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Wyoming Practice

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WYOMING PRACTICE

FRANK J. TRELEASE*

The opportunity to speak to the lawyers of Wyoming on the Wyoming Rules of Civil Procedure is really a memorable occasion for me. I have been working on this subject for a long time, it is now over ten years since the Supreme Court did me the honor of appointing me to the original Rules Advisory Committee. In rising to the occasion, I would first like to give special notice to the members of both the original committee and the reconstituted committee, all of whom are responsible for doing such a fine job for us in preparing these Rules in their final form. Mr. William Wehrli of Casper deserves more credit than any other person for carrying the ball and keeping the movement for the Rules alive. He served as chairman of both the original committee and the reconstituted committee. Some of the members of the first committee were among the most ardent workers—Dwight Wallace, A. G. McClintock and James Munro. E. J. Goppert, William Brown, and Thomas Miller served on both committees, and Carleton Lathrop, Edward Murane, John Raper, and Oliver Steadman joined the new committee. All of these men, after diligent labor, have presented us with a really excellent set of rules that should improve the administration of justice in Wyoming, aid the lawyers in practice, and secure for the citizens of Wyoming the just, speedy and inexpensive determination of every action.

My talks at this institute will not consist of presenting learned papers or scholarly discussions of the Rules, but will be simply a review of some of the major changes made in our practice, an attempt to call your attention to some of the differences that the Rules will make in the conduct of everyday litigation, and to some aspects of our former practice that we have retained in spite of the fact that in the federal courts these things are done in another way.

Although the inspiration and the model for the Wyoming Rules was the Federal Rules, the Wyoming Rules are not the Federal Rules, and although this Institute is largely devoted to the similarities between them, it is my duty to emphasize some of the differences.

THE SCOPE OF THE WYOMING RULES

In 1947 the first Rules Committee adopted a resolution in which we decided to write a complete set of rules for Wyoming practice and procedure, using the Federal Rules as an outline and basis. The result was the 1948 draft, submitted to the Supreme Court and sent to all Wyoming attorneys in the Wyoming Law Journal.¹ This draft had a rule for every Federal Rule, but the Wyoming Rule was not always identical with the Federal Rule. There were changes of three kinds. Some were necessary

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1. 2 Wyo. L.J. 156 (1948).

in order to eliminate federal references and to effect the mechanical process of adapting the Rules from the federal courts to the state courts. Some of them were thought desirable to preserve state practices that were preferred by members of the committee over the corresponding federal practices. Some were what has since been described as gilding the lily, to improve upon the Federal Rules, and perhaps I was most responsible for those, being a theoretical professor instead of a practicing attorney.

In 1957 the new Rules Committee went over the 1948 draft and made many changes in it. First, we were most anxious not to adopt what might be called "built in" conflicts of authority, where the federal courts have taken a divided position on some of the rules, some circuits construing them this way, some the other way, and no decisions by the Supreme Court of the United States. We thought it would be a shame to adopt such conflicts into our practice. We were aided here because in 1955 the United States Advisory Committee, of which Judge Clark was the reporter, had recommended a number of clarifying amendments. Those have been held in abeyance, they have not been adopted in the United States courts, but we have adopted some of them in Wyoming, so here is another way in which the Wyoming Rules are different from the Federal Rules, and here a step ahead. The second thing we did was to undo a lot of the work of the 1948 committee. The attitude of the 1957 committee was that if all things were equal they would choose the Federal and not the State procedure. That was not always so. In 1948 the committee wrote in those rules a lot of state practice, on the theory that since the lawyers were used to it we would keep it. But a good deal of the work of the 1957 committee was to go over the 1948 Rules and make them more like the Federal Rules than they had been. Finally, our Supreme Court went over the Rules with a fine-tooth comb. They did not simply say "The Rules Committee has recommended this, and while we don't know what's in it, it must be good because everyone on the Rules Committee is a fine person and learned in the law." They really looked into the submitted draft of the Rules and made many changes, after meeting with the Committee and discussing them, and many of the Court's changes were again in the direction of making the Rules more federal. By the way, I might add that if some of you are still treasuring the old 1948 issue of the Wyoming Law Journal which contain those rules you had better throw it away or at least put it in the back of the shelf. Those are not the rules under which we are to practice. There have been numerous and substantial changes.

As a result, we have the final 1957 edition of the Wyoming Rules. But we had 600 pages of a Code of Civil Procedure in the 1945 Compiled Statutes, and what's happened to that? We couldn't supersede all of it by the Federal Rules, because in several respects the Federal Rules are not a complete system of procedure. First, they incorporate by reference much state procedure on service of process, attachment, garnishment, etc. Second,

they also incorporate much of the former federal practice that had been built up as a matter of common law and judicial decision, such as the right to a jury trial and the grounds for new trial, and they adopt by reference certain federal statutes such as the Federal Declaratory Judgment Act. Third, the Federal Rules are expressly not applicable to certain types of cases. They are supplemented by the Judicial Code which contains a great deal of matter covered by our code on organization of courts, jurisdiction, venue, some general procedure, some procedure in special cases.

Similarly, our code still exists to supplement the Wyoming Rules. Perhaps "complement" would be a better word—the code fills out a complete system. Some of it is superseded completely, and is no longer applicable in any sense. Most of the sections dealing with pleading and appellate practice fall into this category. Some of the code is superseded in the sense that it has been incorporated into the Rules and will henceforth appear in the Rules instead of in the statutes. Service by publication, right to jury trial, and some general provisions on appeals are in this class. But most of it, if you count it by pages, still exists and will be on the books, but not untouched. It must be fitted into the Rules and the two correlated. Declaratory judgment, divorce, attachment, replevin, and many other subjects will be governed in part by the Code of Civil Procedure, and in part by the Rules.

Three rules have a major bearing on this topic of how the two will be correlated. The first is Wyoming 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, all special statutory proceedings, and the procedure for taking and perfecting all appeals in criminal cases." These words each have a meaning of their own. "Actions" refer to the old common law actions of trespass, case, debt, assumpsit, etc., and their code equivalents. "Suits" cover all suits in equity: specific performance, injunctions and matters of that kind. "Proceedings of a civil nature" is a catch-all phrase to make sure we got things not otherwise specified, for example, an appeal from an administrative agency. "Special statutory proceedings" refer to such things in the code as quiet title suits, divorce actions, eminent domain and certain ancillary matters such as attachment and replevin. "Criminal appeals" is self-explanatory. Rule 1 goes on to say that "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." I have a list, possibly a partial list, of those statutes: Sec. 10-1206, dealing with witnesses; Secs. 10-1211 and 10-1216 relating to depositions; Sec. 10-1315, conduct of the jury; and Sec. 10-1502, motion for new trial.

The next rule dealing with the scope of the Rules is Rule 87, which contains a list of statutes and laws superseded. These statutes are as dead as door nails. Under the rule-making statute the Rules of the Supreme Court are to be the law, and all laws in conflict therewith shall be of no

further force or effect.² It is my understanding that these statutes will not even appear in the new compilation of statutes which is expected to come out later this year. But Rule 87 supersedes not only the listed statutes but also "all other laws in conflict with those rules." There's another catch-all phrase. The Committee listed the sections that obviously cannot exist concurrently with the Rules, but there will undoubtedly be others, and these conflicts will be discovered as specific cases uncovering them arise.

The last rule on the subject is Rule 81, "Statutory provisions shall not apply whenever inconsistent with these rules." Between this Rule and Rule 1, which states that these rules govern the procedure in all special statutory proceedings, we are going to have some instances of doubt as to whether the rules or statutory procedures should be applied.

In many instances there will be no real problem. A divorce action will proceed under the Rules as an ordinary civil action.³ The same will be true of an action for partition. We have an article in our code entitled "Partition," which sets up both a substantive right and a procedure. The procedure will be superseded by the Rules. The substance will remain the same. As for ancillary matters such as replevin and attachment, the seizure of the property, the bonds that are necessary, the return of the property under bonds will proceed under the statute practically unchanged while the main action will proceed under the Rules.

In other cases, adjustments will have to be made which are rather difficult to predict in advance. We have proceedings like mandamus, habeas corpus, quo warranto and eminent domain, for which the statutes set out a rather complete procedure. From the nature of these actions, the procedure is so different from the ordinary action that you can't simply apply to them the rules relating to pleadings and the steps to be taken. There are certain steps in habeas corpus and mandamus proceedings which have no parallel in the ordinary civil action. Here common sense will be the primary guide as to how much of the Rules shall be applied. In pleading a mandamus case, the code says the petition must contain certain statements. Those should be in the complaint in a future action of mandamus. As to the construction of that complaint, amendments to it, motions against it, I see no reason why the Rules should not be applied. There seems to be no reason why we should dredge up the old code motions and demurrers. Questions will come up, such as should discovery apply, and I think the answer is yes, why not. Why should you not have discovery in a mandamus action? The same would be true in summary judgment. Why not a summary judgment? There'll be many others of that nature that must be handled on a case to case basis, and each will have to be decided on a common sense, practical basis, in the spirit of the Rules that requires

2. Wyo. Comp. Stat. § 1-118 (1945).

3. Except as to injunctive relief, discussed *infra*.

litigation to be settled on its merits and not on technical procedural requirements.

There are some other matters worth mentioning. There is a possibility of confusion between the Rules on injunctions and the code article on injunctions, which is not listed by Rule 87 as superseded. Rule 65 follows the federal system, and sets out a full procedure for obtaining temporary and permanent injunctions and temporary restraining orders without notice. So does the code in Sec. 3-6601 et seq. The question may be asked, why aren't these code sections superseded? The answer is that Art. 66 does contain quite a bit of substance, defining an injunction, stating that it will issue when there is a threatened irreparable damage to property, etc., things that we might take for granted, but are nevertheless matters of definition, right, substantive law. They are so interlarded with the procedure that I think that for all practical purposes you can forget Art. 66 and proceed in your injunction cases under Rule 65. But domestic relations cases will continue to be governed by the code. Under Sec. 3-5912, where you may in a divorce action restrain the husband from beating up the wife, under Sec. 3-5917, where the judge might issue other orders such as a ne exeat, an injunction against disposing of property, an injunction against the removal of a child from the jurisdiction, the Rules do not apply and the code provisions will. In other words, you will continue to get those orders in divorce actions in the same manner as you have in the past.

One last matter along these lines pertains to verifications. Under Rule 11, verification of pleadings is ordinarily not required, except when it is specifically provided by the rule or statute. Again I have a list, quite probably a partial list, of rules and statutes which do require verification. Some of you might be saved a little trouble if I were to read those: Rule 23 (b), shareholder's suits; Rule 27 (a) petitions to perpetuate testimony; and Rule 65 (b), ex parte restraining orders. Verified complaints are needed in those cases. Statutes requiring verification are Sec. 3-3805, petition to vacate a judgment; Sec. 3-5701, proceedings for change of names; Sec. 3-6501, habeas corpus, and one you'll probably use daily, Sec. 3-7203, petition to sell real estate where the wife is insane.

PROCESS AND SERVICE

First we might note that the procedure for commencing an action has been somewhat simplified. Under the old code you started an action by filing your petition and causing the summons to be issued. You needed that useless piece of paper, the precipe. Now under Rule 4 (a) the summons is issued automatically, and Rule 3 (a) says that the action is started simply by filing the complaint. The filing of the complaint has been held by the Federal Courts to give the court jurisdiction from that moment. It can then issue orders in attachment and garnishment, it may issue a restraining order.⁴ So for some purposes, the action is started on the

4. *Jacobson v. Coon*, 165 F.2d 565 (6th Cir. 1948).

filing date, but for purposes of statutes of limitation, Wyoming Rule 3 (b) incorporates the substance of our old rule for figuring the date of the starting of an action. The reason for this departure from the federal practice is that the rule-making statute prohibits the Supreme Court from adopting any rule which would change a statute of limitations⁵ and it was felt by the Committee that if we changed the dates upon which an action was deemed to be commenced, we would be changing the period of limitations.⁶

As for process, before the Rules the Wyoming summons was a lineal descendant of the old common law writ from the King to his sheriff. It was an incomprehensible document to the average defendant. Maybe the lawyers were able to figure out what it meant, but most defendants did not. It was addressed to a particular sheriff and it could only be served by him in his county, so if he appointed anyone to serve it outside his county it was not a good service, even though the appointed person was the sheriff in another county. You will remember the case of *Whitaker v. First National Bank*,⁷ where the action was begun in Park County and the summons issued to the sheriff of Park County. When it was found that the defendant was in Casper, he indorsed it over to the Natrona County sheriff, but the court held that service by the latter was bad. Another defect of the old summons was that it expired on its return day and could no longer be served. Very recently the case of *Vanover v. Vanover*⁸ had to be decided by saying that service was not obtained where a summons was served after its return date. Another precept, an alias writ, was required. Under the Rules we've made changes that though they relate to minor details of practice illustrate the spirit of the Rules. The summons is more sensible, easier for the defendant to understand. We don't have an arbitrary return date on which it expires, the summons is apparently good forever—at least so long as you can say that the action is pending. It still has to be returned, of course, under Rule 4 (m), but only after it has been served. It's not addressed to any sheriff so that any sheriff to whom it is lawfully issued can lawfully serve it.

Rule 4 (a) provides that upon request of the plaintiff separate or additional summons shall be issued. These separate summons are handy things. If you have a suit against A in Natrona County and B in Albany County you can have two separate summons issued, one to each sheriff. If you have a suit against A and B and get service on A, the sheriff still has to return the process on or before the answer day, but you can't find B in that time. Later B is located, and an additional summons is issued against him. Each of these separate and additional summons is an original, none of them are alias, each stands on its own feet.

5. Wyo. Comp. Stat. § 1-117 (1945).

6. Cf. *Ragan v. Merchants Transfer & Warehouse Co.*, 337 U.S. 530, 69 S.Ct. 1233, 93 L.Ed. 1520 (1949).

7. 32 Wyo. 288, 231 Pac. 691 (1925).

8. Wyo., 307 P.2d 117 (1957).

On the question of who can serve process, the major change made by Rule 4 (c) is that the appointment of a special process server is made by the clerk instead of the sheriff. Although this is rather a minor thing, it avoids the rule of the *Whitaker* case that a sheriff could appoint no one to act where the sheriff himself could not act. Another somewhat minor change is in Rule 4 (c) (2), which provides that in other states and territories the sheriffs, under-sheriffs, deputies and United States marshals can make out of state service in their jurisdictions without being specially appointed by the clerk. If you are going to have the sheriff of Weld County, Colorado, serve your process you don't need any special appointment of him to make the out of state service. In this connection I would like to point out that Sec. 3-1010 is retained and not superseded. That is the procedure which permits a summons or other process to be transmitted for service by telegraph or telephone. We still retain that practice.

As for service itself, it has been somewhat broadened and considerably simplified. Under the code, if you did not get direct personal service upon an individual defendant, you could leave the summons at the defendant's residence with some person over 14, member of his family or employed by him. The Rules do not retain the word "residence," but substitute "dwelling house or usual place of abode." This is more than a change in words. Dwelling house is a broader term and it usually means the place where the defendant is living at the time of the suit although he may be a resident elsewhere.⁹ We have a Wyoming case, *Honeycutt v. Nyquist*,¹⁰ in which Honeycutt was living in a tent south of Laramie, working as a contractor on the Union Pacific Railroad. He had hired a boy to look after his mules. The sheriff found the tent where Honeycutt was living and served the boy and the court held that the service was not sufficient, since Honeycutt was a resident of Oklahoma and although he had been living three months in that tent, it was not his residence. I think it could be construed to be his usual place of abode. For instance, in a suit in which Charlie Chaplin was a party, when he was at the time a resident of California, but spent as much as four months a year in New York City, service was made upon the hotel in which he stayed, and the hotel was held to be his usual place of abode.¹¹

Another addition made by Rule 4 (d) is that you can now serve an individual defendant at his place of business by leaving the copies of the complaint and summons with any employee then in charge of such place of business. Very frequently you'll find that is the most convenient way to make service.

Service on corporations has been eased a little bit. Rule 4 (d) (4) says that if you cannot find an officer, manager, general agent or agent for process in the county, copies may be delivered to any agent or employee

9. 42 Am.Jur. 48, Process § 61.

10. 12 Wyo. 183, 74 Pac. 90 (1903).

11. *Pickford v. Kravetz*, 17 Fed. Rules Serv. 4d 121, case 1 (S.D.N.Y. 1952).

found in such county. Does this mean a sectionhand on the railroad, or a truckdriver? The answer is, yes. Those who represent corporations may worry a little over this, but notice that where service is made upon lesser agents, an additional safeguard is added. The clerk, at least 20 days before default is entered, will mail copies to the corporation by registered mail at its last known address, so I think this guarantees notice and due process.

Sec. 4 (d) (5) is a very simple provision for service upon state departments or agencies, municipal corporations and other public agencies. We had many different statutes about how to serve school districts, towns, irrigation districts, etc., and there were many situations where there was a hiatus and no one knew exactly how to serve some state agencies. The new rule gives a very good procedure which should fit all cases and at the same time insure due process and actual notice.

Service by publication remains essentially the same. The grounds are unchanged, but the procedure is clarified. As you know, in the old statutes relating to publications, Secs. 3-1101 and 3-1102, there were two references to an affidavit. Sec. 3-1101 provided that the plaintiff was to file an affidavit *before the hearing*, stating that the address of the defendant was unknown and could not be ascertained by the exercise of reasonable diligence. Sec. 3-1102 provided that *before service by publication* could be made, the plaintiff had to file an affidavit that service could not be made within the state. Most lawyers combined those two affidavits into one, but some filed two. The Rules provide for the combination affidavit, Rule 4 (f) requires an affidavit *before publication* stating the things required by both of the old statutes. In many cases, therefore, you will need only one affidavit. However, the rules also keep the second affidavit in cases where it may do some good. The second paragraph of Rule 4 (f) says that in cases where a defendant served by publication does not get delivery of the notice mailed to him, in other words, where the first affidavit erroneously said that the defendant's address was at a certain street in a certain town, and the clerk mailed him a copy of the publication but it is returned, then you need a second affidavit and possibly, if the judge so rules, additional notice and time.

Rule 4 (i), dealing with service on unknown persons, incorporates our former statute on unknown heirs, devisees or legatees, but includes other unknown persons described as bondholders, lienholders or other persons claiming an interest in the subject matter of the action. This brings up a question: can you under this Rule serve the whole world, get a true *in rem* proceedings by adding at the end of your quiet title action "and all other persons having or claiming an interest in the subject matter of this action." I don't know. The Supreme Court will have to decide that one, but it could be argued that these other persons should be persons similar to bondholders or lienholders, in other words a person or class of persons having some describable interest but who are not personally identified.

Another new quirk provides for service by registered mail in lieu of service by publication or service outside the state. Someone has asked if this is constitutional, and I think without any doubt the answer is, yes. A case not in point for the reason that it is much stronger than this case is *Durfee v. Durfee*¹² in which the court permitted personal jurisdiction to be obtained in an action for child maintenance by service by registered mail upon a person within the jurisdiction, even though he was not a resident of the state. The court said he had every aspect of due process, adequate notice and an opportunity to defend.

Going on to Rule 5, one change that has been made is that the service of papers and not the filing of papers is the jural act, the act which is required to make effective a pleading, motion, appearance, etc. To illustrate this, let us suppose that I have a case against you, I represent the defendant and the answer is due today. Today I have the answer typed out, and mail you a copy. Suppose now that I don't have occasion to go down to the court house until some time next week. If the records were checked, it might look as though I were in default, but actually I have served it, my answer is in and I am not in default. I must file the paper with the court within a reasonable time thereafter under Rule 5 (b) , but the failure to file immediately has not put me in default.¹³

It must be noted that there are certain papers that must be filed instead of served. These are a notice of dismissal under Rule 41 (a) , a notice of appeal under Rule 73 (a) , and the designation of the record under Rule 75 (a) . In these cases, filing the papers is the required act, not the service, though service must also occur within the prescribed time.

Rule 5 (a) lists the papers that must be served and Rule 5 (d) tells how service shall be made. The usual service of papers subsequent to the complaint will be upon the attorney for the party and it can be made in a number of ways. You can run down the hall and hand it to the lawyer if he is in the same building with you, and ask him to scribble an acknowledgement or receipt on your copy, you can send it to him by mail, you may leave it at his office with his clerk or leave it in a conspicuous place therein, or serve it on him at home, or you can serve him by leaving the paper with the clerk of the court, who must promptly mail or deliver it for you. The last is quite similar to the old practice and to the extent that it is followed it will not be much different from what you must now do.

TIME

Rule 6 (a) sets out a series of rules for computing periods of time. I don't think this adds very much to the Wyoming practice but it may clarify a number of minor items. Rule 6 (b) provides for the enlargement of time, when an extension of time may be granted. If the original period to do the act has not expired, the court may order the period enlarged

12. 293 Mass. 472, 200 N.E. 395 (1936).

13. *Blank v. Bitker*, 135 F.2d 962 (7th Cir. 1943).

with or without motion or notice, in its discretion. If the specified period has expired, you must make a motion and show that the failure to act was the result of excusable neglect. If I were a lawyer in Wyoming during this period of change from the code to the Rules, one of my favorite cases, which I would always have ready at hand, would be *Buggeln & Smith v. Standard Brands*,¹⁴ a 1939 case, in which the court held that unfamiliarity with the Rules was excusable neglect justifying an extension of time.

At one time I thought it would be a nice thing to write out on a piece of paper a chart of the time within which every step under the Rules was to be done. I prepared such a timetable, but I find it so long that it is perhaps no easier to use than the Rules themselves. For what it is worth, the timetable is appended hereto. It goes without saying that any person who relies solely upon this table without checking it against the Rules is guilty of contributory negligence and assumption of risk.

ATTACKS ON PROCESS AND SERVICE

A very material change has been made on this subject. Rule 12 (b) lists a number of defenses, lack of jurisdiction over the person, improper venue, insufficiency of process, and insufficiency of service of process, which under the code would have been made the subject of a special appearance. However, under the Rules the special appearance has been abolished.¹⁵ These defenses can be raised by either motion or answer. If you raise them by motion, they must be joined with any other motion that you have, to dismiss for failure to state a claim, or to make more definite and certain. If you wait and put these matters of abatement in your answer, they must be joined with any substantive defenses you have.¹⁶ It is no longer necessary, as one Federal Court has said,¹⁷ to appear at the courthouse door, speak the magic words "special appearance," and then step through the door knowing that the court will treat you as if you are not there although he can see you in front of him. You simply and logically file your defense based on lack of process or insufficiency of process right along with any other defense you may have, and you waive none of them by joining them with the others. On the other hand, if you were to file a special appearance and make a motion based only on one of these grounds you would be precluded from making later motions on other grounds, and if you answered only on these grounds you might be held to have waived your substantive defenses.

When I say that the special appearance is abolished, that does not mean that there is no longer any such thing as a general appearance. The general appearance is still retained to the extent that if the defendant does have an objection to jurisdiction or service which he does not put in his motion, or in his answer, he does waive it under Rule 12 (h).

14. 27 F.Supp. 399 (S.D.N.Y. 1939).

15. See Note, Procedure in Lieu of Special Appearances, Symposium, *infra*.

16. *Blank v. Bitker*, 135 F.2d 962 (7th Cir. 1943).

17. *Orange Theatre Corp. v. Rayhertz*, 138 F.2d 871 (3d Cir. 1944).

TRIAL PRACTICE

In the area of trials there is perhaps the greatest deviation from the Federal Rules. The Federal system gives the judge a much greater power in the area of his relations to the jury than the Wyoming lawyers were used to under their code system. A committee of lawyers, as the Advisory Committee was, might be expected to try to keep as much power as possible in their own hands, and nearly all of the practicing members of both the 1947 and the 1957 Advisory Committees expressed the preference for keeping existing state trial practice for the most part rather than adopting the Federal practice.

First, I will go over quickly some of the rules that are Wyoming Rules but not the Federal Rules, where we kept, though in some instances we changed, the Wyoming practice, and then I would like to point out what we did accept of the Federal practice and how it will affect Wyoming trials.

The area in which the present Wyoming practice was retained to the greatest extent deals with the jury. Rule 38 (a) is a direct copy of our former statutes on the right to jury trial. No change was made; wherever you had the right to a jury trial under the code—in actions for money or specific real or personal property—you still have the same right under the Rules. For quite a while we have had the system of waiver of jury trial by failure to file a demand, that system in its essence remains unchanged under Rule 38 except for a few details as to when you file your demand.

Wyoming Rule 47 (a), on examination of jurors, is not a copy of our statutes, as we had no statute on the point, but it is a statement of the practice that has always been followed in the state. Federal Rule 47 (a) says that the court may permit the attorneys to conduct the examination on their voir dire or may itself conduct the examination. Most federal judges do most of it themselves, only allowing the lawyers to suggest questions for the court to ask, but the Wyoming Advisory Committee felt that having the Wyoming lawyers ask the questions was better, so that has been kept. However, upon its own motion, and without the recommendation of the Advisory Committee, our Supreme Court added to the rule we recommended, the phrase "but such examination shall be under the supervision and control of the court," and I am sure that they felt that that does give the judge some control, that if he thinks that a week or two is too long to take to get a jury, he has the power to step in and control the examination.

Another area where we retain our practice is in instructions to juries. Under Rule 51 we keep the practice of instructing the jury in writing, and giving the instructions before the argument of the case begins, in contrast to the federal system where the judge's charge is oral and is the last thing the jury hears before it retires.

One piece of federal law we did put into Rule 51 says that when parties make objections to the instructions before they are given to the

jury, stating distinctly the ground for objection, only the grounds so specified shall be entitled to consideration on motion for new trial or on appeal. That is from the federal rule, and I believe has been the practice in some of the district courts in this state. In other courts, I think it has been customary to simply make a general exception to all the instructions. That gives the losing lawyer a chance to go over the instructions at his leisure and pick out errors that didn't occur to him when the heat was on, and the feeling is that that is not quite fair to the judge, that you must have your objection ready and give him a chance to give a correct instruction. Here again the Supreme Court didn't follow the recommendation of the Advisory Committee verbatim. The Committee was willing to be much tougher, and our draft said that only the grounds so specified *shall be considered* on appeal. But the Supreme Court said "Well, we'll say only those shall be *entitled to consideration*, but we're not going to foreclose ourselves from considering cases in which there is fundamental error," a no cause of action case, a case in which a person's property is being lost because of the failure of the lawyer to ask for the proper instruction or object to a wrong one.

On findings by the court, Rule 52, again Wyoming did not adopt the Federal system. The Federal Rules require the judge to make findings and conclusions of law in every non-jury case. It was felt that this would be a considerable burden and an unnecessary burden on Wyoming trial judges in the many divorce, quiet title actions, and small negligence cases that our judges hear, and that the system of making a general finding was worth preserving. If a party does want special findings he has to request the judge to make them, and he has to do this before the introduction of any evidence. This is new as a statement of our law but not new in the practice. I suppose the purpose is to give fair notice to judge that he has to stay awake in this trial because he is going to have to write down what occurs.

On its own motion the Supreme Court added Rule 52(c), findings required in reserved question cases. If you are thinking of taking a case to the Supreme Court by reserving the decision of the district court on an important constitutional question, you will be very interested in Rule 52(c), and you may finally decide not to bother with the procedure. The Court had recently been faced by some serious problems in administering appeals by reserved question, so they wrote this rule which ties the trial court down to doing absolutely everything up to the last step in making the final finding and giving judgment, and I don't think you're going to get many district judges to duck the question at that time. He would really save nothing except perhaps his record of reversal and affirmance, and unless he is sure there will be an appeal, he may cost the parties an unnecessary trip to the Supreme Court.

The grounds for a new trial under Rule 59(a) are also a copy of the former Wyoming statutes, and no change is made there.

Now I would like to go back and cover some of the rules which have changed the former practice through adoption of the federal practice. First, in dismissal of cases,¹⁸ under the superseded code, Sec. 3-3505, an action could be dismissed by the plaintiff without prejudice any time before the final submission of the case. In my classes we discuss a case from another jurisdiction with a similar statute in which the defendant asked for a directed verdict and the court took the motion under advisement and went into its chambers. He came back with a little piece of paper, and as he was about to read it to the jury, the lawyer for the plaintiff jumped up and said "I dismiss." And that was the end of it. The directed verdict that the judge was about to read was nullified.

That is no longer possible. Under Rule 41 the only time you can dismiss without the consent of the other party or without an order of court is before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs. If the defendant has answered or moved for summary judgment, the plaintiff cannot dismiss on his own motion. This means that you cannot drag the defendant through most of the trial and then "skin out" if you find that the judge has made rulings on the evidence you don't like or has made some ruling on instructions which you think hurt your case, and then try it again next jury term or before another judge. But if your key witness doesn't show up or can't be subpoenaed and prejudice would result, or if somehow the case takes a new turn and surprise would result that couldn't be obviated by granting a continuance or an amendment of the pleading, then the judge should, and I am sure will, permit a dismissal. The judge may impose terms. He may feel that because you have dragged this defendant through the expense of the trial that you should pay costs and possibly attorney's fees. You are applying for a favor, and a number of federal courts have conditioned dismissal by saying that it is either going to be with prejudice or plaintiff is going to pay costs and counsel fees. Or, under Rule 41 (d), the court can wait and impose the costs if a second action is brought, as a condition of permitting the second action he may require payment of the costs and expenses of conducting the first dismissed action on the same cause.

Another important part of Rule 41 is the so-called "two-dismissal rule" expressed in the last phrase of 41 (a) (1): "... the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court an action in which service was obtained on or including the same claim." In other words, the second time you dismiss a case by notice, it is going to be an adjudication on the merits of your claim. You can't bring a third case; two is enough. Any more would amount to harassing defendants. If the second dismissal is by stipulation and the other party agrees that it may be dismissed without prejudice then the rule doesn't

18. See Note, The Two-Dissmissal Rule, Symposium, *infra*.

apply. The rule is not clear as to whether if the first dismissal was by stipulation and the second one by notice, the two-dismissal rule applies and the second one has to be with prejudice. There has been some Federal speculation on that but no clear-cut decision. One other point: even though the plaintiff sues different defendants the court may apply this rule. They have applied it in a case where the first case was against a corporation and the second one, on exactly the same claim, was against the corporation's subsidiaries.

Another aspect of trial practice in which we adopt the Federal system is Rule 49, dealing with special verdicts and interrogatories to juries.¹⁹ I don't think many of you have used the special verdicts proper, by which the jury finds all the facts and the judge applies the law. They were seldom used because of a very serious defect in the practice: if by chance the jury left out a finding essential to the cause of action, the parties could not get judgment, the only remedy was a new trial. By a very neat procedural device Rule 49(a) avoids this. If the parties don't request the essential finding they waive their right to a jury trial on that issue, and that permits the court to make that particular finding. And suppose nobody sees the defect and no finding is made by the court. In that case it is deemed that he made a finding in accordance with the judgment, whatever finding on the point will support the judgment. So those defects of the special verdict are eliminated and we may see more of them.

Rule 49(b) speaks of general verdicts accompanied by interrogatories. I am not entirely sure how much of a change is involved here. The change, if any, comes down in the middle of the rule where it says that where the answers to interrogatories are inconsistent with the general verdict, the court may do one of three things: (1) direct the entry of judgment in accordance with the answers notwithstanding the general verdict, (2) return the jury for further consideration of its answers and verdict, or (3) order a new trial. Although there is one Wyoming case in which a new trial was ordered, the superseded statute seems to say, and several Wyoming cases have stated, that where the answer is inconsistent with the general verdict, the special finding controls and the party favored by it is entitled to a judgment. Under the rules, the judge has other alternatives—to order a new trial, or to clearly tell the jury that they got mixed up and to go back and straighten things up and make their answers consistent. Whether you like this or not depends upon whether you think that these interrogatories are a desirable check upon the jury to make sure they are applying the law to the facts, or that they are a device to confuse the jury and do the plaintiff out of a verdict. I'll let you make your own choice on that.

On motions for directed verdict, there is one important change. Where the motion is made at the end of all of the evidence and is not granted, Rule 50(a) says it is not a waiver of trial by jury even though

19. See Note, Special Verdicts and Interrogatories to Jury, Symposium, *infra*.

all parties to the action have moved for directed verdict. We formerly had that rule, in *Stockgrower's Bank v. Schultz*²⁰ it was held that where both parties moved for directed verdicts, even though neither of them was entitled to it, there was a waiver of jury trial, the jury was dismissed, and the court made its own findings. That rule has kept many a plaintiff from asking for a directed verdict when he was probably entitled to it, because he knew that if he was unsuccessful in convincing the court, the defendant would pop up and make a similar motion and plaintiff would lose his jury trial. If there is a conflict in the evidence, the issue is for the jury, and the plaintiff should be able to get the court to rule on the question of whether there actually is a conflict, without being penalized by loss of the jury in case the court won't accept his argument.

This leads us into Rule 50 (b), motion for judgment notwithstanding the verdict.²¹ Rules 50 (b) and 50 (c) are complexly stated, but very useful. We have always had the motion for judgment notwithstanding the verdict; I don't know whether it has been used very much, but it should be. Suppose that you have a fairly complicated automobile negligence case with lots of witnesses, measurement of highways, exhibits and medical testimony, that takes three or four days to try. At the close of the evidence the defendant moves for a directed verdict on the grounds that the plaintiff was contributorily negligent as a matter of law. The judge might be inclined to agree that there was contributory negligence, but he would be wise not to say so at the moment. It would be better for him to deny the directed verdict, or reserve his decision on it, and get a verdict. If the verdict is for the defendant, that's fine, no possible error has been committed. If it is for the plaintiff, then the defendant can make a motion for judgment notwithstanding the verdict. Now the judge has more time to think about it, he can read the cases and the transcript if available, and if he decides that the verdict should have been directed, he will grant the judgment notwithstanding the verdict. The plaintiff isn't going to like this, he is going to appeal. Suppose he wins, and the Supreme Court says the trial judge was wrong in his ruling on contributory negligence and reverses the case. If the trial court had directed the verdict, it would be reversed for another four-day trial, but now it can be reversed and judgment entered on the old verdict. The expense, delay and work involved in a second trial has been saved.

Suppose, however, that the jury returns an excessive verdict, say \$100,000 in a case where defense counsel might think that \$50,000 would be plenty. The defendant doesn't want to have that verdict reinstated, and here's where 50 (b) and (c) come into play. Before the Rules, when plaintiff got the judgment notwithstanding the verdict reversed defendant would have to come back in the trial court and move for a new trial,

20. 40 Wyo. 274, 276 Pac. 532 (1929).

21. See Note, Motion for Judgment Notwithstanding Verdict and for New Trial, Symposium, *infra*.

and if that was denied, he would make a second appeal. But see how these rules work in such a case: the defendant will move for judgment notwithstanding the verdict, and he will also move for a new trial on the grounds of excessive damages. The judge rules on both motions. Under the assumptions of our case he would grant the motion for judgment notwithstanding the verdict because of contributory negligence. However, if he doesn't agree the damages are excessive, he will deny the new trial. The plaintiff is going to appeal because his verdict was taken away from him, and the defendant would cross-appeal on the ruling on the new trial, arguing that the verdict was excessive and that if his judgment is taken away from him he is at least entitled to a new trial. The ruling on the motion for a new trial is always conditional on reversal of the ruling for judgment notwithstanding the verdict—if that ruling is affirmed, there is no reason for reaching the question of new trial. So it can be seen that just as in the case of the judgment notwithstanding the verdict where you save the time and expense of a new trial, you have saved the time and expense of a possible second appeal.

I don't have time to analyze in detail the rules on appeals, but I would like to say just one word about Rule 75, the Record on Appeal. Instead of sending up all the original papers, as has been done up to now in proceedings on direct appeal, the appellant will designate what part of the record he wants copied and copies will be made. The record will be abbreviated in accordance with Rule 75(e): "All matters not essential to the decision of the questions presented by the appeal shall be omitted. Formal parts of all exhibits and more than one copy of any document shall be excluded. Documents shall be abridged by omitting all irrelevant and formal portions thereof. For any infraction of this rule . . . the supreme court may withhold or impose costs . . . and costs may be imposed upon offending attorneys or parties." Even the testimony may be shortened by putting it in narrative form. However, Rule 75(l) permits the court to provide by rule or by order for hearings on the original papers. In such cases we would revert back pretty much to the former practice. Some lawyers have expressed the hope that the court will soon provide for appeals on original papers, because they don't like this idea of a shortened record and all this copying. I don't think they will. I think the Supreme Court wants to try this out, and why shouldn't they. Who should have the burden of going through a record and deciding whether all of this stuff is material to the decision on appeal, the Supreme Court, or the lawyers? The latter are in a much better position to do this work than is the Supreme Court. It may be found that in some types of cases, perhaps workmen's compensation cases, this is more work than it is worth and maybe sending the original papers up in those cases would not be burdensome on the Court. If so, they might establish a rule so providing. Or, it is possible to get an order from the Supreme Court under 75(l) for the transmission of the original papers in any individual case, but I am not sure of the showing

you would have to make to get such an order. Maybe if the record was a long one but practically all material to the appeal, the Court would save you the expense of having it all copied.

CONCLUSION

I have, of course, only hit the high spots. There are lots of little rules, lots of details that you are going to have to learn. You have much serious study before you, study of the literal words of each and every rule and study of their sense and intent, so that you will know, follow and apply them. I know that you are going to do this, because each of you will take pride in the skillful use of the tools of your trade. You will also study them because it will still be possible for a lawyer to throw away his client's case by his own ineptness. Rule 1 says that the Rules are to be construed to secure justice, and Rules 61 and 72 say that every error or defect in what is done under the Rules is to be disregarded where it does not affect the substantial rights of the parties, so it's going to be difficult, but it can be done.

This, naturally, applies to the other fellow, not to you. But when opposing counsel slips, and when you because of your superior knowledge of the Rules can prove he did something wrong, hesitate before you pounce on him hoping to trap him with a technicality. For under the Wyoming Rules of Civil Procedure the judge is going to look behind him to his client, and the client, the Wyoming citizen, is going to get justice even if he didn't hire as good a lawyer as you are.

TIME TABLE

WYOMING RULES OF CIVIL PROCEDURE

- (1) Rule 5 (a) requires the *service* of papers on parties affected thereby. Filing is in most cases incidental and may be made either before service or within a reasonable time thereafter. (See Rule 5 (d)). Unless otherwise specified, the times hereinafter enumerated refer to the times within which service must be made.
- (2) The times prescribed are to be computed in accordance with Rule 6 (a), may be enlarged as provided in Rule 6 (b), and will be extended by three days under Rule 6 (e) when dependent upon service of a paper and service is made by mail or by delivery to the clerk. Where specific provision is made for the judge to prescribe a different time than that set out in the Rules, an asterisk (*) follows the citation to the Rule. Where the prescribed time may not be extended, or may be extended only under certain conditions, that fact is stated. See Rule 6 (b).

SERVICE

Action Commenced

For purposes of jurisdiction:

On date of filing. 3 (a)

For purposes of statutes of limitation:

On date of filing complaint, if service made within 60 days on defendant or person united in interest. 3 (b)

On date of service, if service not made within 60 days. 3 (b)

On date of first publication. 3 (b)

Summons

Issued by clerk:

Forthwith, upon filing complaint. 4 (a)

Expires:

Never, while action is pending.

Return by person serving:

Promptly after service. within time person served must respond.
4 (m)

Amendment:

At any time unless material prejudice would result. 4 (n)

Notice by Registered Mail (by clerk)

To corporation served by delivery to subordinate agent or employee:
20 days before default entered. 4 (d) (4)

To person whose address is known, served by publication:

Immediately after first publication (party making service delivers
copy to clerk). 4 (f)

PLEADINGS

Answer:

20 days after personal service. 12 (a)

30 days after last publication. 12 (a)

30 days after service outside state, including service by registered
mail. 12 (a), 4 (1), 4 (e)

Counterclaim:

In responsive pleading to the claim. 13

Omitted counterclaim:

After leave of court. 13 (f)

Maturing after pleading:

After permission of court. 13 (e)

Cross-claim:

In responsive pleading to the claim. 13 (g)

Reply

To counterclaim:

20 days after service of answer. 12 (a)

Ordered by Court:

20 days after service of order. 12 (a) *

Answer to Cross-Claim:

20 days after service of cross-claim. 12 (a)

Third Party Complaint

Motion to file:

Any time, ex parte if made before answer, with notice if made
after Answer. 14 (a)

Response to Third Party Complaint

(including answer, motions, counterclaims, etc.);

Same as to original complaint. 14 (a), 12, 13.

Effect of Motions permitted under Rule 12:

The motion suspends the above times, and

If denied, or decision postponed to trial:

Responsive pleading shall be served within 10 days after notice
of court's action. 12 (a) *

If motion for more definite statement granted:

Responsive pleading shall be served within 10 days after service
of statement. 12 (a) *

Amendments

More definite statement:

10 days after notice of grant of motion. 12 (e) *

Amended pleading:

Any time before responsive pleading is served, or within 20 days after original pleading served, if no responsive pleading is due, and action not placed on trial calendar, or upon leave of court or with consent of adverse party. 15 (a)

To conform to evidence:

Upon motion at any time, even after judgment. 15 (b)

Supplemental pleading:

After motion, reasonable notice, and permission. 15 (d)

Response to amended pleading:

Within time to respond to original pleading, or 10 days after service of amended pleading, whichever is larger. 15 (a) *

Response to supplemental pleading:

If ordered, within time specified by court. 15 (d)

Motions:

To dismiss, to strike, for definite statement:

20 days after service of pleading to which directed. 12 (b) (e) (f)

30 days if service by publication or out of state. 12 (a)

For judgment on pleadings:

After pleadings are closed, within such time as not to delay trial. 12 (c)

For substitution of parties

Death:

In time for judge to order substitution within 1 year. 25 (a) .

May not be extended. 6 (b)

Death of public officer, or separation from office:

Within 1 year. 25 (d)

To add or drop party:

At any stage of the action. 21

Notice of Motion (other than ex parte):

5 days before hearing. 6 (d) *

(See Default, summary judgment, injunction, for exceptions.)

Affidavits on Motion

In support of motion:

With motion. 6 (b)

Opposing motion:

1 day before hearing 6 (b) (See New Trial for exception)

Relating to discovery, summary judgment, injunctions, motions after judgment:

See those subjects

DISCOVERY

Depositions

Notice of taking:

Any time after commencement of action, on reasonable notice. 26 (a), 30 (a) * (Plaintiff must obtain leave to take if notice served within 20 days after commencement of action.) 26 (a)

Subpoena:

After proof of service of notice, or stipulation of taking. 45 (d)

Motion to quash or modify subpoena duces tecum:

Promptly, and before time specified for compliance. 45 (b)

Motion for protective order:

Seasonably. 30 (b)

Motion to terminate or limit examination:

At any time during taking. 30 (d)

Motion for order compelling witness to testify:

On reasonable notice after completion of deposition on other matters, or adjournment. 37 (a)

Filing of deposition by officer taking:

Promptly. 30 (f)

Objections

To errors or irregularities in notice:

Promptly. 32 (a)

To qualifications of officer:

Before taking begins. 32 (b)

To competency of witness, competency relevancy or materiality of testimony, if objection can be obviated or removed:

At time of taking. 32 (c) (1)

To manner of taking, form of question and answer, oath, conduct of party, or other error which might be obviated, removed or cured:

Seasonably, at time of taking. 32 (c) (2)

To errors and irregularities in completion, transcription and return:

Motion to suppress must be made with reasonable promptness after defect is, or with diligence might have been ascertained. 32 (d)

To admissibility in evidence of deposition or part thereof:

At trial. 26 (e)

Depositions on Written Interrogatories

Direct interrogatories:

Served with notice of taking. 31 (a)

Motion for protective order:

After service of interrogatories and prior to taking testimony. 31 (c)

Cross interrogatories:

Within 10 days after notice. 31 (a)

Redirect interrogatories:

Within 5 days after cross. 31 (a)

Recross interrogatories:

With 3 days after redirect. 31 (a)

Objections:

Within time allowed for the succeeding interrogatories and within 3 days after service of last interrogatories authorized. 32 (c) (3)

Deposition to Perpetuate Testimony

Before Action:

Petition and notice served at least 20 days before hearing. 27 (a) (2)

Pending Appeal:

Motion made on same notice and service as if the action was pending in the district court. 27 (b), 6 (d)

Interrogatories to Parties:

Any time after commencement of action. (Plaintiff must obtain leave to serve within first 10 days). 33

Objections:

Within 10 days after service of interrogatories. 33

Answers:

Within 15 days after service of interrogatories. 33*

If objection has been made, answers deferred until objection determined.

Production of Documents and Things for Inspection, Copying, Photographing

(a) after motion and order, when and as ordered. 34 (a)

(b) if demanded in interrogatory or subpoena, in response thereto. 34 (b), 33, 45 (d)

Physical Examination:

After motion, notice and order, when and as ordered. 35 (a)

*Admission of Fact and Genuineness of Documents***Request for:**

Any time after commencement of action (Plaintiff must obtain leave to serve within first 10 days). 36 (a)

Denials or objections:

Within time designated, not less than 10 days (or requested admission deemed made). 36 (a)

TRIAL AND JUDGMENTS

*Default***Entry:**

After party has failed to plead or defend as provided by Rules. 55 (a). If defendant is corporation and service was on inferior agent or employee, 20 days after registered mail of copies sent by clerk. 4 (d) (4)

Judgment:

For sum certain, by clerk after filing affidavit of amount due. 55 (b) (1)

In other cases, upon application to court, but if defaulting party has appeared, after service of notice of application 3 days before hearing. 55 (b) (2)

*Dismissals by Plaintiff or Claimant***Without court order:**

Filed before service of answer or motion for summary judgment. 41 (a)

If stipulated:

Any time. 41 (a)

With court order:

Any time. 41 (a)

Counterclaims, cross-claims, third party claims:

Before responsive pleading served, or if none, before introduction of evidence at trial. 41 (c)

*Summary Judgment***Motion by claimant:**

Any time after 20 days from commencement of action, or after motion for summary judgment by adverse party. 56 (a)

Motion by defending party:

At any time

Hearing:

At least 10 days after motion. 56 (c)

Supporting affidavits:

With motion. 56 (a) (b), 6 (d)

Opposing affidavits:

Prior to day of hearing. 56 (d), 6 (d)

Demand for Jury**Actions in District Court:**

Any time after commencement of action, not later than 10 days after service of last pleading directed to issue to be so tried.

May be endorsed upon a pleading. 38 (b) (1)

Appeals to district court:

45 days after docketing in district court. 38 (b) (2)

Jury fee:

Must accompany demand. 38 (b) (3)

Demand for trial of other issues:

Within 10 days after demand for jury trial of some issues. 38 (c) *

Offer of Judgment:

10 days before trial begins. 68

Injunctions**Temporary Restraining Order:**

Any time after commencement of action, without notice.

Expires within such time, not to exceed 10 days, as court fixes, unless within such time it is extended for a like period. 65 (b)

Motion for preliminary injunction:

After temporary restraining order:

At earliest possible time. 65 (b)

Motion for dissolution of temporary restraining order:

2 days' notice to party who obtained order, or on shorter notice as court may prescribe. 65 (b)

Request for Special Findings by Court

Before introduction of any evidence. 52 (a)

Subpoena**Motion to quash or modify subpoena duces tecum:**

Promptly, before time specified for compliance. 45 (b)

Tender of witness fees:

At least 1 day before witness must leave home. 45 (e)

Objections to Master's Report:

10 days after notice of filing of report. 53 (e) (2)

Judgment or Final Order:**Entry:**

Whenever form of judgment or order, signed by judge, is filed with clerk, or if no form is signed, when entered on journal. 58 (b)

Notice:

Clerk shall mail copies immediately upon entry. 77 (d)

Motions after Judgment

For judgment notwithstanding verdict:

10 days after entry of judgment, or if no verdict returned, 10 days after jury discharged. 50 (b). May not be extended. 6 (b)

For New Trial:

10 days after entry of judgment. 59 (b). May not be extended. 6 (b). May be joined with motion for judgment n.w.v. 50 (b)

Supplemental motion for new trial:

At any time before court passes on original motion. 59 (b)

For new trial after verdict set aside on judgment n.w.v.:

10 days after entry of judgment. 50 (c) (2)

Affidavits opposing motion for new trial based on affidavits:

10 days after service of motion. 59 (c)

Determination of motion for new trial:

60 days after entry of judgment, unless continued by order or stipulation. If not determined or continued, deemed denied. 59 (f)

To amend findings:

10 days after entry of judgment. 52 (b). May not be extended. 6 (b)

To alter or amend judgment:

10 days after entry of judgment. 59 (e). May not be extended. 6 (b)

To correct clerical mistakes:

At any time, after such notice, if any, as court orders. 60 (a)

To relieve a party from a judgment:

One year after judgment, order or proceeding was entered or taken. 60 (b). May not be extended. 6 (b)

APPEALS

Notice of Appeal

Filed and served 30 days from entry of judgment or final order. 73 (a)

Unless a different time is provided by law. 73 (a)

May be extended not exceeding 30 days from expiration of original time, on showing of excusable failure to learn of entry of judgment. 73 (a)

Time is terminated by timely motion for judgment under 50 (b), to amend findings under 52 (b), to alter or amend judgment under 59, or for new trial under 59. The full time commences to run again on entry of any order granting or denying such motions, except granting new trial. 73 (a)

Bond for Costs on Appeal:

Filed with notice of appeal. 73 (c)

Supersedeas Bond:

Presented at or before time of filing notice of appeal, or before docketing of action in supreme court. 73 (d) (1)

Preparation of Record

Designation of contents by appellant:

Filed and served 30 days after filing of notice of appeal.

May be extended for cause, but not beyond 4 months from filing notice, except for cause shown within the 4 months, or by stipulation. 75 (a)

Designation by appellee:

Before appellant files designation, if desired. After appellant files designation, appellee may file designation of additional portions of record. 75 (a)

Transcript:

If all or any portion designated, filed with designation. 75 (b)

Narrative statement of testimony:

If desired, filed with designation. 75 (c)

Statement of points:

If complete record not designated, served with designation. 75 (d)

Stipulation as to contents of record:

Filed within 30 days after filing notice of appeal. 75 (f), 75 (a)

Correction of record:

Before or after transmittal to supreme court. 75 (h)

Docketing Record on Appeal:

Filed in supreme court and docketed 60 days from filing of notice of appeal. 73 (g)

If more than 1 appeal, time is prescribed by district court, but not less than 60 days from filing of first notice of appeal. 73 (g)

May be extended, before original period or extended period has expired, but not more than 90 days from the date of filing the first (or only) notice of appeal. 73 (g)

If filed later than above, for causes beyond control of counsel, supreme court may accept appeal in extraordinary cases upon a showing of diligence. 73 (g)

Transmission of Original Papers:

When provided for by order or rule, within same time or extended time as provided for docketing record under 73 (g), unless court fixes shorter time. 75 (l)

Agreed Statement:

Within time provided for docketing record by 73 (g). 76.