IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1970

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

O R D E R

It is ordered that new Rules 23.1, 23.2, 43(f), 44.1, and 65.1, Wyoming Rules of Civil Procedure, reading as hereinafter set out, be adopted:

RULE 23.1

DERIVATIVE ACTIONS BY SHAREHOLDERS

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified. The complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

RULE 23.2

ACTIONS RELATING TO UNINCORPORATED ASSOCIATIONS

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

RULE 43

EVIDENCE

(f) Interpreters. The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

RULE 44.1

DETERMINATION OF FOREIGN LAW

A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43. The court's determination shall be treated as a ruling on a question of law.

RULE 65.1

SECURITY: PROCEEDINGS AGAINST SURETIES

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

It is further ordered that Rules 1, 4(1), 5(a), 12(b), (g) and (h), 13(h), 14(a), 17(a), 18(a), 19(a), 20(a), 23, 24(a), 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 41(b), 44, 45(d), 59(d), 65(a), (b) and (c), 68, 69, 71.1(d), (e) and (1), 72.1(c) and (i), 73, 74, 75, 87(a), and Form 24, Wyoming Rules of Civil Procedure, be amended to read as follows, the amending portions being in italics and the deleted portions indicated by asterisks:

RULE 1

SCOPE OF RULES

These rules govern procedure in all courts of record in the State of Wyoming, in all actions, suits or proceedings of a civil nature, in all special statutory proceedings except as provided in Rule 81, and in all appeals in criminal cases. In all cases in which statutes of civil procedure are made applicable by statute to the trial of criminal cases and are not superseded by the Wyoming Rules of Criminal Procedure, these rules shall govern insofar as they supersede or are in conflict with such statutes. They shall be construed to secure the just, speedy and inexpensive determination of every action.

RULE 4

PROCESS

(1) Other Service: Personal Service Outside the State; Service by Registered Mail. In all cases where service by publication can be made under these rules, or where a statute

permits service outside this state, the plaintiff may obtain service without publication by either of the following methods:

(1) Personal Service Outside the State. By delivery to the defendant of copies of the summons and complaint.

(2) Service by Registered Mail. Upon the request of any party the clerk shall send by registered mail a copy of the complaint and summons addressed to the party to be served at the address given in the affidavit required under subdivision (f) of this rule, requesting a return receipt signed by addressee only. When such return receipt is received signed by the addressee the clerk shall file the same and enter a certificate in the cause showing the making of such service.

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 paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, 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 12

DEFENSES AND OBJECTIONS--WHEN AND HOW
PRESENTED--BY PLEADING OR MOTION--MOTION
FOR JUDGMENT ON PLEADINGS

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join * * * a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading

to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it * * * any other motions herein provided for and then available to him. If a party makes a motion under this rule * * * but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on * * * the * * * defense or * * * objection so omitted, except a motion as provided in subdivision (h) * * * (2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses. * * *

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

RULE 13

COUNTERCLAIM AND CROSS-CLAIM

(h) Joinder of Additional Parties * * * . * * * Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

RULE 14

THIRD-PARTY PRACTICE

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a * * * defending party, 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

ten 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 third-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 17

PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. * * * An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought * * * ; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

RULE 18

JOINDER OF CLAIMS AND REMEDIES

(a) Joinder of Claims. * * * A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, * * * legal or equitable, * * * as he * * * has against an opposing party.

RULE 19

* * * JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) * * * Persons to be Joined if Feasible. A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

RULE 20

PERMISSIVE JOINDER OF PARTIES

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any * * * question of law or fact common to all * * * these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any * * * question of law or fact common to all * * * defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

RULE 23

CLASS ACTIONS

(a) * * * Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) * * * Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) * * * Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b) (3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (b) (1) or (b) (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b) (3), whether

or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c) (2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

RULE 24

INTERVENTION

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the * * * applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

RULE 26

* * * GENERAL PROVISIONS GOVERNING DISCOVERY

(a) * * * Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and

mental examinations and requests for admission. Unless the court orders otherwise under subdivision (c) of this rule, the frequency of use of these methods is not limited.

(b) Scope of * * * Discovery. Unless otherwise * * * limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b) (4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b) (1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a) (4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b) (1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the court may order further discovery by other means,

subject to such restrictions as to scope and such provisions, pursuant to subdivision (b) (4) (C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b) (4) (A) (ii) and (b) (4) (B) of this rule; and (ii) with respect to discovery obtained under subdivision (b) (4) (A) (ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b) (4) (B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) * * * Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition to be taken within the state, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a) (4) apply to the award of expenses incurred in relation to the motion.

(d) * * * Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) * * * Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person not theretofore identified expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (A) he knows that the response was incorrect when made, or (B) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

* * *

RULE 29

STIPULATIONS REGARDING * * * DISCOVERY PROCEDURE

* * * Unless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may be made only with the approval of the court.

RULE 30

DEPOSITIONS UPON ORAL EXAMINATION

(a) * * * When Depositions May be Taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of thirty days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that leave is not required (1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or (2) if special notice is given as provided in subdivision (b) (2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

(b) * * * Notice of Examination: General Requirements; Special Notice; Non-stenographic Recording; Production of Documents and Things; Deposition of Organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the State of Wyoming and will be unavailable for examination unless his deposition is taken before expiration of the thirty-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when he was served with notice under this subdivision (b) (2) he was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against him.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The court may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may nevertheless arrange to have a stenographic transcription made at his own expense.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b) (6) does not preclude taking a deposition by any other procedure authorized in these rules.

(c) Examination and Cross-examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Rule 43(b). The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically * * * or recorded by any other means ordered in accordance with subdivision (b) (4) of this rule. If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties * * * may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of * * * a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken within the state may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in * * * Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. * * * The provisions of Rule 37(a) (4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within ten days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed * * * unless on a motion to suppress under Rule 32(d) (4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true

record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the * * * reasonable expenses incurred by him and his attorney in * * * attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the * * * reasonable expenses incurred by him and his attorney in * * * attending, including reasonable attorney's fees.

RULE 31

DEPOSITIONS * * * UPON WRITTEN * * * QUESTIONS

(a) Serving * * * Questions; Notice. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take * * * a deposition * * * upon written * * * questions shall serve them * * * upon every other party * * * with a notice * * * stating (1) the name and address of the person who is to answer them * * * , if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b) (6).

Within ten days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within ten days after being served with cross questions, a party may serve redirect questions upon all other parties. Within ten days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all * * * questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the * * * questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the * * * questions received by him.

(c) * * * Notice of Filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

RULE 32

* * * USE OF DEPOSITIONS IN COURT PROCEEDINGS

(a) * * * Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b) (6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) that the witness is dead; or (B) that the witness is absent from the county where the trial or hearing is held, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(b) * * * Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision (d) (3) of this rule, 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.

(c) * * * Effect of Taking or Using Depositions. A party does not make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subdivision (a) (2) of this rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) * * * Effect of Errors and Irregularities in Depositions.

(1) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice. [Previously 32(a).]

(2) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence. [Previously 32(b).]

(3) As to Taking of Deposition.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time. [Previously 32(c)(1).]

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition. [Previously 32(c)(2).]

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized. [Previously 32(c)(3)--amended.]

(4) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained. [Previously 32(d).]

RULE 33

INTERROGATORIES TO PARTIES

(a) Availability; Procedures for Use. Any party may serve upon any * * * other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association * * * or * * * governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and * * * upon any other party with or after service of the summons and complaint upon that party.

* * * Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers * * * are to be signed by the person making them * * * , and the objections signed by the attorney making them. * * * The party upon whom the interrogatories have been served shall serve a copy of the answers * * * , and objections if any, within thirty days after the service of the interrogatories, except that a defendant may serve answers or objections within forty-five days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(b) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the * * * extent * * * permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(c) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answers may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

RULE 34

* * * PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION * * * AND OTHER PURPOSES

(a) * * * Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) * * * Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within thirty days after the service of the request, except that a defendant may serve a response within forty-five days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37 (a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

RULE 35

PHYSICAL AND MENTAL EXAMINATION OF PERSONS

(a) Order for Examination. * * * When the mental or physical condition * * * (including the blood group) of a party, or of * * * a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental * * * examination by a physician or to produce for * * * examination * * * the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of * * * Examining Physician.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After * * * delivery the party causing the examination * * * shall be entitled upon request to receive from the party * * * against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. * * * The court on motion * * * may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make * * * a report the court may exclude his testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule.

RULE 36

* * * REQUESTS FOR ADMISSION

(a) Request for Admission. * * * A party may serve upon any other party a written request for the admission * * * , for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of forty-five days after service of the summons and complaint upon him. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part * * * of * * * the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny * * * the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why he cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a) (4) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party * * * under this rule is for the purpose of the pending action only and * * * is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

RULE 37

* * * FAILURE TO MAKE DISCOVERY: * * * SANCTIONS

(a) * * * Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate Court. An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition to be taken within the state, to the court where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court where the deposition is being taken.

(2) Motion. If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b) (6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising

the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply with Order.

(1) * * * Sanctions by Court in District Where Deposition is Taken. If a * * * deponent fails to be sworn or * * * to answer * * * a question after being directed to do so by the court in the district in which the deposition is being taken, the * * * failure may be considered a contempt of that court.

(2) * * * Sanctions by Court in Which Action is Pending. If * * * a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b) (6) or 31(a) to testify on behalf of a party * * * fails to obey an order * * * to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the * * * failure as are just, and among others the following:

* * * (A) An order that the matters regarding which the * * * order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

* * * (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing * * * designated * * * matters in evidence;

* * * (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

* * * (D) In lieu of any of the foregoing orders or in addition thereto, an order * * * treating as a contempt of court the failure to obey any * * * orders except an order to submit to a physical or mental * * * examination;

* * * (E) Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders as are listed in * * * paragraphs (A), (B), and (C) of this subdivision * * * , unless the party failing to comply shows that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Expenses on * * * Failure to Admit. If a party * * * fails to admit the genuineness of any * * * document or the truth of any * * * matter as requested under Rule 36, * * * and if the party requesting the admissions thereafter proves the genuineness of * * * the document or the truth of * * * the matter * * * , he may apply to the court for an order requiring the other party to pay * * * him the reasonable expenses incurred in making * * * that proof, including reasonable attorney's fees. * * * The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b) (6) or 31(a) to testify on behalf of a party * * * fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or * * * (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of * ** the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court * * * in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b) (2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

RULE 41

DISMISSAL OF ACTIONS

(b) Involuntary Dismissal: Effect Thereof.

(1) By Defendant. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. * * * The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the

court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, * * * for improper venue, or for * * * failure to join a party under Rule 19, operates as an adjudication upon the merits.

(2) By the Court. Upon its own motion the court may dismiss without prejudice any action not prosecuted or brought to trial with due diligence.

RULE 44

PROOF OF OFFICIAL RECORD

(a) Authentication * * * .

(1) Domestic. An official record kept within the United States, or any state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a * * * copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. * * * The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. * * *

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

(b) * * * Lack of Record. A written statement * * * that after diligent search no record or entry of a specified tenor is found to exist in the records * * * designated by the statement, authenticated as provided in subdivision (a) (1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a) (2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by * * * law.

(d) Seal Dispensed With. In the event any office or officer, authenticating any documents under the provisions of this rule, has no official seal, and so certifies, then authentication by seal is dispensed with.

RULE 45

SUBPOENA

(d) Subpoena for Taking Depositions; Place of Examination.

(1) Proof of service of a notice to take a deposition as provided in Rules 30 * * * (b) and 31(a) * * * constitutes a sufficient authorization for the issuance by the clerk of the district court for the county in which the deposition is to be taken, or by the notary public or other officer authorized to take the deposition, of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain * * * matters within the scope of the examination permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of * * * Rule 26(c) and subdivision (b) of this rule * * * .

The person to whom the subpoena is directed may, within ten days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

RULE 59

NEW TRIALS; AMENDMENT OF JUDGMENTS

(d) On Initiative of Court. Not later than ten days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party * * * . After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

RULE 65

INJUNCTIONS

(a) Preliminary * * * Injunction.

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a) (2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary Restraining Order; Notice; Hearing; Duration. * * * A temporary restraining order * * * may be granted without written or oral notice to the adverse party or his attorney * * * only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before * * * the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed ten days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, * * * the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who

is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof.

* * * The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

RULE 68

OFFER OF JUDGMENT

At any time more than ten days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within ten days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ten days prior to the commencement of hearings to determine the amount or extent of liability.

RULE 69

EXECUTION

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. In aid of the judgment or execution, and in addition to the proceedings provided by statute, the judgment creditor or his successor in interest when that interest appears of record, may * * * obtain discovery from any person, including the judgment debtor, in the manner provided in these rules * * * .

RULE 71.1

CONDEMNATION OF PROPERTY

(d) Order for Hearing; Process; Answer.

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

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

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

RULE 72.1

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

(c) Petition for Review; Other Proceedings for Review. The proceedings for judicial review under this rule shall be instituted by filing a petition for review in the district court having venue. No other pleading shall be necessary, either by petitioner

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

No summons shall be necessary. Copies of the petition shall be served without unnecessary delay upon the agency and the parties in accordance with Rule 5.

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

The court shall enter judgment affirming, modifying or reversing the order, or in its discretion, remanding the case to the agency for proceedings in conformity with the direction of the court.

RULE 73

APPEAL TO THE SUPREME COURT

(a) * * * How and * * * When Taken. * * * An appeal * * * permitted by law from a district court to the supreme court * * * shall be taken by filing a notice of appeal with the district court within thirty days from the entry of the judgment or final order appealed from and serving the same in accordance with the provisions of Rule 5, unless a different time is provided by law, except that: (1) upon a showing of excusable neglect * * * the district court in any action may extend the time for filing the notice of appeal not exceeding thirty days from the expiration of the original time herein prescribed * * * ; (2) if a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days of the date on which the first notice of appeal was filed, or within the time otherwise herein prescribed, whichever period last expires. The running of the time for appeal is terminated as to all parties by a timely motion made by any party pursuant to any of the rules hereinafter enumerated, and the full time for appeal fixed in this subdivision commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: * * * granting or denying a motion for judgment under Rule 50(b); or granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required

if the motion is granted; or granting or denying a motion under Rule 59 to alter or amend the judgment; or denying a motion for a new trial under Rule 59.

* * * Concurrently with filing the notice of appeal, the appellant shall * * * order and arrange for the payment of a transcript of the portions of the evidence deemed necessary for the appeal, and written evidence of the compliance with this requirement shall be filed in the case or indorsed upon the notice of appeal. Failure of * * * an appellant to take any * * * step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such * * * action as the supreme court deems appropriate, which may include dismissal of the appeal. If an appeal has not been docketed, the parties, with the approval of the district court, may dismiss the appeal by stipulation filed in that court, or that court may dismiss the appeal upon motion and notice by the appellant.

(b) Notice of Appeal. The notice of appeal shall specify the parties taking the appeal; shall designate the judgment or final order or part thereof appealed from; and shall name the court to which the appeal is taken.

(c) Bond on Appeal. Whenever a bond for costs on appeal is required by law, the bond shall be filed or equivalent security shall be deposited with the notice of appeal. The bond shall be in the sum of one hundred dollars, unless the court fixes a different amount or unless a supersedeas bond is filed, in which event no separate bond on appeal is required. The bond on appeal shall have sufficient surety and shall be conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed, or of such costs as the appellate court may award if the judgment is modified. If a bond on appeal or equivalent security in the sum of one hundred dollars is given, no approval thereof is necessary. After a bond on appeal is filed an appellee may raise objections as to the form of the bond or to the sufficiency of the surety for determination by the clerk.

(d) Supersedeas Bond; Restitution Undertaking.

(1) Supersedeas Bond. Whenever an appellant entitled thereto desires a stay * * * on appeal, he may present to the court at or before the time of filing his notice of appeal, a supersedeas bond in such amount as shall be fixed by the district court and with surety or sureties to be approved by the court or by the clerk thereof. The bond shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for delay, if for any reason the appeal is not perfected or is dismissed, or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as the supreme court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining and unsatisfied, costs on the appeal, and interest, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property

is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. A separate supersedeas bond need not be given, unless otherwise ordered, when the appellant has already filed in the district court security including the event of appeal, except for the difference in amount, if any.

When the judgment directs the execution, assignment or delivery of a conveyance or other instrument, appellant may execute, assign or deliver the conveyance or other instrument, leaving same in the custody of the clerk of the district court in which the judgment was rendered, there to remain and abide the judgment of the supreme court, and in such case appellant shall give bond only for costs on appeal and damages for delay.

Executors, administrators and guardians who have given bond in this state, with surety according to law, shall not be required to give a supersedeas bond.

(2) * * * Restitution Undertaking. In an action on a contract for the payment of money only, or in an action for injuries to the person, if the appellee gives adequate security to make restitution in case the judgment be reversed or modified, he may, on leave obtained from the trial court, proceed to enforce the judgment notwithstanding the execution of a supersedeas bond. Such security must be an undertaking executed to the appellant, with sufficient surety, to the effect that if the judgment be reversed or modified he will make full restitution to the appellant of the money by him received under the judgment; but the provisions of this paragraph shall not apply to judgments recovered in actions for libel, slander, malicious prosecution, false imprisonment or assault and battery.

* * * [Text of new paragraph (2) above is identical to prior Rule 73(d)(3), W.R.C.P.]

(e) Failure to File or Insufficiency of Bond. If a bond on appeal or a supersedeas bond is not filed within the time specified, or if the bond filed is found insufficient, and if the action is not yet docketed with the supreme court, a bond may be filed at such time before the action is so docketed as may be fixed by the district court. After the action is so docketed, application for leave to file a bond may be made only in the supreme court.

(f) Judgment Against Surety. * * * The provisions of Rule 65.1 apply to a surety upon an appeal or supersedeas bond given pursuant to subdivisions (c) and (d) of this rule.

(g) Docketing * * * the Appeal; Filing of the Record on Appeal. The * * * appellant shall cause the record on appeal as provided for in Rules 75 and 76 * * * to be filed with the supreme court and the appeal * * * to be docketed there within sixty days from the date of filing the notice of appeal * * * . The record will be filed and the appeal docketed upon receipt by the clerk of the supreme court, within the sixty days herein provided or within

such shorter or longer period as the court may prescribe, of the record on appeal and, unless the appellant is authorized to proceed without payment of fees, of the docket fee fixed by Rule 7 of the Rules of the Supreme Court. When more than one appeal is taken from the same judgment, the district court may prescribe the time for filing and docketing, which in no event shall be less than sixty days from the date of filing the first notice of appeal. In all cases the district court * * * may extend the time for filing the record * * * and docketing the appeal * * * upon motion of an appellant made within the period for filing and docketing as originally prescribed or as extended by a previous order, or upon its own motion by order entered within such period; but the district court shall not extend the time to a day more than ninety days from the date of filing the first notice of * * * appeal. The motion of an appellant for an extension shall show that his inability to effect timely filing and docketing is due to causes beyond his control or to circumstances which may be deemed excusable neglect. However, the supreme court on proper application may permit the record on appeal to be later filed and docketed (1) where without fault of the appealing party the necessary transcript of evidence was not made available to the appellant within the time limited for filing and docketing the record on appeal if the appealing party produces written evidence that concurrently with the filing and serving of the notice of appeal such appellant had ordered from and arranged with the court reporter the payment for the transcript of those portions of the evidence deemed necessary for the appeal, or (2) upon a showing satisfactory to the supreme court that diligence was used by counsel for appellant and that, for causes beyond his control, the record on appeal could not be docketed within the time limited. The district court or the supreme court may require the record to be filed and the appeal to be docketed at any time within the time otherwise provided or fixed.

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

RULE 74

JOINT * * * APPEALS

* * * If two or more persons are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate notices of appeal, and they may thereafter proceed on appeal as a single appellant.

RULE 75

RECORD ON APPEAL TO THE SUPREME COURT

(a) * * * Composition of the Record on Appeal. * * * The original papers and exhibits filed in the district court, the transcript of proceedings, if any, or any designated portion thereof, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal

in all cases. The parties may agree by written stipulation filed in the district court that designated parts of the record need not be transmitted to the supreme court, in which event the parts shall be retained in the district court unless thereafter the supreme court shall order or any party shall request their transmission, but the parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

Whenever such a designation is made, the papers transmitted to the supreme court shall always include the material pleadings without unnecessary duplication, or the indictment or information and pleas and motions addressed thereto, the notice of appeal with date of filing, the stipulation making the designation, and any verdict, master's report, findings of fact or conclusions of law made a part of the record as provided in Rule 52(a), final order, judgment, sentence and statement of issues.

(b) * * * The Transcript of Proceedings; Notice to Appellee if Partial Transcript is Ordered. Unless the entire transcript is to be included, the appellant shall, within ten days after filing the notice of appeal, file and serve on the appellee a description of the parts of the transcript which he intends to include in the record and a statement of the issues he intends to present on the appeal. If an appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion. If the appellee deems a transcript of other parts of the proceedings to be necessary he shall, within ten days after the service of the statement of the issues by the appellant, order such parts from the reporter or procure an order from the district court requiring the appellant to do so. At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

All transcripts of testimony, evidence and proceedings shall be certified by the official court reporter to be true and correct in every particular, and when so certified shall be received as prima facie evidence of the facts, testimony, evidence, and proceedings set forth in such transcript. The reporter shall indicate at the bottom of each page of the transcript the name of the witness, the name of counsel then examining, and the type of examination there appearing. The transcript shall be certified by the clerk as a part of the record on appeal. The papers transmitted to the supreme court by the clerk of the district court shall be fastened together in one or more volumes, with pages numbered consecutively, and with a cover page bearing the title of the case and containing the designation "Record on Appeal," followed by a complete index of all the papers therein, and the clerk shall append his certificate identifying the papers with reasonable definiteness.

(c) * * * Statement of the Evidence or Proceedings When No Report Was Made or When the Transcript Is Unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may serve objections or propose amendments

thereto within ten days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the district court for settlement and approval and as settled and approved shall be included by the clerk of the district court in the record on appeal.

(d) * * * Correction or Modification of the Record. If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the supreme court, or the supreme court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court.

(e) * * * Transmission of the Record. Within the time provided or fixed under the provisions of Rule 73(g) for filing the record and docketing the appeal, the clerk of the district court shall transmit the record to the clerk of the supreme court. The appellant shall comply with the provisions of subdivision (b) of this rule and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is taken, each appellant shall comply with the provisions of subdivision (b) and of this subdivision, and a single record shall be transmitted. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the supreme court. A party must make advance arrangements with the clerks of both courts for the transportation and receipt of exhibits of unusual bulk or weight.

Upon stipulation of the parties, or by order of the district court at the request of any party, the clerk shall temporarily retain the record for use by the parties in preparing appellate papers. In that event, the appellant shall cause the record to be filed and the appeal to be docketed in the supreme court within the time provided or fixed under the provisions of Rule 73(g) by presenting to the clerk of the supreme court a partial record in the form of a copy of the docket entries, accompanied by a certificate of counsel for the appellant, or of the appellant if he is without counsel, reciting that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree, or as the court may order, the appellant shall request the clerk of the district court to transmit the record.

(f) * * * Retention of the Record in the District Court by Order of Court. The supreme court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted. If the record is required in the district court for use there pending the appeal,

the district court may make an order to that effect, and the clerk shall retain the record and shall transmit a copy of the order and of the docket entries together with such parts of the record as the district court shall allow and copies of such parts as the parties may designate. If the record is retained in the district court by order of either court, the clerk shall retain it subject to the order of the supreme court, and transmission of the copy of the docket entries shall constitute transmission of the record.

(g) * * * Record for Preliminary Hearing in the Supreme Court. If prior to the time the record is transmitted a party desires to make in the supreme court a motion for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, for an extension of time within which to complete the record, or for any intermediate order, the clerk at the request of any party shall transmit to the supreme court such parts of the original record as the parties shall designate.

(h) * * * Return of the Record to the District Court. After an appeal has been disposed of, the original papers comprising the record on appeal shall be returned to the custody of the district court.

* * * * * * * * * *

RULE 87

LAWS SUPERSEDED

(a) Generally.

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

Secs. 1-442, 1-443
Sec. 1-502
Secs. 1-509 to 1-519
Sec. 1-626
Sec. 3-104
Secs. 3-107 to 3-110
Sec. 3-211
Article 3, Chapter 3
Secs. 3-517, 3-518
Articles 6 and 7, Chapter 3
Secs. 3-1001 to 3-1009
Secs. 3-1011 to 3-1016
Articles 11 and 12, Chapter 3
Secs. 3-1301 to 3-1315
Secs. 3-1317, 3-1318
Articles 14 to 18, inclusive, Chapter 3
Secs. 3-2101 to 3-2105
Sec. 3-2107
Sec. 3-2204
Secs. 3-2302 to 3-2317
Secs. 3-2418 to 3-2427
Secs. 3-2501 to 3-2515
Secs. 3-2607 to 3-2611
Secs. 3-2901 to 3-2927
Article 30, Chapter 3
Secs. 3-3116 to 3-3121
Articles 32, 33 and 34, Chapter 3
Secs. 3-3501 to 3-3506
Secs. 3-3509, 3-3511
Secs. 3-3601 to 3-3606
Secs. 3-3804, 3-3811
Secs. 3-5301 to 3-5308
Secs. 3-5310 to 3-5315
Secs. 3-5318, 3-5319, 3-5322, 3-5323
Article 54, Chapter 3
Sec. 12-145

(2) From and after the effective date of these rules, the sections of Wyoming Statutes, 1957, as amended, hereinafter enumerated, shall be superseded, and such statutes and all other laws in conflict with these rules shall be of no further force or effect:

Secs. 1-154 to 1-156

FORM 24

* * * REQUEST FOR PRODUCTION OF DOCUMENTS, ETC., UNDER RULE 34

Plaintiff A.B. * * * requests defendant C.D. to respond within ..... days to the following requests:

(1) * * * That defendant produce and * * * permit plaintiff to inspect and to copy each of the following documents:

(Here list the documents either individually or by category and describe each of them.)

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

(2) * * * That defendant produce and permit plaintiff to inspect and to * * * copy, test, or sample each of the following objects:

(Here list the objects either individually or by category and describe each of them.)

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

(3) * * * That defendant permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph, test or sample (here describe the portion of the real property and the objects to be inspected * * *).

(Here state the time, place, and manner of making the inspection and performance of any related acts.)

* * * * *

Signed: _____
Attorney for Plaintiff

Address: _____

Notice of Motion

(Contents the same as in Form 19)

Exhibit A

State of _____
County of _____

A.B., first being duly sworn says:

(1) (here set forth all that plaintiff knows which shows that defendant has the papers or objects in his possession or control).

(2) (here set forth all that plaintiff knows which shows that each of the above mentioned items is relevant to some issue in the action).

(Jurat)

Signed: A.B.

It is further ordered that these rules be published in the Wyoming Reporter and shall become effective ninety days after their publication in the Pacific Reporter Advance Sheets, and thereupon shall be spread at length upon the journal of this court.

Dated at Cheyenne, Wyoming this 21st day of October, 1970.

BY THE COURT:

Norman B. Gray

NORMAN B. GRAY, Chief Justice