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Amendments to the Wyoming Rules of Civil Procedure: Order

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IN THE SUPREME COURT, STATE OF WYOMING
 APRIL TERM, A. D. 1964

In the Matter of Wyoming)
)
 Rules of Civil Procedure)

ORDER

The Supreme Court of the United States having adopted a number of amendments to the Federal Rules of Civil Procedure for the United States District Courts on January 21, 1963; and in the interest of preserving the uniformity between the Federal Rules of Civil Procedure and the Wyoming Rules of Civil Procedure, the Permanent Rules Committee having recommended to the Supreme Court of Wyoming that subdivision (a) of Rule 5, subdivisions (a) and (b) of Rule 6, subdivision (a) of Rule 7, subdivision (a) of Rule 14, subdivision (d) of Rule 15, subdivision (c) of Rule 24, subdivision (a) (1) of Rule 25, subdivision (e) of Rule 26, subdivision (b) of Rule 28, subdivisions (a) and (c) of Rule 50, subdivisions (c) and (e) of Rule 56, and Form 22 be amended and that subdivision (d) of Rule 50 and Form 28 be adopted; and it appearing upon consideration that the recommendations are well taken;

It is ordered that such rules and Form 22 be amended and subdivision (d), Rule 50, and Form 28 adopted to read as follows, amending portions being in italics and deleted portions indicated by asterisks:

RULE 5.

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.

(a) Service: When Required. *Except as otherwise provided in these rules, * * * every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. * * * No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.*

RULE 6.
 TIME.

(a) Computation. In computing any period of time prescribed or allowed by these rules, *by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default * * * from which the designated period of time begins to run * * * shall not * * * be included. The last day of the period so computed * * * shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is * * * not a Saturday, a Sunday, * * * or a legal holiday. When the period of time prescribed or*

allowed is less than 7 days, intermediate *Saturdays*, *Sundays*, and *legal holidays* shall be excluded in the computation. * * * *As used in this rule, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the governor or legislature of the State of Wyoming.*

(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), 58 (b), (d) and (e), 60 (b), 73 (a) and (g), and 75 (a), except to the extent and under the conditions stated in them.

RULE 7.

PLEADINGS ALLOWED; FORM OF MOTIONS.

(a) *Pleadings.* There shall be complaint and an answer; * * * a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third party complaint, if * * * a person who was not an original party *is summoned under the provisions of Rule 14*; and * * * a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

RULE 14.

THIRD-PARTY PRACTICE.

(a) *When Defendant May Bring in Third Party.* * * * *At any time after commencement of the action* a defendant, * * * as a third-party plaintiff, * * * may cause a summons and complaint *to be served* upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. *The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than 10 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action.* * * * The person * * * served *with the summons and theird-party complaint*, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon

shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13. *Any party may move to strike the third-party claim, or for its severance or separate trial.* A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

RULE 15.

AMENDED AND SUPPLEMENTAL PLEADINGS.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. *Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense.* If the court deems it advisable that the adverse party plead * * * to the supplemental pleading, it shall so order, specifying the time therefor.

RULE 24.

INTERVENTION.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon * * * the parties * * * as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

RULE 25.

SUBSTITUTION OF PARTIES.

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court * * * may order substitution of the proper parties. * * * The motion for substitution may be made *by any party or* by the successors or representatives of the deceased party * * * and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. *Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.*

RULE 26.

DEPOSITIONS PENDING ACTION.

(e) Objections to Admissibility. Subject to the provisions of *Rules 28(b) and 32(c)*, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

RULE 28.

PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN.

(b) In Foreign Countries. In a foreign * * * country, depositions * * *

may be taken (1) on notice before a * * * person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before * * * a person * * * commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or * * * a letter rogatory shall be missed * * * on application and notice and on * * * terms * * * that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. o o o A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. * * * A letter rogatory may be addressed "To the Appropriate * * * Authority in (here name the country)." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

RULE 50.

MOTION FOR A DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

(a) *Motion for Directed Verdict: When Made * * *; Effect.* A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. *The order of the court granting a motion for a directed verdict is effective without any assent of the jury.*

(c) Same: Conditional Rulings on Grant of Motion.

(1) If the motion for judgment notwithstanding the verdict, provided for in subdivision (b) of this rule, is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, * * * the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court * * * has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 59 not later than 10 days after entry of the judgment notwithstanding the verdict * * * .

* * * * *

(d) Same: Denial of Motion. If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling him to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

RULE 56.

SUMMARY JUDGMENT.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, *answers to interrogatories*, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, *answers to interrogatories*, or * * * further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

FORM 22-A.

SUMMONS AND COMPLAINT AGAINST
THIRD-PARTY DEFENDANT

* * * *

STATE OF WYOMING)		IN THE DISTRICT COURT
COUNTY OF LARAMIE)	ss.	FIRST JUDICIAL DISTRICT
		Civil Action No. _____
A. B.,)
Plaintiff)
v.)
C. D.,)
Defendant and Third-Party Plaintiff) SUMMONS
v.)
E. F.,)
Third-Party Defendant)

To the above-named Third-Party Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney whose address is _____, and upon _____, who is attorney for C. D., defendant and third-party plaintiff, and whose address is _____, an answer to the third-party complaint which is herewith served upon you * * * within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint. *There is also served upon you herewith a copy of the complaint of the plaintiff which you may but are not required to answer.*

Dated _____, 19__.

Clerk of Court.

(Seal of District Court)
STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT

Civil Action No. _____

A. B.,)
Plaintiff)
v.)
C.D.,)
Defendant and Third-Party Plaintiff) THIRD-PARTY
v.) COMPLAINT
E. F.,)
Third-Party Defendant)

1. Plaintiff A. B. has filed against defendant C. D. a complaint, a copy of which is hereto attached as "Exhibit C."

2. (Here state the grounds upon which C. D. is entitled to recover from E. F., all or part of what A. B. may recover from C. D. The statement should be framed as in an original complaint.)

Wherefore C. D. demands judgment against third-party defendant E. F. for all sums that may be adjudged against defendant C. D. in favor of plaintiff A. B.

Signed: _____
Attorney for C. D., Third-Party Plaintiff
Address: _____

FORM 22-B.

MOTION TO BRING IN THIRD-PARTY DEFENDANT

Defendant moves for leave, as third-party plaintiff, to cause to be served upon E. F. a summons and third-party complaint, copies of which are hereto attached as Exhibit X.

Signed: _____
Attorney for Defendant C. D.
Address: _____
Notice of Motion

(Contents the same as in Form 19. The notice should be addressed to all parties to the action.)

Exhibit X

(Contents the same as in Form 22-A.)

FORM 28.

SUGGESTION OF DEATH UPON THE RECORD UNDER

RULE 25 (a) (1)

A. B. [describe as a party, or as executor, administrator, or other representative or successor of C. D., the deceased party] suggests upon the record, pursuant to Rule 25 (a) (1), the death of C. D. [describe as party] during the pendency of this action.

It is further ordered that this order be published in the advance sheets of the new ensuing volume of the WYOMING REPORTER; that these changes in the Wyoming Rules of Civil Procedure become effective ninety days from the date of this order; and that this order be spread at length upon the journal of this court.

Dated at Cheyenne, Wyoming, this 13th day of July, 1964.

BY THE COURT
/s/ GLENN PARKER
Chief Justice