ascertained by a reasonably diligent search of

the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. Other defendants, as described in Rule 4(i), shall be made defendants when they are necessary parties. Process shall be served as provided in subdivision (d) of this rule upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added.

(d) *Order for Hearing; Process; Answer.*

(1) *Order for Hearing.* At the time of filing the complaint, the plaintiff shall apply to the court for an order fixing the time and place for a hearing on the complaint.

(2) *Process.* Summons shall be issued and served and proof of service shall be made in accordance with Rule 4. The summons and complaint shall be served together. The summons shall state the time and place of the hearing at which the defendant is to appear and defend, and shall further notify the defendant that if he fails to appear at said time and place, judgment will be rendered for plaintiff condemning defendant's interest in the property therein described, appointing appraisers to ascertain the compensation to be paid therefor, and permitting plaintiff, if application therefor has been made as provided in subdivision (e) of this rule, to take possession or to continue in possession thereof upon the payment into court of such sum of money as may be required, or upon the giving of such approved security as may be determined by the court, and shall further notify the defendant that if he desires to contest the plaintiff's right to take the property, or the necessity therefor, he shall, prior to the time set for hearing, file with the court an answer to the complaint.

(3) *Answer.* No answer is required unless defendant desires to contest the plaintiff's right to take the property or the necessity therefor, in which event the answer shall be filed prior to the time set for hearing. If no answer is filed, defendant may file an appearance with the clerk describing the property in which he claims an interest so as to facilitate his prompt receipt of notices.

(e) *Hearing.* The hearing shall be held not less than

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

(f) *Amendment of Pleadings.* With the leave of court, the plaintiff may amend the complaint at any time before the award of compensation is made, and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by subdivision (k) of this rule. The plaintiff shall serve a copy of any amendment, as provided in Rule 5(b), upon any party affected thereby who has appeared. If

a party has not appeared in the action and is affected by the amendment, then a notice directed to him shall be served personally or by publication or other substituted service in the manner provided in subdivision (d).

(g) *Substitution of Parties.* Substitution of parties may be made in accordance with Rule 25.

(h) *Appraisers, Procedure.* The appraisers appointed by the court, before entering upon the duties of their office, shall take an oath to faithfully and impartially discharge their duties as said appraisers. The court shall instruct them in writing as to their duties and as to the applicable and proper law to be followed by them in making their ascertainment. They shall carefully inspect and view the property sought to be taken or affected and shall thereupon ascertain and certify the compensation proper to be made to the defendant, or defendants, for the real or personal property to be taken or affected, according to the rule of damages as set forth in the written instructions given by the court. They shall make, subscribe and file with the clerk of the district court in which the action is pending a certificate of their said ascertainment and assessment in which the real or personal property shall be described with convenience, certainty and accuracy. Fees allowed the appraisers shall be fixed by the court.

(i) *Order of Award.* The district judge, upon filing of the certificate of appraisers under subdivision (h) above, or upon entry of the jury verdict under subdivision (j) below, and upon receiving due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the county treasury, or other place for that purpose approved by the court, shall make and cause to be entered an order describing the real or personal property taken, the compensation ascertained, and the mode of making compensation or deposit thereof as aforesaid. A certified copy of said order shall be recorded and indexed in the office of the register of deeds of the proper county. Upon the entry of such order, the plaintiff shall have such rights in the condemned property as are granted to him by the statutes of this state authorizing the exercise of the power of eminent domain

by plaintiff and which have been the subject matter of his action.

(j) *Jury Trial.* When an assessment shall have been regularly made by the appraisers, as aforesaid, either party, within thirty days after the filing of the certificate of such assessment, if not satisfied with the award, may demand, and shall be entitled to, a trial by jury in the district court of the issue of just compensation.

(1) Demand. Either party may demand a trial by jury in such instances by filing with the clerk of court and by serving upon the other parties in accordance with Rule 5(b) a demand therefor, in writing, within thirty days after the filing of the certificate of assessment by the appraisers.

(2) Procedure in Trial by Jury. The said trial by jury shall be conducted in the same manner as trials by jury in civil actions, and the provisions of Rule 59 of these rules relating to new trial shall be applicable.

(3) Verdict. The jury shall determine the compensation proper to be made to the defendant, or defendants, and shall render its verdict, in writing, signed by the foreman, which shall be entered of record.

(k) *Dismissal of Action.*

(1) As of Right. If no certificate of appraisers has been filed and the plaintiff has not acquired the title or a lesser interest in or taken possession, the plaintiff may dismiss the action as to that property, without an order of the court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(2) By Stipulation. Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed in whole or in part without an order of the court as to any property by filing a stipulation of dismissal by the plaintiff and defendant affected thereby; and, if the parties so stipulate, the court may vacate any judgment that has been entered.

(3) By Order of the Court. At any time before compensation for a piece of property has been determined and

paid and after motion and hearing, the court for good cause shown may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The court at any time may drop a defendant unnecessarily or improperly joined.

(4) *Effect.* Except as otherwise provided in the notice, or stipulation of dismissal or order of the court, any dismissal is without prejudice.

(1) *Deposit and Its Distribution.* The plaintiff shall deposit with the court any money or bond required by law as a condition to the exercise of the power of eminent domain, or as a condition to the right of continuing or obtaining immediate possession; and, although not so required, may make a deposit when permitted by statute. In such cases the court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. Interest shall not accrue as to the sum deposited by the plaintiff from and after the time the deposit becomes available for distribution to the defendant or defendants. If the compensation finally awarded to any defendant exceeds the amount which has been paid to him on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to him, the court shall enter judgment against him and in favor of the plaintiff for the overpayment.

(m) *Costs.* In any proceeding under this rule costs may be allowed and apportioned between the parties on the same or adverse sides in the discretion of the court.

Rule 72.1. Judicial Review of Administrative Action.

(a) *Applicability.* To the extent that judicial review of administrative action by a district court is available, any person who is aggrieved or adversely affected in fact by a final decision of an agency in a contested case, or who is ag-

grieved or adversely affected in fact by any other agency action or inaction, or who is adversely affected in fact by a rule adopted by an agency, may obtain such review as provided in this rule.

(b) *Definitions.* As used in this rule, the words "agency," "contested case," "party," "person" and "rule" (when referring to an agency or administrative rule) shall have the meanings set forth in Section 1(b) of the Wyoming Administrative Procedure Act, provided, that "agency" shall not mean a sheriff, clerk of court, district court commissioner, master, referee, receiver, appraiser, executor, administrator, guardian, commissioner appointed by a court, or any other officer of a court or officer appointed by a court.

(c) *Petition for Review; Other Proceedings for Review.* The proceedings for judicial review under this rule shall be instituted by filing a petition for review in the district court having venue. All appeals from administrative agencies and all proceedings for trials de novo reviewing administrative action shall be governed by this rule. The relief, review, or redress available in suits for injunction against agency action or enforcement thereof, in actions for the recovery of money, in actions for a declaratory judgment of rights, status, or legal relations based on administrative action or inaction, in actions for mandamus to compel administrative action, and in applications for writs of certiorari and prohibition to review or prevent administrative action shall be available by independent action and shall also be available under a petition for review. In any such suit, action, application or petition, the court may grant, in addition to specific relief prayed for, any relief or redress to which the pleadings, record, and evidence show plaintiff or petitioner is entitled.

(d) *Time; Transcript.* In a contested case, or in a non-contested case where a statute places a time limit on appeal, the petition for review shall be filed within thirty days after the final decision of the agency or denial of a petition for a rehearing, or, if a rehearing is held, within thirty days after the decision thereon, except that upon a showing of excusable neglect based upon the failure of a party to learn of the decision or action, the district court may extend the time for

filing the petition for review not exceeding thirty days from the expiration of the original time herein prescribed. Concurrently with the filing of the petition, the appellant shall order and arrange for the payment of a transcript of the evidence necessary for the appeal, and written evidence of the compliance with this requirement shall be served upon the agency and all parties as provided in Rule 5.

(e) *Stay of Enforcement.* Filing of the petition does not itself stay enforcement of the agency decision. The reviewing court may order a stay upon appropriate terms. If the stay involves an order preventing an agency or another party from committing or continuing an act or course of action, the provisions of Rule 65 relating to injunctions shall apply.

(f) *Requirements of Petition.* The petition for review shall include a concise statement showing jurisdiction and venue and the ground or grounds upon which petitioner contends he is entitled to relief.

(g) *Record.* Within thirty days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. The record in a contested case shall consist of the matter required by Section 7(m) of the Wyoming Administrative Procedure Act. To the extent that any matter so required was not preserved by the agency, and there is no record thereof, the court may take evidence of the matter. The record in all other cases shall consist of the appropriate agency documents reflecting the agency action and the basis thereof. By stipulation of all parties to the review proceedings, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent additions or corrections to the record.

(h) *Presentation of Evidence.* If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material, and there was good reason for failure to present it in the proceeding before the agency, the court in contested cases shall

order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may adhere to or modify its findings and decision after receiving such additional evidence, and shall supplement the record to reflect the proceedings had and the decision made. Supplemental evidence may be taken by the court in cases involving fraud or involving misconduct of some person engaged in the administration of the law affecting the decision. In all cases other than contested cases additional material evidence may be presented to the court.

(i) *Extent of Review.* The review shall be conducted by the court without a jury and shall be confined to the record as supplemented pursuant to the provisions of subdivision (h) of this rule, and to the issues raised before the agency. The court's review shall be limited to a determination of the matters specified in Section 14(c) of the Wyoming Administrative Procedure Act. The court may receive written briefs and may in its discretion hear oral argument.

(j) *Joint or Several Appeals; Agreed Statement.* The provisions of Rules 74 and 76 shall apply as near as may be to appeals from administrative agencies to the district court.

Form 29. Summons in Condemnation

State of Wyoming)	In The District Court
) ss.	First Judicial District
County of Laramie)	Civil Action No.....

A. B.,	}	Summons in Condemnation
Plaintiff,		
v.		
C. D.,	}	
Defendant.		

To the above-named defendant:.....

You are hereby summoned and notified that at o'clockm. on the day of, 19....., a hearing before the above-entitled court at will be held upon plaintiff's complaint which is

herewith served upon you, at which time and place you are to appear and defend.

You are further notified that if you fail to appear at said time and place, judgment will be rendered for plaintiff condemning your interest in the property described in plaintiff's complaint, appointing appraisers to ascertain the compensation to be paid therefor (and permitting plaintiff to take possession or to continue in possession thereof upon the payment into court of such sum of money as may be required, or upon the giving of such approved security as may be determined by the court). (Strike if inapplicable.)

You are further notified that if you desire to contest the plaintiff's right to take the said property or the necessity therefor, you shall, prior to the time set for hearing as above stated, file with the court an answer to the complaint.

Dated, 19.....

(Seal of District Court)

.....
Clerk of Court

.....
Attorney for Plaintiff

.....
Address

**AMENDED WYOMING RULES OF
CIVIL PROCEDURE**

(Amended portions are in italics and deleted portions are indicated by asterisks).

Rule 1

Scope of Rules

These rules govern procedure in all courts of record in the State of Wyoming, in all actions, suits or proceedings of a civil nature, *in all special statutory proceedings except as provided in Rule 81*, and *in * * * all appeals in criminal cases*. In all cases in which statutes of civil procedure are made applicable by statute to the trial of criminal cases, these rules shall govern insofar as they supersede or are in conflict with such statutes. They shall be construed to secure the just, speedy and inexpensive determination of every action.

Rule 6

Time

(b) **Enlargement.** When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court, or a commissioner thereof, for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), 60(b), 72.1, 73(a) and (g), and 75(b), except to the extent and under the conditions stated in them.

Rule 50

Motions for a Directed Verdict and for Judgment Notwithstanding the Verdict

(b) **Motion for Judgment Notwithstanding the Verdict.** When a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the moving party may move not later than ten days after the entry of judgment to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within ten days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative; and a motion to set aside or otherwise nullify a verdict or for a new trial shall be deemed to include a motion for judgment notwithstanding the verdict as an alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of

judgment as if the requested verdict had been directed or may order a new trial. *Motions for judgment notwithstanding the verdict shall be determined within sixty days after the entry of the judgment, and if not so determined shall be deemed denied, unless within such sixty days the determination is continued by order of the court or by stipulation.*

Rule 51

Instructions to Jury; Objection

** * * At any time before or during the taking of evidence, the court may give to the jury such general instructions as to the duties and functions of the court and jury, and the manner of conducting the trial, as it may deem desirable to assist the jury in performing its functions. Such instructions, exclusive of rulings which are recorded by the court reporter for inclusion in any record, shall be reduced to writing, numbered and delivered to the jury with the other instructions and shall be a part of the record in the case.*

At the close of the evidence, or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. Before the argument of the case to the jury is begun, the court shall give to the jury such instructions on the law as may be necessary and same shall be in writing, numbered and signed by the judge, and shall be taken by the jury when it retires. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make any such objection out of the hearing of the jury. All instructions offered by the parties, or given by the court, shall be filed with the clerk and, with the endorsements thereon indicating the action of the court, shall be a part of the record of the cause.

Rule 52

Findings by the Court

(b) Amendment. Upon motion of a party made not later than ten days after entry of judgment the court may amend

special findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When special findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment. *Such motions to amend shall be determined within sixty days after the entry of the judgment, and if not so determined shall be deemed denied, unless within such sixty days the determination is continued by order of the court or by stipulation.*

Rule 59

New Trials; Amendment of Judgments

(f) **Motions for New Trial or to Alter or Amend a Judgment; Time Limit.** Motions for new trial *and motions to alter or amend a judgment* shall be determined within sixty days after the entry of the judgment, and if not so determined shall be deemed denied, unless within such sixty days the determination is continued by order of the court or by stipulation.

Rule 72

General Provisions

(b) **Review by District Court.** A judgment rendered or final order made by * * * *any court* inferior in jurisdiction to the district court may be reversed, vacated or modified * * * *upon an appeal taken to the district court.*

(e) **When Rules Shall Govern.** All appeals to the district court and supreme court shall be governed by these rules, except appeals to the district court from * * * *any court inferior in jurisdiction to the district court*, for trial de novo in the district court. The provisions of Rules 73 to 76, inclusive, which cover the procedure on appeals from the district courts to the supreme court, shall be followed in appeals governed by these rules from *such* inferior tribunals to the district court * * *.

(j) **Costs on Reversal.** When a judgment or final order is reversed, the appellant shall recover his costs, and when

reversed in part and affirmed in part, the court may apportion the costs between the parties in such manner as it deems equitable; and there shall be taxed as a part of such costs the cost of making the transcript of the evidence in the case * * * and for typewriting or printing of briefs, * * * such costs * * * to be computed at the rate allowed by law for making the transcript of such evidence * * *; provided, however, that the supreme court may, by order entered of record, refuse to allow as part of such costs, such costs as may result from the insertion in the transcript of the evidence or in the briefs such parts as may clearly appear to have been unnecessary.

(k) *Costs and Penalties on Affirmance.* When, in any case, the judgment or final order is affirmed, *appellee shall recover the cost for typewriting or printing his brief, such cost to be computed at the rate allowed by law for making the transcript of the evidence. Unless the court certifies that there was reasonable cause for the appeal, there shall also be taxed as part of the costs in the case, a reasonable fee, to be fixed by the court, not less than twenty-five dollars nor more than three hundred dollars, to the counsel of the appellee; and the court shall adjudge to the appellee damages in such sum as may be reasonable, not exceeding five hundred dollars, unless the judgment or final order directs the payment of money, and execution thereof was stayed, when in lieu of such penalty, it shall bear additional interest at a rate not exceeding five percent per annum, for the time for which it was stayed, to be ascertained and awarded by the court * * *.*

Rule 73

Appeal to The Supreme Court

(g) *Docketing and Record on Appeal.* The record on appeal as provided for in Rules 75 and 76 shall be filed with the supreme court and the appeal there docketed within sixty days from the date of filing the notice of appeal; except that, when more than one appeal is taken from the same judgment, the district court may prescribe the time for filing and docketing, which in no event shall be less than sixty days from the date of filing the first notice of appeal. In all cases the

district court for good cause shown may extend the time for filing the record on appeal and docketing the appeal, if its order for extension is made before the expiration of the period for filing and docketing as originally prescribed or as extended by a previous order, but the district court shall not extend the time to a day more than ninety days from the date of filing the notice of the first appeal * * *. *However, the supreme court on proper application may permit the record on appeal to be later filed and docketed (1) where without fault of the appealing party the necessary transcript of evidence was not made available to the appellant within the time limited for filing and docketing the record on appeal if the appealing party produces written evidence that concurrently with the filing and serving of the notice of appeal such appellant had ordered from and arranged with the court reporter the payment for the transcript of those portions of the evidence deemed necessary for the appeal, or (2) upon a showing satisfactory to the supreme court that diligence was used by counsel for appellant and that, for causes beyond his control, the record on appeal could not be docketed within the time limited.*

(h) Jurisdiction. Except as is provided in Rule 75 * * * (k), the supreme court shall not acquire jurisdiction over the cause until the record on appeal is filed with the clerk of the supreme court.

Rule 75

Record on Appeal to the Supreme Court

(a) * * * *Contents of Record on Appeal.* The record on appeal shall contain all the proceedings and evidence in the case unless there is a designation of contents.

(b) * * * *Designation of Contents of Record on Appeal.* If the appellant wishes the record on appeal to contain less than all the proceedings and evidence of the case, the appellant shall within thirty days after filing the notice of appeal serve upon the appellee and file with the district court a designation of the portions of the record, proceedings, and evidence to be contained in the record on appeal, unless the appellee has already served and filed a designation. Within ten days after

the service and filing of a designation, any other party to the appeal may serve and file a designation of additional portions of the record, proceedings, and evidence to be included. If the appellee files the original designation, the parties shall proceed under subdivision (c) of this rule as if the appellee were the appellant.

(c) * * * *Transcript.* The appellant shall within the time required for docketing under Rule 73(g), or such extension of time as may have been granted after a filing under subdivision (k) of this rule, file with the district court a copy of the reporter's transcript of the evidence or proceedings to be included in the record on appeal. If there was a designation and the appellant chose to include only part of the reporter's transcript, the appellant shall also file a copy of such additional parts thereof as the appellee shall have designated under the provisions of subdivision (b) of this rule, and if the appellant fails to do so the court on motion may require him to furnish the additional parts needed. The copy so filed by the appellant shall be available for the use of the other parties. In the event that a copy of the reporter's transcript or of the necessary portions thereof is already on file, the appellant shall not be required to file an additional copy. 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 so certified shall be received as prima facie evidence of the facts, testimony, evidence, and proceedings set forth in such transcript. The reporter shall indicate at the bottom of each page of the transcript the name of the witness, the name of counsel then examining, and the type of examination there appearing.

(d) * * * *Form of Testimony.* Testimony of witnesses to be included in the record on appeal need not be in narrative form, but may be in question and answer form. A party may prepare and file within thirty days of his notice of appeal a condensed statement in narrative form of all or part of the testimony to be included in the record on appeal, and any other party to the appeal, if dissatisfied with the narrative statement, may require testimony in question and answer form to be substituted for all or part thereof.

(e) * * * *Statement of Points.* No assignment of errors is necessary, but if there is a designation, the appellant shall serve therewith a concise statement of the points on which he intends to rely on the appeal.

(f) * * * *Record to be Abbreviated.* All matters not essential to the decision of the questions presented by the appeal shall be omitted. For any infraction of this rule or for the unnecessary substitution by one party of evidence in question and answer form for a fair narrative statement proposed by another, the supreme court may withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require; and costs may be imposed upon offending attorneys or parties.

(g) * * * *Stipulation as to Record.* Instead of serving designations as above provided, the parties by written stipulation filed with the clerk of the district court may designate the parts of the record, proceedings and evidence to be included in the record on appeal.

(h) * * * *Preparation of Record on Appeal.*

(1) *Record to be Prepared by Clerk; Necessary Parts.* The clerk of the district court, under his hand and seal of the court, shall transmit to the supreme court all the proceedings and evidence in the action or the matter designated by the parties. In cases where there is a designation, the record shall always include, whether or not designated, the following: The material pleadings without unnecessary duplication; the verdict; the master's report, if any; the judgment or final order appealed from, including all findings of fact and conclusions of law made by the district court and preserved in the record as provided in Rule 52(a); the notice of appeal with date of filing; any designations or stipulations of the parties as to matter to be included in the record; and any statement by the appellant of the points on which he intends to rely. The matter so certified and transmitted constitutes the record on appeal. The copy of the transcript filed as provided in subdivision (c) of this rule shall be certified by the clerk as a part of the record on appeal. The papers transmitted to the supreme court by the clerk of the district court shall be fastened together in one or more

volumes, with pages numbered consecutively, and with a cover page bearing the title of the case and containing the designation "Record on Appeal," followed by a complete index of all the papers therein, and the clerk shall append his certificate identifying the papers with reasonable definiteness.

(2) *Record in Criminal Case. In criminal cases appealed to the supreme court the record on appeal shall be prepared in the same manner except that in lieu of the pleadings the record shall include the indictment or information, motions or demurrers addressed thereto, and any special plea, and shall also include the verdict and the judgment and sentence of the court or final order from which the appeal is prosecuted.*

(i) * * * *Power of Court to Correct or Modify Record. It is not necessary for the record on appeal to be approved by the district court or judge thereof except as provided in Rule 76, but, if any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the district court, before the record is transmitted to the supreme court, may direct that the omission or misstatement be corrected. After the supreme court obtains jurisdiction, that court, on stipulation of the parties, may direct that the omission or misstatement be corrected, or if deemed necessary, the record may be returned to the district court for examination and correction or supplement, and then recertified to the supreme court.*

(j) * * * *Copies to be Transmitted Instead of Original Papers When Ordered by District Judge. If the judge of the court from which the appeal is taken is of the opinion that it is necessary that the original record in the case be kept in the district court pending the appeal, for use in the trial of other litigation or for other valid reason, he may make an order to that effect, and thereupon it shall be the duty of the clerk of the court from which the appeal is taken to*

transmit to the supreme court certifide copies in lieu of the original papers required to be transmitted under subdivision (h) of this Rule.

(k) * * * *Record for Preliminary Hearing in Supreme Court.* If, prior to the time the complete record on appeal is settled and certified as herein provided, a party desires to docket the appeal in order to make in the supreme court a motion for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on the supersedeas bond, for an extension of time within which to complete the record, or for any intermediate order, the clerk of the district court at his request shall certify and transmit to the supreme court a copy of such portion of the record or proceedings below as is needed for that purpose.

(l) * * * *Several Appeals.* When more than one appeal is taken to the supreme court from the same judgment or order, a single record on appeal shall be prepared containing all the matter designated or agreed upon by the parties, without duplication.

(m) * * * *Return of Original Papers.* After the appeal has been disposed of, all original papers shall be returned to the custody of the district court.

Rule 76

Record on Appeal to the Supreme Court; Agreed Statement

When the questions presented by an appeal to the supreme court can be determined without an examination of all the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by the supreme court. The statement shall include a copy of the judgment appealed from, a copy of the notice of appeal with its filing date, and a concise statement of the points to be relied on by the appellant. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the questions raised by the appeal, shall be approved by the district court and shall then be certified to the supreme court as the record

on appeal. * * * *Five* copies of the agreed statement shall be filed in the supreme court.

Rule 81

Applicability in General

Statutory provisions shall not apply whenever inconsistent with these rules, *provided, (1) that in special statutory proceedings any rule shall not apply insofar as it is clearly inapplicable, and (2) where the statute creating a special proceeding provides the form, content, time or manner of service or filing of any pleading, writ, notice or process, either the statutory provisions relating thereto or these rules may be followed.*

Rule 87

Laws Superseded

(a) *Generally.* From and after the effective date of these rules, the sections of the Wyoming Compiled Statutes, 1945, as amended, hereinafter enumerated, shall be superseded, and such statutes and all other laws in conflict with these rules shall be of no further force or effect:

Sec. 1-442	Sec. 3-2204
Sec. 1-443	Secs. 3-2302 to 3-2317
Sec. 1-502	Secs. 3-2418 to 3-2427
Secs. 1-509 to 1-519	Secs. 3-2501 to 3-2515
Sec. 1-626	Secs. 3-2607 to 3-2611
Sec. 3-104	Secs. 3-2901 to 3-2927
Secs. 3-107 to 3-110	Article 30, Chapter 3
Sec. 3-211	Secs. 3-3116 to 3-3121
Article 3, Chapter 3	Articles 32, 33 and 34, Chapter 3
Sec. 3-517	Secs. 3-3501 to 3-3506
Sec. 3-518	Secs. 3-3509, 3-3511
Articles 6 and 7, Chapter 3	Secs. 3-3601 to 3-3606
Secs. 3-1001 to 3-1009	Secs. 3-3804, 3-3811
Secs. 3-1011 to 3-1016	Secs. 3-5301 to 3-5308
Articles 11 and 12, Chapter 3	Secs. 3-5310 to 3-5315
Secs. 3-1301 to 3-1315	Secs. 3-5318, 3-5319
Secs. 3-1317, 3-1318	Secs. 3-5322, 3-5323
Articles 14 to 18, inclusive, Chapter 3	Article 54, Chapter 3

Secs. 3-2101 to 3-2105
Sec. 3-2107

Sec. 12-145

(b) *Administrative Procedure.* All statutory provisions relating to procedure on appeal from or review of administrative action by district courts, including all time limitations, but not including provisions giving a right of appeal or review, are superseded, provided, that statutory provisions relating to bonds, costs and precedence or advancement on the calendar shall be directory and may be applied by the judge of the district court.

(c) *Eminent Domain.* The sections of Wyoming Statutes, 1957, as amended, hereinafter enumerated, shall be superseded, and such statutes and all other laws in conflict with Rule 71.1 shall be of no further force or effect:

Sec. 1-756	Sec. 1-766	Sec. 1-778	Sec. 1-798
Sec. 1-757	Sec. 1-767	Sec. 1-779	Sec. 1-799
Sec. 1-758	Sec. 1-768	Sec. 1-780	Sec. 1-800
Sec. 1-759	Sec. 1-769	Sec. 1-781	Sec. 1-801
Sec. 1-760	Sec. 1-770	Sec. 1-782	Sec. 1-803
Sec. 1-761	Sec. 1-771	Sec. 1-783	Sec. 1-804
Sec. 1-762	Sec. 1-772	Sec. 1-790	Sec. 1-805
Sec. 1-763	Sec. 1-773	Sec. 1-795	Sec. 1-806
Sec. 1-764	Sec. 1-774	Sec. 1-796	Sec. 1-807
Sec. 1-765	Sec. 1-776	Sec. 1-797	Sec. 1-809

AMENDED WYOMING SUPREME COURT RULES

(Amended portions are in italics and deleted portions are indicated by asterisks).

Rule 2

Clerk of the Court

The clerk of the court shall reside at the capital of Wyoming and keep his office at the Supreme Court and Library Building and shall not practice as an attorney or counselor in this or any other court while he continues in such position. He shall have the custody of the seal and all records, books and papers appertaining to the court and the proceedings therein. He shall keep a record of all proceedings of the court, and for this purpose shall keep a journal, an appearance doc-

ket * * *, a roll of the attorneys admitted to practice in the court showing the date of their admission, and a book for noting the filing of applications for admission to the bar and the proceedings thereon. He shall record in the journal as they occur the orders, judgments and other proceedings of the court which are proper to be recorded therein. He shall enter each case upon the appearance docket in the order in which it is commenced or filed, numbering the cases consecutively. At the time of the commencement or filing of a case, he shall enter on the appearance docket the full names of the parties, with the names of counsel then appearing, or shown by the papers on file, and thereafter, whenever they appear, the name or names of other counsel, and shall note under the case so docketed at the time the same occurs the filing of the various papers, the issuance of any process, the orders made in the case, the fees and taxation of costs, and whenever any fees are paid or advanced the amount and date thereof and the party paying or advancing the same, and such other proceedings, if any, as may be necessary from time to time to show the condition of the case. Whenever a decision is rendered the clerk shall promptly give notice thereof by mail or *telephone call* to an attorney on each side, unless such attorneys are in attendance at the time the decision is announced.

Rule 9

Costs in Other Cases

No supreme court fees shall be collected in criminal cases properly coming to this court on reserved questions or by bill of exceptions of a prosecuting attorney unless otherwise provided by statute.

In all other cases when a judgment or final order is *affirmed, appellee shall recover his costs; when a judgment or final order is reversed, the appellant shall recover his costs; and when reversed in part and affirmed in part, the court may apportion the costs between the parties in such manner as it deems equitable; and there shall be taxed as part of such costs the cost of making the transcript of the evidence in the case * * * and the cost of typewriting or printing briefs, such costs to be computed at the rate allowed by law for making the*

transcript of such evidence; provided, however, that the court may, by order entered of record, refuse to allow as part of such costs, the costs as may result from the insertion in the transcript of the evidence or in the briefs such parts as may clearly appear to have been unnecessary.

Rule 12

Briefs

(b) Statement of Case. * * * *Appellant shall set forth in his brief a short and clear statement disclosing:*

- (1) *The nature of the action.*
- (2) *What the issues were.*
- (3) *How the issues were decided, and what judgment or decree was given.*
- (4) *A concise statement of the ultimate facts of the case material to determination of the issues presented in this court, as appellant contends them to be proved by the evidence submitted upon the trial; or when questions of fact were not tried in the trial court and are unnecessary in the determination of the action by this court, a concise statement of the contentions made by the pleadings or other papers on which are based the questions raised on the issues tried in the trial court and brought to this court for review. The statement shall not contain evidentiary matter unless material to a proper consideration of the questions presented, in which instance a reference shall be made to the page of the record where such evidence appears. In addition to the foregoing, the appellant shall state briefly any other matters of fact necessary to inform the court of the issues and points raised upon the appeal, insofar as such facts are legally a part of the record. If the appellee disagrees with appellant's statement of the case, he shall set forth in his brief in a supplemental statement each correction or addition which he desires to make or considers material.*

The statement of the case shall not contain argument. In the interest of brevity an appellant or appellee may cause any part or parts of the statement of the case to be placed in an appendix to be filed as a part of, or separately from but simultaneously with, his brief, in which event references thereto in his brief shall be to both the page numbers of the record and the pages of the appendix.

- (c) (4) A succinct statement of the argument of the party presenting the brief, *including a specific enumeration by appellant of the points upon which he relies for reversal or modification.*