

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 1996

IN THE SUPREME COURT
STATE OF WYOMING
FILED

In the Matter of Amendments to Rules 50, 52, 59,)
and 83, Wyoming Rules of Civil Procedure)

APR - 3 1996

ORDER AMENDING RULES 50, 52, 59, and 83,
WYOMING RULES OF CIVIL PROCEDURE

Judy Pacheco
JUDY PACHECO, CLERK

The Permanent Rules Advisory Committee, Civil Division, having submitted to the court proposed amendments to Rules 50, 52, 59, and 83, Wyoming Rules of Civil Procedure, as attached hereto, and the court having reviewed the proposed amendments and finding that the proposed amendments should be adopted; it is therefore

ORDERED that the amendments to Rules 50, 52, 59, and 83, Wyoming Rules of Civil Procedure, as attached hereto, shall be, and they are hereby, adopted by the court; and it is further

ORDERED that said amended rules be published in the Wyoming Reporter and shall become effective 60 days after their publication in the advance sheets of the Pacific Reporter; and shall thereupon be spread at length upon the journal of this court.

Dated this 2nd day of April, 1996.

BY THE COURT:

Michael Golden

Michael Golden
Chief Justice

WYOMING RULES OF CIVIL PROCEDURE

Proposed Amendments to Rules 50, 52, 59 and 83
March 1996

Rule 50. Judgment as a matter of law in ~~actions tried by jury trials~~; alternative motion for new trial; conditional rulings.

(a) *Judgment as a matter of law.*

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) ~~Renewal of~~Renewing motion for judgment after trial; alternative motion for new trial. -- ~~Whenever~~ If, for any reason, the court does not grant a motion for a judgment as a matter of law made at the close of all the evidence ~~is denied or for any reasons is not granted~~, the moving party ~~movant~~ may renew the motion by service and its request for judgment as a matter of law by filing a motion not later than 10 days after entry of judgment. -- and may alternatively request a new trial or join a motion for a new trial under Rule 59 ~~may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested 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 renewed motion for judgment as a matter of law as an alternative. ~~If a verdict was returned, In ruling on a renewed motion, the court may, in disposing of the renewed motion,:~~

(1) If a verdict was returned:

(A) ~~a~~Allow the judgment to stand, ~~or may reopen the judgment and either~~

(B) ~~e~~Order a new trial, or

(C) ~~d~~Direct the entry of judgment as a matter of law; or

(2) If no verdict was returned, ~~the court may, in disposing of the renewed motion,:~~

(A) Order a new trial, or

(B) ~~d~~Direct the entry of judgment as a matter of law ~~or may order a new trial.~~

(c) ~~Same; conditional rulings on grant of~~ Granting renewed motion for judgment as a matter of law; conditional rulings; new trial motion.

(1) If the renewed motion for judgment as a matter of law 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~~Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law has been is rendered ~~may serve~~ shall be filed a motion for a new trial pursuant to Rule 59 not later than 10 days after entry of the judgment.

(d) *Same; denial of motion for judgment as a matter of law.* -- If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. 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 52. Findings by the court; judgment on partial findings.

(a) *General and special findings by court.* -- Upon the trial of questions of fact by the court, or with an advisory jury, it shall not be necessary for the court to state its findings, except generally for the plaintiff or defendant, unless one of the parties requests it before the introduction of any evidence, with the view of excepting to the decision of the court upon the questions of law involved in the trial, in which case the court shall state in writing its special findings of fact separately from its conclusions of law; provided, that without such request the court may make such special findings of fact and conclusions of law as it deems proper and if the same are preserved in the record either by stenographic report or by the court's written memorandum, the same may be considered on appeal. Requests for findings are not necessary for purposes of review. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in subdivision (c) of this rule.

(b) *Amendment or additional findings.* -- ~~Upon~~ ~~On a party's~~ ~~motion of a party made~~ ~~filed~~ not later than 10 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 ~~accompany~~ a motion for a new trial pursuant to ~~under~~ 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~~ ~~supporting~~ the findings may ~~thereafter be~~ ~~later questioned~~ ~~raised~~ whether or not ~~in the~~ ~~district court~~ the party raising the question has made ~~in the~~ ~~district court~~ an objection to such ~~objected to the~~ findings, moved

~~or has made a motion to amend them or a motion for judgment, or moved for partial findings.~~

(c) *Judgment on partial findings.* -- If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. The party against whom entry of such a judgment is considered shall be entitled to no special inference as a consequence of such consideration, and the court may weigh the evidence and resolve conflicts. Such a judgment shall be supported by findings as provided in subdivision (a) of this rule.

(d) *Reserved questions.* -- In all cases in which a district court reserves an important and difficult constitutional question arising in an action or proceeding pending before it, the district court, before sending the question to the supreme court for decision, shall (1) dispose of all necessary and controlling questions of fact and make special findings of fact thereon, and (2) state its conclusions of law on all points of common law and of construction, interpretation and meaning of statutes and of all instruments necessary for a complete decision of the case. No constitutional question shall be deemed to arise in an action unless, after all necessary special findings of fact and conclusions of law have been made by the district court, a decision on the constitutional question is necessary to the rendition of final judgment. The question reserved shall be specific, and shall identify the constitutional provision to be interpreted. The special findings of fact and conclusions of law required by this subdivision of this rule shall be deemed to be a final order from which either party may appeal, and such appeal may be considered by the supreme court simultaneously with the reserved question.

Rule 59. New trials; amendment of judgments.

(a) *Grounds.* -- A new trial may be granted to all or any of the parties, and on all or part of the issues. On a motion for a new trial in an action tried without a jury, the court may open the judgment, if one has been entered, take additional testimony, amend

findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment. Subject to the provisions of Rule 61, a new trial may be granted for any of the following causes:

(1) Irregularity in the proceedings of the court, jury, referee, master or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial;

(2) Misconduct of the jury or prevailing party;

(3) Accident or surprise, which ordinary prudence could not have guarded against;

(4) Excessive damages appearing to have been given under the influence of passion or prejudice;

(5) Error in the assessment of the amount of recovery, whether too large or too small;

(6) That the verdict, report or decision is not sustained by sufficient evidence or is contrary to law;

(7) Newly discovered evidence, material for the party applying, which the party could not, with reasonable diligence, have discovered and produced at the trial;

(8) Error of law occurring at the trial.

(b) *Time for motion.* -- Any motion for a new trial shall be ~~served~~ ~~filed~~ not later than 10 days after the entry of the judgment.

(c) *Time for serving affidavits.* -- When a motion for new trial is based upon affidavits, they shall be ~~served~~ ~~filed~~ with the motion. The opposing party has 10 days after such service within which to ~~serve~~ ~~file~~ opposing affidavits, ~~which~~ but that period may be extended for an additional period not exceeding up to 20 days, either by the court for good cause ~~shown~~ or by the parties, by written stipulation. The court may permit reply affidavits.

(d) On ~~court's initiative of court~~; notice; specifying grounds. -- Not later than 10 days after entry of judgment the court, ~~on of its own~~, initiative may order a new trial for any reason ~~for which it might have granted a new trial on that would justify granting one on a party's motion of a party~~. After giving the parties notice and an opportunity to be heard ~~on the matter~~, the court may grant a timely motion for a new trial, ~~timely served~~, for a reason not stated in the motion. ~~In either case, When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify in the order the grounds in its order therefor.~~

(e) Motion to alter or amend ~~a~~ judgment. -- Any motion to alter or amend ~~the a~~ judgment shall be ~~served~~ filed not later than 10 days after entry of the judgment.

Rule 83. Rules of district courts.

The district courts, by action of a majority of the judges of the District Court Division of the ~~Judicial Conference Council~~ and approval of the supreme court, may make and amend uniform rules governing district court practice. A uniform rule shall be ~~not inconsistent with~~ -- but not duplicative of -- these rules. Approved uniform rules shall be published in the Wyoming Court Rules volume. A district court may not establish rules of procedure applicable only in that district.