

IN THE SUPREME COURT, STATE OF WYOMING

October Term, A.D. 2007

In the Matter of)
Rules 5, 26, 30, 33, 34, 37, 40,)
45, 56.1, and 77 of the)
Wyoming Rules of Civil Procedure)

**ORDER ADOPTING AMENDMENTS TO RULES 5, 26, 30, 33, 34, 37, 40, 45, AND 77
OF THE WYOMING RULES OF CIVIL PROCEDURE**

AND

ORDER ADOPTING RULE 56.1 OF THE WYOMING RULES OF CIVIL PROCEDURE

This matter came before the Court upon a recommendation from the Permanent Rules Advisory Committee, Civil Division. The Committee has recommended amendments to Rules 5, 26, 30, 33, 34, 37, 40, 45, and 77 of the Wyoming Rules of Civil Procedure. This Court, having carefully reviewed the proposed amendments, finds that the proposed amendments should be adopted. The Committee has also recommended that this Court adopt Rule 56.1 of the Wyoming Rules of Civil Procedure. This Court, having carefully reviewed proposed Rule 56.1, finds that the rule should be adopted. It is, therefore,

ORDERED that the amendments to Rules 5, 26, 30, 33, 34, 37, 40, 45, and 77 of the Wyoming Rules of Civil Procedure, attached hereto, are adopted and that this order and those amendments be published in the advance sheets of the Pacific Reporter and in the Wyoming Reporter. The amendments shall be effective July 1, 2008, and thereafter shall be spread at length upon the journal of this Court; and it is further

ORDERED that Rule 56.1 of the Wyoming Rules of Civil Procedure, attached hereto, is adopted and that the rule be published in the advance sheets of the Pacific Reporter and in the Wyoming Reporter. The rule shall be effective July 1, 2008, and thereafter shall be spread at length upon the journal of this Court.

DATED this 8th day of January, 2008.

BY THE COURT:

BARTON R. VOIGT
Chief Justice

Rule 5. Service and filing of pleadings and other papers.

~~(b) *Service; How Made.*—Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by transmitting it to the attorney or party at the attorney's or party's last known address by mail or by other equally reliable means, including facsimile transmission, or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with a person over the age of 14 years then residing therein. Service by mail or transmission by other equally reliable means is complete upon mailing or dispatch; provided, however, transmission by facsimile must be received by 5:00 p.m. of the date of transmission, otherwise service is not complete until the next business day.~~

(b) *Making service.* -

(1) Service under Rules 5(a) and 77(d) on a party represented by an attorney is made on the attorney unless the court orders service on the party.

(2) Service under Rule 5(a) is made by:

(A) Delivering a copy to the person served by:

(i) handing it to the person;

(ii) leaving it at the person's office with a clerk or other person in charge, or, if no one is in charge, leaving it in a conspicuous place in the office; or

(iii) if the person has no office or the office is closed, leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

(B) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing.

(C) If the person served has no known address, leaving a copy with the clerk of court.

(D) Delivering a copy by any other means, including electronic means, consented to in writing by the person served. Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. If authorized by the clerk of the court, a party may make service under this subparagraph (D) through the court's transmission facilities. Service by electronic means under Rule 5(b)(2)(D) is not effective if the party making service learns that the attempted service did not reach the person to be served.

~~(d) *Filing; certificate of service.* - All papers after the complaint required to be served upon a party, together with a certificate of service, shall must be filed with the court either before service or within a reasonable time thereafter. Depositions and exhibits thereto, interrogatories and answers thereto, and requests for production and requests for admission and responses thereto shall be served upon counsel, or upon parties if appearing pro se, but shall not be filed with the court except as otherwise provided by this rule. If relief is sought under Rule 26 or 37, or if consideration of discovery papers is necessary with respect to a proceeding before the court~~

~~under Rule 56 or otherwise, a party may file relevant portions of such papers.~~ but disclosures under Rule 26(a)(1), (1.1), or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions; interrogatories; requests for documents or to permit entry upon land; and requests for admission. A notice of discovery proceedings may be filed concurrently with service of discovery papers to demonstrate substantial and bona fide action of record to avoid dismissal for lack of prosecution.

(e) *Filing with the court defined.* - The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Papers may be filed, signed, or verified by electronic means if the necessary equipment is available to the clerk. No documents shall be transmitted to the court by facsimile or electronic means for filing without prior telephonic notification to the clerk of court. Only under emergency circumstances shall documents be filed by facsimile transmission. Any paper filed by electronic means must be followed by an identical signed or otherwise duly executed original, or copy of any electronic transmission other than facsimile transmission, together with the fee as set forth in the Rules For Fees and Costs for District Court or the Rules For Fees and Costs For Circuit Court, mailed within 24 hours of the electronic transmission. The clerk upon receiving the original or copy shall note its date of actual delivery, and shall replace the facsimile or other electronic transmission in the court file. A paper filed by electronic means in compliance with this rule constitutes a written paper for the purpose of applying these rules. No document which exceeds ten (10) pages in length may be filed by facsimile. All format requirements contained in applicable rules must be followed. The court may reject any paper filed not in compliance with this rule.

Rule 26. General provisions governing discovery; duty of disclosure.

~~(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods:~~

- ~~(1) Depositions upon oral examination or written questions;~~
- ~~(2) Written interrogatories;~~
- ~~(3) Production of documents or things or permission to enter upon land or other property, for inspection and other purposes;~~
- ~~(4) Physical and mental examinations; and~~
- ~~(5) Requests for admission.~~

(a) *Required disclosures; methods to discover additional matter.*

(1) Initial disclosures. - Except in categories of proceedings specified in Rule 26 (a) (1) (E), or to the extent otherwise stipulated in writing or directed by order, a party must, without awaiting a discovery request, provide to other parties:

(A) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

(B) A copy of, or a description by category and location of, all documents, electronically stored information, and tangible things that are in the possession, custody,

or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;

(C) A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) For inspection and copying as under Rule 34 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.

(E) The following categories of proceedings are exempt from initial disclosure under Rules 26 (a) (1) (A), (B), (C) and (D):

- (i) cases arising under Title 14 of the Wyoming Statutes;
- (ii) cases in which the court sits in probate;
- (iii) divorce actions [for which the required initial disclosures are set forth in Rules 26 (a)(1.1) (A), (B), (C), (D), (E), (F), (G) and (H)];
- (iv) a forfeiture action in rem arising from a Wyoming statute;
- (v) a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence;
- (vi) an action brought without counsel by a person in custody of the State, county or other political subdivision of the State;
- (vii) an action to enforce or quash an administrative summons or subpoena; and
- (viii) a proceeding ancillary to proceedings in the court of original jurisdiction or other courts.

Unless a different time is set by stipulation in writing or by court order, these disclosures must be made within 30 days after a party's answer is required to be served under Rule 12(a) or as that period may be altered as described in Rule 12(a) by the party's service of a dispositive motion as described in Rule 12(b). Any party later served or otherwise joined must make these disclosures within 30 days after being served or joined unless a different time is set by stipulation in writing or by court order. A party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(1.1) Initial disclosures in divorce actions. - In divorce actions the following initial disclosures are required in pre-decree proceedings, and in post-decree proceedings to the extent that they pertain to a particular claim or defense:

(A) A schedule of financial assets, owned by the party individually or jointly, such as savings or checking accounts, stocks, bonds, cash or cash equivalents, which schedule shall include: (i) the name and address of the depository; (ii) the date such account was established; (iii) the type of account; (iv) the account number; and (v) whether acknowledged to be a marital asset or asserted to be a non-marital asset and, if asserted to be a non-marital asset, an explanation of the legal and factual basis for such assertion;

(B) A schedule of non-financial assets, owned by the party individually or jointly, which schedule shall include: (i) the purchase price and the date of acquisition; (ii) the present market value; (iii) any indebtedness relating to such asset; (iv) the state of record

ownership; (v) whether purchased from marital assets or obtained by gift or inheritance; and (vi) whether acknowledged to be a marital asset or asserted to be a non-marital asset and, if asserted to be a non-marital asset, an explanation of the legal and factual basis for such assertion;

(C) A schedule of all debts owed individually or jointly, identifying: (i) the date any obligation was incurred; (ii) the spouse in whose name the debt was incurred; (iii) the present amount of all debts and the monthly payments; (iv) the use to which the money was put which caused the debt to arise; (v) identification of any asset which serves as security for such debt; and (vi) an acknowledgement of whether each debt is a marital or non-marital debt and, if asserted to be a non-marital debt, an explanation of the legal and factual basis for such assertion;

(D) As to safe deposit boxes: (i) the name and address of the institution where the box is located; (ii) the box number; (iii) the name and address of the individual(s) who have access to the box; (iv) an inventory of the contents; and (v) the value of the assets located therein;

(E) Employment: (i) the name and address of the employer; (ii) gross monthly wage; (iii) payroll deduction(s), specifically identifying the type and amount; (iv) the amount of other benefits including transportation, employer contributions to health care, and employer contributions to retirement accounts; and (v) outstanding bonuses;

(F) Other income: list all sources of other income as defined by Wyo.Stat.Ann. § 20-6-202(a)(ix), including the name and address of the source and the amount and date received;

(G) As to retirement accounts or benefits: (i) the name and address of the institution holding such account or benefits; (ii) the present value if readily ascertainable; (iii) the initial date of any account; (iv) the expected payment upon retirement and the specific retirement date; and (v) the value of the account at the date of the marriage if the account existed prior to marriage;

(H) A party seeking custody or a change in custody shall set forth the facts believed to support the claim of superior entitlement to custody. In addition, as to a change of custody the party shall set forth any facts comprising a substantial change in circumstances and disclose any supporting documentation.

These disclosures in divorce actions must be made within 30 days after the defendant is served unless a different time is set by stipulation in writing or by court order. A party must make its disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of expert testimony.

(A) In addition to the disclosures required by paragraph (1) or (1.1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Wyoming Rules of Evidence.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis

and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under subdivision (e)(1).

(3) Pretrial Disclosures. - In addition to the disclosures required by Rule 26 (a)(1), (1.1), and (2), a party must provide to other parties and promptly file with the court the following information regarding the evidence that it may present at trial other than solely for impeachment:

(A) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and promptly file a list disclosing (i) any objections to the use under Rule 32 (a) of a deposition designated by another party under Rule 26(a)(3)(B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under Rule 26(a)(3)(C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Wyoming Rules of Evidence, are waived unless excused by the court for good cause.

(4) Form of disclosures. - Unless the court orders otherwise, all disclosures under Rules 26(a)(1), (1.1), (2), or (3) must be made in writing, signed, and served.

(5) Methods to discover additional matter. - 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 under Rule 34 or 45(a)(1)(C), for inspection and other purposes; physical and mental examinations; and requests for admission.

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

(1) ~~(A)~~ In General. - Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of the party seeking discovery or to the claim or defense of any 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. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by ~~Rule 26(b)(2)(B)(i), (ii), and (iii)~~ Rule 26(b)(2)(A), (B), and (C).

~~(B) — Limitations. — The frequency or extent of use of the discovery methods set forth in subdivision (a) may be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).~~

~~(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.~~

(2) Limitations.

(A) By order, the court may alter the limits in these rules on the number of depositions and interrogatories or the length of depositions under Rule 30. By order, the court may also limit the number of requests under Rule 36.

(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).

(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 the other party's 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 the party's case and that the party 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) 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) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. Upon motion, the court may order further discovery by other means. Such deposition or other discovery is subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C), 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.~~

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under subdivision (a)(2)(B), the deposition shall not be conducted until after the report is provided.

(B) A party may, through interrogatories or by deposition, 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)~~ this subdivision; and

(ii) ~~With respect to discovery obtained under subdivision (b)(4)(A)(ii) 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.

(5) Claims of Privilege or Protection of Trial Preparation Materials. -

(A) Information Withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(B) Information Produced. If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

(c) *Protective Orders.* ~~(4)~~ - Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the jurisdiction 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:

~~(A)~~ (1) That the disclosure or discovery not be had;

~~(B)~~ (2) That the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;

~~(C)~~ (3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

~~(D)~~ (4) That certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

~~(E)~~ (5) That discovery be conducted with no one present except persons designated by the court;

~~(F)~~ (6) That a deposition, after being sealed, be opened only by order of the court;

~~(G)~~ (7) That a trade secret or other confidential research, development, or commercial information not be ~~disclosed~~ revealed or be ~~disclosed~~ revealed only in a designated way;

~~(H)~~ (8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

~~(2) Unless otherwise ordered, a party may not file a motion for a protective order unless prior to such filing counsel for the moving party has conferred, in person, by telephone, or by written communication, or has made reasonable efforts to confer, with opposing counsel concerning the matters in dispute. With any such motion, counsel for the moving party shall file a certificate of compliance with this rule stating the substance of the conference.~~

(3) 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 other person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(4) Pending resolution of any motion under Rule 26(c) or 30(d), neither the objecting party, witness, nor any attorney is required to appear at a deposition to which the motion is directed until the motion is ruled upon. The filing of a motion under either of these rules shall stay the disclosure or discovery at which the motion is directed pending further order of the court. Any motion for relief under this subdivision directed to a deposition must be filed and served as soon as practicable after receipt of the discovery request notice of deposition, but in no event less than three days prior to the scheduled deposition. Counsel seeking such relief shall request the court for a ruling or a hearing thereon promptly after the filing of such motion, so that disclosure or discovery shall not be delayed in the event such motion is not well taken.

(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.~~ Except in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E), or when authorized under these rules or by order or agreement of the parties, a party may not seek discovery from any source before that party has provided the disclosures required under Rule 26(a)(1), unless otherwise ordered by the court. 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, does not operate to delay any other party's discovery.

(e) *Supplementation of disclosures and responses.* - A party who has made a disclosure under subdivision (a) or responded to a request for discovery with a disclosure or response ~~that was complete when made~~ is under no a duty to supplement or correct the disclosure or response to include information thereafter acquired, ~~except as follows if ordered by the court or in the following circumstances:~~

(1) A party is under a duty ~~seasonably~~ to supplement, ~~the response with respect to any question directly addressed to:~~ at appropriate intervals, its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subdivision (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of

the expert, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Rule 26(a)(3) are due.

~~(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 the person is expected to testify, and the substance of the person's testimony;~~

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

~~(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.~~

(f) *Discovery conference.* - At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any expansion or further limitation proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and each party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16.

(g) *Signing of disclosures, discovery requests, responses, and objections.*

(1) Every disclosure made pursuant to Rule 26(a)(1) or (1.1) shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(2) Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney

shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: ~~(4)~~ (A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; ~~(2)~~ (B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and ~~(3)~~ (C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

Rule 30. Depositions upon oral examination.

(a) *When depositions may be taken; when leave required. -*

(1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) A proposed deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) The person to be examined already has been deposed in the case; or

(C) ~~The plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e), except that such leave is not required (i) if a defendant has served a notice of taking deposition or otherwise sought discovery; or (ii) if special notice is given as provided in subdivision (b)(3).~~ A party seeks to take a deposition before the time specified in Rule 26(d) unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the State of Wyoming and be unavailable for examination in this State unless deposed before that time.

(b) *Notice of examination: general requirements; ~~special notice~~; method of recording; production of documents and things; deposition of organization; deposition by telephone.*

(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 the

person or the particular class or group to which the person 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) 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. The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by nonstenographic means.~~

~~(3) 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 the person's deposition is taken before expiration of the 30-day period; and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's 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 the party was served with notice under this subdivision (b)(3) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party. With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.~~

~~(4) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. The parties may stipulate in writing or the court may upon motion order that the testimony be recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording and preserving the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at the party's own expense. Any objections under subdivision (c), any changes made by the witness, the witness' signature identifying the deposition as the witness' own or the statement of the officer that is required if the witness does not sign, as provided in subdivision (e), and the certification of the officer required by subdivision (f) shall be set forth in a writing to accompany a deposition recorded by nonstenographic means.~~

~~Any deposition may be recorded by audio-visual means. Unless otherwise stipulated or ordered, a stenographic record shall be made simultaneously. An audio-visual deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used. The notice for taking an audio-visual deposition and the subpoena for attendance at that deposition shall state that the deposition will be recorded by audio-visual means. Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes: (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the~~

deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(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 the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe 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 the person will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. 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.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rules 28(a), 37(a)(1), and 37(b)(1), a deposition taken by telephone is deemed to be taken at the place where the deponent is to answer questions ~~propounded to the deponent~~.

(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 the Wyoming Rules of Evidence except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method ~~ordered or stipulated to pursuant to~~ authorized by subdivision (b)(2)(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, to the manner of taking it, or to the evidence presented, or to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being 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 the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) *Schedule and duration; motion to terminate or limit examination.* -

(1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A party person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ~~on evidence~~ directed by the court, or to present a motion under ~~paragraph (3)~~ Rule 30(d)(4).

(2) Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours, ~~but the~~ The court shall must allow additional time consistent with Rule 26(b)(4)(B)(2) if needed for a fair examination of the deponent or if the

deponent or another ~~party person~~, or other ~~circumstances~~ circumstance, impedes or delays the examination. ~~If the court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible costs and attorney's fees incurred by any parties as a result thereof.~~

(3) If the court finds that any impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

~~(3)~~ (4) At any time during a 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 jurisdiction 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~~ must 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 Review by 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 the witness, 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 30 days of its submission to the witness, 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. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.~~

~~(f) Certification and delivery by officer; exhibits; copies; notice of delivery. -~~

(1) The officer shall must certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer shall then securely seal the deposition in an envelope or package indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall must promptly deliver it to the person initiating the deposition or as the parties otherwise agree. The officer shall notify all parties of the delivery. send it to the

attorney who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

Documents and things produced for inspection during the examination of the witness ~~shall~~ must, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may: (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals; or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to, and ~~delivered~~ 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. Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.~~

~~(3) The person to whom the original deposition is delivered or any person having possession of an original deposition shall retain it and shall deliver it upon request to any party for filing with the court or for use at trial or hearing. The party taking the deposition shall give prompt notice of its filing to all other parties.~~

Rule 33. Interrogatories to parties.

(a) *Availability.* - Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 30 in number including all discrete subparts, 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. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2)(1)(B).

(b) *Answers and Objections.* -

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, ~~except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant.~~ A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(d) *Option to Produce Business Records.* - Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof 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. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

Rule 34. Production of documents, electronically stored information, 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 the requestor's behalf, to inspect, ~~and~~ copy, test, or sample any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, ~~phone records~~ sound recordings, images, and other data or data compilations stored in any medium 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 designated 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, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d).

The party upon whom the request is served shall serve a written response within 30 days after the service of the request; ~~except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant.~~ A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. 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, including an objection to the requested form or forms for producing electronically stored information, stating in which event the reasons for the objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. If objection is made to the requested form or forms for producing electronically stored information - or if no form was specified in the request - the responding party must state the form or forms it intends to use. 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.

Unless the parties otherwise agree, or the court otherwise orders:

(i) A ~~a~~ party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request;

(ii) if a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and

(iii) a party need not produce the same electronically stored information in more than one form.

(c) *Persons Not Parties.* - A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45. 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 37. Failure to make disclosures or cooperate in 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 disclosure or discovery as follows:

(1) Appropriate Court. - An application for an order to a party shall be made to the court in which the action is pending. An application for an order to a person who is not a party shall be made to the court where the discovery is being, or is to be, taken.

(2) Motion. -

(A) If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(B) 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. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) Evasive or Incomplete Disclosure, Answer or Response. - For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(4) Expenses and Sanctions. -

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, 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 making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing 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.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(c) *Failure to ~~supplement or amend responses~~; failure to disclose; false or misleading disclosure; refusal to admit.* –

(1) A party that without substantial justification fails to disclose information as required by Rule 26(a) or 26(e)(1) or to supplement or amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make the disclosure.

(2) 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, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that:

- (A) ~~(1)~~ The request was held objectionable pursuant to Rule 36(a);
- (B) ~~(2)~~ The admission sought was of no substantial importance;
- (C) ~~(3)~~ The party failing to admit had reasonable ground to believe that the party might prevail on the matter; or
- (D) ~~(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 the deposition, after being served with a proper notice; (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 subparagraphs (A), (B) and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney

advising that party 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 a pending motion for a protective order as provided by Rule 26(c).

(e) *Failure to participate in the framing of a discovery plan.* - If a party or a party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after affording an opportunity to be heard, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

(f) *Electronically stored information.* - Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

Rule 40. Assignment for trial or alternative dispute resolution.

~~(e) *Registry of names.* - The clerk of the supreme court shall maintain a registry of the names of retired judges and justices and other qualified persons who are available to accept limited assignments of cases under this rule.~~

~~(d)~~ (c) *Fees and costs.* - For those cases filed in court and assigned for settlement conference or mediation, compensation for services shall be arranged by agreement between the parties and the person conducting the settlement conference or serving as the mediator, and that person's statement shall be paid within 30 days of receipt by the parties.

~~(e) *Report of disposition of cases.* - A report as to whether a settlement conference or mediation pursuant to this rule resulted in settlement shall be submitted by the person conducting the settlement conference or serving as the mediator to the clerk of the supreme court within 15 days of final disposition.~~

(f) (d) *Other forms of alternative dispute resolution.* - Nothing in this rule is intended to preclude the parties from agreeing to submit their dispute to other forms of alternative dispute resolution, including arbitration and summary jury trial.

~~(g)~~ (e) *Retained jurisdiction.* - Assignment of a case to alternative dispute resolution shall not suspend any deadlines or cancel any hearings or trial. The court retains jurisdiction for any and all purposes while the case is assigned to any alternative dispute resolution.

Rule 45. Subpoena.

(a) *Form; issuance.* -

(1) Every subpoena shall:

(A) State the name of the court from which it issued; and

(B) State the title of the action, the name of the court in which it is pending, and its civil action number; and

(C) Command each person to whom it is directed to attend and give testimony ~~by deposition or at trial or hearing,~~ or to produce and permit inspection and copying,

testing, or sampling of designated books, documents, electronically stored information, or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subdivisions (c), (d) and (e) of this rule.

A command to produce evidence or to permit inspection, copying, testing, or sampling may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.

~~(2) A subpoena shall issue from the court in which the action is pending. A subpoena must issue as follows:~~

~~(3) (A) A subpoena may be issued to command For attendance or production at a trial or hearing, without notice to other parties from the court for the district where the trial or hearing is to be held in which the action is pending; A subpoena to command attendance at deposition, or to produce and permit inspection and copying of designated books, documents or tangible things before trial or hearing, or to permit inspection of premises before trial or hearing, shall be issued only after or concurrently with reasonable notice, served in the manner prescribed by Rule 5(b), to all other parties to the action of the deposition, production or inspection.~~

~~(B) For attendance at a deposition, from the court in which the action is pending, stating the method for recording the testimony; and~~

~~(C) For production, inspection, copying, testing, or sampling, if separate from a subpoena commanding a person's attendance, from the court for the district where the production or inspection is to be made.~~

~~(4) (3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on behalf of~~

~~(A) a court in which the attorney is authorized to practice; or~~

~~(B) a court for a district in which a deposition or production is compelled by the subpoena, if the deposition or production pertains to an action pending in a court in which the attorney is authorized to practice.~~

(b) *Service; place of attendance. -*

(1) A subpoena may be served by the sheriff, by a deputy sheriff, or by any other person who is not a party and is not a minor, at any place within the State of Wyoming. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the ~~statutory witness~~ fees for one day's attendance and the mileage allowed by law. The party subpoenaing any witness residing in a county other than that in which the action is pending shall pay to such witness, after the hearing or trial, the statutory per diem allowance for state employees for each day or part thereof necessarily spent by such witness in traveling to and from the court and in attendance at the hearing or trial.

(2) Proof of service shall be made, when necessary, as provided in Rule 4(m), and costs shall be taxed as provided in Rule 4(c)(4).

(3) A subpoena for trial or hearing may require the person subpoenaed to appear at the trial or hearing irrespective of the person's place of residence, place of employment, or where such person regularly transacts business in person.

(4) A person commanded by subpoena to appear at a deposition may be required to attend only in the county wherein that person resides or is employed or regularly transacts business in person, or at such other convenient place as is fixed by an order of court. A nonresident of the state may be required to attend only in the county wherein that nonresident is served with a subpoena or at such other convenient place as is fixed by an order of court.

(c) *Protection of persons subject to subpoenas. -*

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty

and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection, ~~and copying, testing, or sampling~~ of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to ~~subdivision paragraph~~ (d)(2) of this rule, a person commanded to produce and permit inspection, ~~and copying, testing, or sampling~~ may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to ~~inspection or copying of producing~~ any or all of the designated materials or inspection of the premises – ~~or to producing electronically stored information in the form or forms requested~~. If objection is made, the party serving the subpoena shall not be entitled to inspect, ~~and copy, test, or sample~~ the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel ~~production~~ shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, ~~and copying, testing, or sampling~~ commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) ~~Fails~~ fails to allow reasonable time for compliance;

(ii) ~~Requires, in the case of a deposition or production prior to hearing or trial,~~ requires a person who is not a party or an officer of a party to travel outside that person's county of residence or employment or a county where that person regularly transacts business in person except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; ~~or~~

(iii) ~~Requires~~ requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) ~~Subjects~~ subjects a person to undue burden.

(B) If a subpoena:

(i) ~~Requires~~ requires disclosure of a trade secret or other confidential research, development, or commercial information; ~~or~~

(ii) ~~Requires~~ requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; ~~or~~

(iii) ~~Requires~~ requires a person who is not a party or an officer of a party to incur substantial expense to travel to attend trial,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) *Duties in responding to subpoena. -*

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2)(A) When information or material subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* - Failure ~~by~~ of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. ~~Adequate~~ An adequate causes for failure to obey include ~~lack of personal service upon the person subpoenaed, and~~ exists when a subpoena purports to require a ~~person~~ nonparty to attend a deposition or produce ~~prior to hearing or trial~~ at a place not within the limits provided by clause (ii) of ~~subdivision~~ subparagraph (c)(3)(A).

Rule 56.1. Summary judgment – Required statement of material facts.

Upon any motion for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure, in addition to the materials supporting the motion, there shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried.

In addition to the materials opposing a motion for summary judgment, there shall be annexed a separate, short and concise statement of material facts as to which it is contended that there exists a genuine issue to be tried.

Such statements shall include pinpoint citations to the specific portions of the record and materials relied upon in support of the parties' position.

Rule 77. District courts and clerks.

(d) *Service of orders or judgments.* - Immediately upon the entry of an order or judgment the clerk shall mail a copy thereof in the manner provided in Rule 5(b) to every party who is not in default for failure to appear, ~~and who has not in person or by attorney acknowledged receipt of a copy thereof.~~ Unless the order or judgment is prepared by the court, the copies necessary for

such mailing shall be furnished to the clerk by the prevailing party, and the clerk shall make a note of the mailing on the docket. ~~Such mailing is sufficient notice for all purposes for which notice of the entry of an order or judgment is required by these rules; but any~~ Any party may in addition serve a notice of such entry in the manner provided in Rule 5(b) for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by the Wyoming Rules of Appellate Procedure.
