

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2024

In the Matter of Adoption of)
Rule 30.1 of the Wyoming)
Rules of Civil Procedure)

ORDER ADOPTING RULE 30.1 OF THE WYOMING RULES OF CIVIL PROCEDURE

The Permanent Rules Advisory Committee, Civil Division, has recommended the Court adopt Rule 30.1 of the Wyoming Rules of Civil Procedure. This Court finds the proposed rule should be adopted. It is, therefore,

ORDERED that Rule 30.1 of the Wyoming Rules of Civil Procedure, attached hereto, be and hereby are adopted by the Court to be effective October 1, 2024; and it is further

ORDERED that this order and the attached rule be published in the advance sheets of the Pacific Reporter; the attached rules be published in the Wyoming Court Rules Volume; and that this order and the attached rules be published online at the Wyoming Judicial Branch’s website, <http://www.courts.state.wy.us>, on the “Rule Amendments” page. The amendments shall also be recorded in the journal of this Court.

DATED this 9th day of July, 2024.

BY THE COURT:

/s/

KATE M. FOX
Chief Justice

Wyoming Rules of Civil Procedure

Rule 30.1. Remote Depositions.

The following Protocols shall apply to all Remote Depositions, unless otherwise stipulated to by the parties or as otherwise ordered by the court:

(a) Remote Depositions. Depositions conducted in a manner that allows the deponent and all other persons entitled and required to attend a deposition the opportunity to participate in person without being physically present at the same location as all deposition participants (“Remote Deposition”) may be conducted in any civil case.

(b) Unless specifically stated otherwise herein, any Remote Deposition taken pursuant to this Rule must comply with the requirements of W.R.C.P. 30.

(c) A Remote Deposition will be deemed to have been taken before an appropriate officer provided the court reporter attends by the same remote means as the other participants and is able to hear and communicate with all other attendees. The witness may be sworn in remotely with the same effect as an oath administered in person.

(d) At least seven (7) days prior to the Remote Deposition, the party noticing the deposition must identify the company or court reporter that will host and record the Remote Deposition (the “Remote Deposition Vendor”). The notice must also contain a general description of how those attending may access the remote connection and platform utilized.

(1) The party noticing the deposition must provide the witness and all other attendees detailed instructions that explain how to participate in the Remote Deposition. These instructions must be provided to the parties within the Remote Deposition Notice.

(2) To avoid technological issues, the parties shall meet and confer in advance of the Remote Deposition to discuss protocols applicable to the Remote Deposition, including but not limited to sign-in information, vendor identification, the identities of all individuals who are expected to attend, exhibit sharing, and audio and visual concerns, if any. Unless the parties agree otherwise, a Remote Deposition Vendor shall have adequate security measures to ensure the confidentiality of the Remote Deposition, video and audio feeds, and exhibits. These security measures shall include password protection and tools for the court reporter to admit only those individuals authorized to attend the Remote Deposition.

(3) Unless the parties agree otherwise, at least twenty-four (24) hours prior to the Remote Deposition, counsel, the witness, and the Remote Deposition Vendor shall conduct a test of the system, equipment, and internet connection that will be used to conduct the Remote Deposition (the “Remote Deposition Technology”).

(4) At the commencement of the Remote Deposition, the witness must advise the court reporter of his or her physical location. If the witness appears via remote video platform, the witness should endeavor to participate in the deposition from a quiet, well-lit, indoor location, while seated in front of a neutral background, and must face the camera. Other than the application required to conduct the deposition, the witness shall not have any other applications open or running on any electronic device.

(5) If the witness intends to appear in a Remote Deposition via telephonic means

(and not by video), the party noticing the deposition shall assure that the location of the witness's appearance is covered by a reliable connection.

(6) The microphones and video feeds for a Remote Deposition examining attorney, witness and court reporter shall remain "on" while the deposition is on the record.

(7) At the request of the examining attorney or self-represented party, a split screen may be utilized to record and display an exhibit while the witness is being deposed.

(8) The Remote Deposition Technology shall show in real-time a list of all persons attending the Remote Deposition. The participating attorneys may, at their option, be visible to all other participants during the deposition.

(A) All individuals participating in or observing the Remote Deposition must announce themselves for the record.

(B) The Remote Deposition Vendor, court reporter and videographer, the witness's counsel, and any party or attorney and representatives of a party are the only individuals permitted to be in the same physical location as the witness during a Remote Deposition. Unless the notice provides otherwise, or unless the parties so stipulate, no other individuals are permitted to be in the same room as the witness during a Remote Deposition.

(C) If a party's or witness's attorney intends to attend the Remote Deposition in the same physical location as the witness, that attorney shall provide notice to all other parties at least twenty-four (24) hours in advance of the Remote Deposition.

(D) At the commencement of a Remote Deposition, the witness shall be informed by counsel or the court reporter to inform those in attendance of any person, other than the witness's counsel, that enters the room where the witness is physically located.

(9) A videographer employed by the Remote Deposition Vendor may record the witness's deposition testimony by reasonable technological means, including remote video capture/recording. The video recording of the deposition may only be suspended during the deposition upon stipulation by counsel conducting and defending the deposition.

(A) Unless the parties agree otherwise, the Remote Deposition shall only be recorded by the court reporter, videographer and/or Remote Deposition Vendor.

(B) Unless all parties agree or the court orders otherwise, during the Remote Deposition, the operator/videographer will video record the witness only.

(C) The videographer must only record:

(i) The audio and video of the witness's testimony.

(ii) The video of any documents being displayed or annotated for the witness during the deposition; and

(iii) The audio of the questioning and defending attorneys.

(e) A Remote Deposition conducted in accordance with this Rule will not be a basis for excluding the Remote Deposition at trial and shall have the same effect as a video deposition that was recorded in-person at the same physical location as the deponent.

(f) Any document that may be used as an exhibit during the Remote Deposition shall be transmitted by the examining attorney to all Remote Deposition participants:

- (1) in sealed envelopes in advance of the Remote Deposition;
- (2) in real time or in advance electronically through either the court reporter or the Remote Deposition Vendor's Remote Deposition platform, secure file transfer, or email, before or during the course of the Remote Deposition;
- (3) a combination of subsections (1) and (2) of this paragraph; or
- (4) by an alternative means agreed to in advance by the parties.
- (5) If documents that may be used as exhibits are transmitted to Remote Deposition Participants in sealed envelopes pursuant to subparagraph (1), the deposition participants will not open the sealed envelopes or otherwise access such documents unless and until specifically requested by the examining attorney. All sealed envelopes must be opened only during the Remote Deposition. The witness shall not review documents during the deposition, other than those marked by the examining attorney as exhibits or otherwise used by the examining attorney, without notifying and with the consent of the examining attorney.

(g) During the Remote Deposition examination, no person is permitted to communicate with the witness by any means not recorded in the same manner as the deposition itself. All private chat features on the remote connection being utilized shall be disabled. All applications on the witnesses' device, other than the applications being utilized to conduct the deposition, shall be closed. No witness shall communicate with any person (verbally, in writing, or by conduct) while on the record at the deposition in a manner that the examining attorney cannot personally observe through the videoconference technology. However, the witness's counsel may communicate with the witness telephonically or by other electronic means (including, but not limited to, the use of the remote connection software) during Remote Deposition breaks, consistent with the Wyoming Rule of Civil Procedure and the Wyoming Rules of Evidence.

(h) During Remote Deposition breaks, the parties may use any confidential breakout room feature provided by the Remote Deposition Vendor, which simulates a live breakout room through videoconference. Conversations in the breakout rooms shall not be recorded. The breakout rooms shall be established by the Remote Deposition Vendor prior to the deposition and controlled by the Remote Deposition Vendor.

(i) Any pauses, lags, and/or disruptions in technology, including but not limited to interruptions in internet connection, will not result in waiver of objections by any party. If a technical issue prevents any person from being able to see or hear one or more of the other persons clearly or to access published exhibits, the person encountering such technical issue shall promptly notify the other participants.

(j) Nothing in this Rule prevents a party from moving for a protective order under W.R.C.P. 26(c) to request a given deposition proceed in person.

(k) Nothing contained in this Rule precludes counsel for a witness from being in the same room as the witness.

(l) Any Protective Order entered in the action shall apply to any confidential testimony and/or documents used as exhibits during the taking of any Remote Deposition to the same extent it would to an in-person deposition.

(m) The parties may agree on *ad hoc* modifications to this procedure in order to accommodate the needs of a particular witness and/or to resolve any issues that may arise with respect to a particular deposition. Such modifications may be stipulated to in writing or memorialized on the record at a deposition.

(n) If there are issues with connectivity with a Deposition Participant, or if these Remote Deposition Protocols cannot be resolved consensually, subject to the court's availability, the parties may seek an expedited telephonic hearing with the court.
