WYOMING RULES OF APPELLATE PROCEDURE

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 2017

IN THE MATTER OF SETTING OF DOCKET AND SERVICE FEES IN THE WYOMING SUPREME COURT	)))	General Order 17-2

ORDER SETTING DOCKET AND SERVICE FEES FOR THE WYOMING SUPREME COURT

THIS MATTER came before the Court upon its own motion in connection with consideration of amendments to this Court's General Order 10-1, entered on April 22, 2010. In accordance with W.R.A.P. 2.09(a), Wyo. Stat. Ann. §§ 5-2-120, 5-2-202, and 5-2-121, the Court finds that General Order 10-1 should be vacated and the contents of this order shall serve in its place. It is therefore

ORDERED that effective July 1, 2017, General Order 10-1 is vacated in its entirety; and it is

FURTHER ORDERED that the following docket and service fees to be collected by the Clerk of the Wyoming Supreme Court, be and they are hereby, established effective July 1, 2017, as follows:

1. For the docketing of an appeal or any original proceeding, including any matters brought to the supreme court by the certification process or the writ of review, $110.00, $25.00 of which shall be deposited into the judicial systems automation account established by Wyo. Stat. Ann. § 5-2-120; and $10.00 of which shall be deposited into the indigent civil legal services account established by Wyo. Stat. Ann. § 5-2-121.

2. The sum of $5.00 for issuing certified court documents and certification of records.

3. The sum of $10.00 for certificates of good standing of attorneys.

4. The sum of $.50 per page for reproducing any document, record or other paper.

5. The sum of $10.00 for replacement, duplication, or renewal of admission certificate.

6. For notary service, fee as set by Wyo. Stat. Ann. § 34-26-302.

IT IS FURTHER ORDERED that this general order be published in the advance sheets of the Pacific Reporter, the Wyoming Court Rules Volume; and be made available online at the Wyoming Judicial Branch's website, http://www.courts.state.wy.us. This general order shall remain in full force and effect until such time as it may be amended by the Court.

DATED this 21st day of June, 2017.

BY THE COURT:

E. JAMES BURKE
CHIEF JUSTICE

WYOMING RULES OF APPELLATE PROCEDURE

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 2017

IN THE MATTER OF THE SETTING OF APPELLATE FILING AND DOCKETING FEES IN THE DISTRICT COURTS, CIRCUIT COURTS, AND MUNICIPAL COURTS	)))))	General Order 17-3

ORDER SETTING APPELLATE FILING AND DOCKETING FEES IN THE DISTRICT COURTS, CIRCUIT COURTS, AND MUNICIPAL COURTS

THIS MATTER came before the Court upon its own motion in connection with consideration of amendments to this Court's General Order 10-2, entered on May 25, 2010, and in further consideration of the need to set uniform filing and docketing fees for various appellate filings, other than those filed in the Supreme Court. The Court finds that such uniform fees as set out below should be adopted. It is therefore

ORDERED that effective July 1, 2017, General Order 10-2 is vacated in its entirety; and it is

FURTHER ORDERED that the following docketing fees shall be collected by the various courts as set out more fully below. These fees shall be effective July 1, 2017, as follows:

District Courts

1. For all transcripts and records in cases appealed or certified to the Supreme Court, including certificates, seals and transmission, $85.00, of which $25.00 shall be for court automation and $10.00 shall be for indigent civil legal services and both shall be remitted as provided in Wyo. Stat. Ann. § 5-3-205.

2. For docketing a petition for review from an administrative agency, $85.00, of which $25.00 shall be for court automation and $10.00 shall be for indigent civil legal services and both shall be remitted as provided in Wyo. Stat. Ann. §5-3-205.

3. For docketing an appeal from a circuit court or municipal court, $85.00, of which $25.00 shall be for court automation and $10.00 shall be for indigent civil legal services and both shall be remitted as provided in Wyo. Stat. Ann. §5-3-205.

Circuit Courts and Municipal Courts

1. For the preparation of the record on appeal to the district court, including the certified copy of the docket entries, the sum of $20.00 to be paid at the time of filing of the notice of appeal by the appellant.

IT IS FURTHER ORDERED that this general order be published in the advance sheets of the Pacific Reporter, the Wyoming Court Rules Volume; and be made available online at the Wyoming Judicial Branch's website, http://www.courts.state.wy.us. This general order shall remain in full force and effect until such time as it may be amended by the Court.

DATED this 21st day of June, 2017.

BY THE COURT:

E. JAMES BURKE
CHIEF JUSTICE

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Rule 1. General rules.

1.01. [Effective until November 1, 2017.] Electronic Filing; number of copies to be filed; format.

(a) Except as noted below, all briefs, motions and other pleadings shall be filed electronically in the supreme court using C-Track Electronic Filing System (CTEF), and the electronic version shall be the officially filed document in the case. The rules will apply to district courts and circuit courts as they adopt electronic filing. The current version of the supreme court e-filing training, policies and log-in can be found at www.courts.state.wy.us/Documents/EFiling/PnPManual.pdf.

(1) Electronic filing must be completed within the time set forth in the Wyoming Supreme Court, Electronic Filing Administrative Policies and Procedures Manual, www.courts.state.wy.us/Documents/EFiling/PnPManual.pdf, to be considered timely filed on the date it is due. Electronic filing, together with the Notice of Electronic Filing that is automatically generated by CTEF, constitutes filing of a document.

(2) When documents filed do not comply with the rules (such as the Rules Governing Redaction from Court Records), the document will be removed from the public docket and counsel will immediately be notified by email and instructed to re-file the pleading within a specified amount of time. If the pleading is not correctly re-filed within the required time, it shall not be considered timely filed.

(3) Documents filed by pro se non-attorney parties shall not be electronically filed unless ordered by the supreme court. Attorneys acting in a pro se capacity shall comply with the electronic filing requirements.

(4) With regard to proceedings including petition for writ of review, certification of question of law, and certification of case pursuant to Rule 12.09(b), the initial pleading in the reviewing court shall not be filed electronically. However, responses and further briefing shall be electronically filed.

(5) Motion to intervene in a case or motion to file amicus curiae shall not be electronically filed unless ordered by the supreme court.

(b) Attachments to electronically filed documents:

(1) May be scanned, however the document to which they are attached shall be uploaded directly from the filer's computer using CTEF;

(2) If the attachments to an electronically filed document are not available in an electronic format, the cover page of the document shall state that the attachment is on the paper copies only.

(c) Until otherwise ordered, in addition to electronic filing, the following paper copies are required:

(1) One original and six copies of all briefs, petitions, motions and other documents shall be filed in the supreme court; or

(2) One original and two copies of all briefs, petitions, motions and other documents shall be filed in the district court; and

(3) A proposed order shall accompany all filings in the district court. For filings in the supreme court, a proposed order may be attached.

(d) All briefs, petitions, motions and other documents shall be filed on 8½″ x 11″ paper. Any attachments or appendices, which in their original form are on larger or smaller paper, should be reduced or enlarged to 8½″ x 11″ paper.

(Amended May 4, 2001, effective September 1, 2001; amended April 6, 2015, effective July 1, 2015.)

1.01. [Effective November 1, 2017.] Electronic Filing; number of copies to be filed; format.

(a) Except as noted below, all briefs, motions and other pleadings shall be filed electronically in the supreme court using C-Track Electronic Filing System (CTEF), and the electronic version shall be the officially filed document in the case. The rules will apply to district courts and circuit courts as they adopt electronic filing. The current version of the supreme court e-filing training, policies and log-in can be found at www.courts.state.wy.us/Documents/EFiling/PnPManual.pdf.

(1) Electronic filing must be completed within the time set forth in the Wyoming Supreme Court, Electronic Filing Administrative Policies and Procedures Manual, www.courts.state.wy.us/Documents/EFiling/PnPManual.pdf, to be considered timely filed on the date it is due. Electronic filing, together with the Notice of Electronic Filing that is automatically generated by CTEF, constitutes filing of a document.

(2) When documents filed do not comply with the rules (such as the Rules Governing Redaction from Court Records), the document will be removed from the public docket and counsel will immediately be notified by email and instructed to re-file the pleading within a specified amount of time. If the pleading is not correctly re-filed within the required time, it shall not be considered timely filed.

(3) Documents filed by pro se non-attorney parties shall not be electronically filed unless ordered by the supreme court. Attorneys acting in a pro se capacity shall comply with the electronic filing requirements.

(4) With regard to proceedings including petition for writ of review, certification of question of law, and certification of case pursuant to Rule 12.09(b), the initial pleading in the reviewing court shall not be filed electronically. However, responses and further briefing shall be electronically filed.

(5) Motion to intervene in a case or motion to file amicus curiae shall not be electronically filed unless ordered by the supreme court.

(b) Attachments to electronically filed documents:

(1) May be scanned, however the document to which they are attached shall be uploaded directly from the filer's computer using CTEF;

(2) If the attachments to an electronically filed document are not available in an electronic format, the cover page of the document shall state that the attachment is on the paper copies only.

(c) Until otherwise ordered, in addition to electronic filing, the following paper copies are required:

(1) One original and six copies of all briefs, petitions, motions and other documents shall be filed in the supreme court; or

(2) One original and two copies of all briefs, petitions, motions and other documents shall be filed in the district court; and

(3) A proposed order shall accompany all filings in the district court. For filings in the supreme court, a proposed order may be attached.

(d) All briefs, petitions, motions and other documents shall be filed on 8½″ x 11″ paper, single-sided. Any attachments or appendices, which in their original form are on larger or smaller paper, should be reduced or enlarged to 8½″ x 11″ paper, single-sided. (Amended May 4, 2001, effective September 1, 2001; amended April 6, 2015, effective July 1, 2015; amended August 23, 2017, effective November 1, 2017.)

1.02. Scope of rules.

(a) All appeals, reviews pursuant to Rule 12, certifications under Rules 11 or 12, and petitions for writ of review pursuant to Rule 13 shall be governed by these rules. Where the term "appellate court" is used in these rules, it refers to either the district court or the supreme court as circumstances make appropriate. The term "trial court" refers to either a district court, a circuit court, or a municipal court.

(b) These rules shall supersede any conflicting statutes, rules or regulations addressing procedural matters.

(Amended May 4, 2001, effective September 1, 2001; amended December 2, 2002, effective January 6, 2003; amended April 6, 2015, effective July 1, 2015.)

Comment. — See *White v. Fisher,* 689 P.2d 102, 106-07 (Wyo. 1984).

Source. — Former Rule 72(e), W.R.C.P.; Rule 38, W.R. Cr. P. (Cited in Cisneros v. City of Casper, 479 P.2d 198 (Wyo. 1971); Jackson v. State, 547 P.2d 1203 (1976)).

Effect of following appellate rules. — An individual is not deprived of his constitutional rights to an appeal in a criminal case so long as the rules governing appellate procedure are followed. State v. Berger, 600 P.2d 708 (Wyo. 1979).

Effect of not following appellate rules. — Summary judgment was properly entered in favor of a creditor in debt collection proceedings because the debtor, who appeared pro se on appeal, violated numerous rules of appellate procedure; thus, the appeal was subject to summary affirmance pursuant to this rule. Snyder v. Direct Merchs. CR, 138 P.3d 675 (Wyo. 2006).

Delay in appeal bars review. — Where the appellant-defendant pled guilty to a charge of grand larceny and no appeal was then taken, but later a judgment and sentence was entered by the district court revoking probation and activating the original sentence, and on appeal defendant asserts that the trial judge erred in the prior guilty plea proceeding in failing to ascertain a factual basis for such a plea, the Supreme Court does not have jurisdiction to consider the judgment and sentence originally entered by the district court. Murphy v. State, 592 P.2d 1159 (Wyo. 1979).

Applied in Gillis v. F & A Enters., 813 P.2d 1304 (Wyo. 1991).

Quoted in L Slash X Cattle Co. v. Texaco, Inc., 623 P.2d 764 (Wyo. 1981); Elliott v. State, 626 P.2d 1044 (Wyo. 1981); Sellers v. Employment Sec. Comm'n, 760 P.2d 394 (Wyo. 1988).

Stated in Jessen v. State, 622 P.2d 1374 (Wyo. 1981); Bender v. Uinta County Assessor, 14 P.3d 906 (Wyo. 2000).

Cited in Wood v. City of Casper, 660 P.2d 1163 (Wyo. 1983); City of Laramie v. Hysong, 808 P.2d 199 (Wyo. 1991); Nathan v. Am. Global Univ., 113 P.3d 32 (Wyo. 2005).

Law reviews. — For case note, "Criminal Procedure — The Elimination of Dismissals for Lack of Prosecution from Wyoming Intermediate Appeals. Wood v. City of Casper, 660 P.2d 1163 (Wyo. 1983)," see XIX Land & Water L. Rev. 301 (1984).

Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appellate Review §§ 84 to 263.

1.03. Failure to comply with rules.

(a) The timely filing of a notice of appeal, which complies with Rule 2.07(a), is jurisdictional. The failure to comply with any other rule of appellate procedure, or any order of court, does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, including but not limited to: refusal to consider the offending party's contentions; assessment of costs; monetary sanctions; award of attorney fees; dismissal; and affirmance.

(b) A party's failure to comply with these rules may result in imposition of sanctions, including but not limited to:

(1) Appellant or cross appellant who fails to provide a notice of appeal to the appellate court as required by Rule 2.01(a), or whose notice of appeal does not include the appendix required by Rule 2.07(b) and (c), may be subject to a monetary sanction when the case is docketed in the appellate court.

(2) A party who fails to file the required designation or certification of record in the trial court contemporaneously with filing the brief in the appellate court may be subject to a monetary sanction upon notification of non-compliance by the clerk of the trial court. See Rule 3.05. For Supreme Court general orders on sanctions, see www.courts.state.wy.us/WSC/Clerk.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 73(a), W.R.C.P. — next-to-last sentence in subdivision; former Rule 18, Sup. Ct. (See notes following Rule 4.05, W.R.A.P.).

Editor's notes. *— Any annotations which are taken from cases decided prior to 1978 are taken from cases decided under former Rule 18, Sup. Ct., and its statutory and rule antecedents.*

Application of rule. — This rule was intended to apply to cases coming to Supreme Court in ordinary course of direct appeal procedure, where new trial has been granted by district court after record on appeal and specifications of error have been filed there and trial judge has been notified as provided by statute. Bales v. Brome, 53 Wyo. 370, 84 P.2d 714 (1938).

This rule is to be accorded the force of statute. Henning v. City of Casper, 63 Wyo. 352, 182 P.2d 840 (1947).

Supreme Court will not consider piecemeal appeals. — Despite an express determination by the trial court that there is no just reason for delay, the Supreme Court will not consider piecemeal appeals. Molle v. Iberline Ranch, 614 P.2d 1339 (Wyo. 1980).

And court will not consider issue unsupported by authority or cogent argument. Dechert v. Christopulos, 604 P.2d 1039 (Wyo. 1980); State v. Steele, 620 P.2d 1026 (Wyo. 1980).

Where a tenant failed to comply with the appellate rules by supporting arguments with citations to authority and the record, as required under Wyo. R. App. P. 7.01, the court refused to consider other contentions under this rule. However, the court refused to impose additional sanctions because of the tenant's pro se status and his presentation of one proper argument for meaningful review. Kinstler v. RTB South Greeley, LTD., LLC, 160 P.3d 1125 (Wyo. 2007).

Appellant's brief was void of cogent argument or legal authority, thus warranting summary affirmance of the decision of the lower court, where the brief revealed only argument and hyperbole, raised new issues on appeal, and included conclusions without supporting reasoning and a total lack of pertinent authority. State ex rel. Reece v. Wyoming State Bd. of Outfitters & Professional Guides, 931 P.2d 958 (Wyo. 1997).

And will assess costs. — The appellant presented no statement of the issues in her brief and did not support her position with cogent arguments or authority. Accordingly, the court assessed costs against her. Garlach v. Tuttle, 705 P.2d 828 (Wyo. 1985).

Appellee's costs of preparing for appeal were assessed against appellant, where appellant violated several rules of appellate procedure, and failed to offer either cogent argument or pertinent legal authority in support of his position. Painter v. Spurrier, 969 P.2d 548 (Wyo. 1998).

Although inmate proceeded pro se and in forma pauperis in seeking reduction of sentence, monetary sanctions against him were appropriate due to frivolousness of his appeal; state was therefore entitled to an award of costs and attorney's fees. Hodgins v. State, 1 P.3d 1259 (Wyo. 2000).

Enforceable by dismissal. — This rule has the force of law, and in event of noncompliance case will be dismissed. Federal Gold Mining Co. v. Pioneer Carissa Gold Mines, Inc., 74 Wyo. 414, 289 P.2d 643 (1955).

Under this rule direct appeal from judgment of district court must be dismissed where record was filed in district court clerk's office on April 12, 1938, and in Supreme Court on June 29, 1938, notwithstanding stipulation of counsel to extend time for filing specifications of error, to May 2, 1938, same being in fact filed in district court on April 29, 1938. Sayre v. Roberts, 53 Wyo. 491, 84 P.2d 718 (1938).

Appeal must be dismissed where record was filed in Supreme Court by district court clerk two days after time fixed for court rule. Samuel v. Christensen-Garing, Inc., 47 Wyo. 331, 37 P.2d 680 (1934).

District court did not abuse its discretion in dismissing pro se litigant's petition for review, where petition failed to meet even the most basic requirements of the rules of appellate procedure, and district court carefully considered petition before determining that it was simply too confusing to invoke the court's jurisdiction. Pinther v. Webb, 983 P.2d 1221 (Wyo. 1999).

Plaintiff's complaint against defendants was properly affirmed where plaintiff's final notice of appeal did not comply with the requirements of Wyo. R. App. P. 2.07, as it misnamed the court and did not contain all pleadings that asserted a claim for relief in the appendix as required. Finch v. Pomeroy, 130 P.3d 437 (Wyo. 2006).

Power is discretionary. — This rule does not include any requirement for prejudice, but simply provides that the failure "is ground only for such action as the appellate court deems appropriate," including but not limited to dismissal. The language in this rule is a classic statement of discretionary power, and the only issue to be resolved on appeal is whether there was an abuse of discretion. McElreath v. State ex rel. Wyo. Workers' Comp. Div., 901 P.2d 1103 (Wyo. 1995).

Court rejected the employer's motion to dismiss the ex-employee's appeal based on the employee's noncompliance with W.R.A.P.. 7.01(e)(2) in that the employee's brief failed to provide citations to the record in support of his factual summary. Although the brief was deficient, the court had discretion under W.R.A.P. 1.03 to decline to impose the sanction requested by the employer where the facts in this case were straightforward, and the violation of Rule 7.01(e)(2) did not affect or detract from the court's ability to review the matter. Kruzich v. Martin-Harris Gallery, LLC, 126 P.3d 867 (Wyo. 2006).

Delay in appeal bars review. — Where the appellant-defendant pled guilty to a charge of grand larceny and no appeal was then taken, but later a judgment and sentence was entered by the district court revoking probation and activating the original sentence, and on appeal defendant asserts that the trial judge erred in the prior guilty plea proceeding in failing to ascertain a factual basis for such a plea, the Supreme Court does not have jurisdiction to consider the judgment and sentence originally entered by the district court. Murphy v. State, 592 P.2d 1159 (Wyo. 1979).

Denial of a motion to intervene under W.R.C.P. 24(a)(2) was a final and appealable order pursuant to W.R.A.P. 1.05, but where the notice of appeal was not filed within the 30-day period for final orders under W.R.A.P. 2.01(a), the court did not have jurisdiction to hear the appeal under W.R.A.P. 1.03. Yeager v. Forbes, 78 P.3d 241 (Wyo. 2003).

Failure to meet deadline is incurable defect. — The failure to comply with the deadline for filing an appeal is an incurable jurisdictional defect. Miller v. Murdock, 788 P.2d 614 (Wyo. 1990).

Because a decision granting summary judgment in a labor dispute was an appealable order under Wyo. R. App. P. 1.05(a) since it left nothing for further consideration, a notice of appeal filed more than 30 days thereafter was untimely under Wyo. R. App. P. 2.01(a); dismissal entered in the case after summary judgment was merely a nullity, and there was no equitable tolling principals recognized under Wyoming law. Merchant v. Gray, 173 P.3d 410 (Wyo. 2007).

But dismissal not automatic result of tardy observance of requirements. — There are certain appellate obligations which must be discharged before the Supreme Court acquires jurisdiction, but it does not follow that the tardy observance of all of these requirements will automatically result in dismissal of the appeal. DS v. Department of Pub. Assistance, 607 P.2d 911 (Wyo. 1980).

Failure to include required material in notice of appeal. — Because plaintiff filed a notice of appeal which did not encompass the information required by Rule 12.06, W.R.A.P., rather than a petition for review, the district court did not abuse its discretion by invoking the dismissal sanction found in Rule this rule. McElreath v. State ex rel. Wyo. Workers' Comp. Div., 901 P.2d 1103 (Wyo. 1995).

Failure of the clerk of the district court to file records on appeal with the Supreme Court within 60-day limit would not prevent dismissal of the cases, since it is the duty of counsel to see to it that the records are filed within the 60-day period. Henning v. City of Casper, 63 Wyo. 352, 182 P.2d 840 (1947).

Where record on direct appeal was not filed within time fixed by this rule, inadvertence of district court clerk in not transmitting record, if established, does not excuse late filing and appeal must be dismissed. Baehr v. Luce, 59 Wyo. 462, 142 P.2d 270 (1943).

That record on direct appeal was not filed on time because district court had agreed to transmit record but failed to do so, does not excuse the delay. Porter v. Carstensen, 44 Wyo. 49, 8 P.2d 446 (1932).

Retention of record by opposing counsel. — Where record was not presented to counsel for respondent until after expiration of 60-day period, his retention of same for 13 days was not an excuse for failure of appellant's counsel to file record with the Supreme Court within 60-day limit. Henning v. City of Casper, 63 Wyo. 352, 182 P.2d 840 (1947).

Late filing of docketing statement will not justify dismissal. — The late filing of a docketing statement has never been sufficient ground to justify the dismissal of the appeal in the supreme court. Watson v. Dailey, 673 P.2d 645 (Wyo. 1983).

Delay in return of record to district court. — Failure to file record in Supreme Court within 60 days after filing in trial court requires dismissal of appeal notwithstanding that severity of weather prevented stenographer's return of records to clerk of district court until after time for filing in Supreme Court where records were not received until two days after receipt by clerk of district court and filing fee was not paid until 4 days thereafter. In re

Federal Lands Emergency Constr. Project No. 6, 50 Wyo. 41, 57 P.2d 684 (1936).

Receipt of fee deemed time of filing. — Record on appeal is considered as having been filed on date of clerk's receipt of filing fee, not date on which he received record, requiring dismissal of appeal where fee was received over 60 days after filing of record in district court. Snider v. Rhodes, 53 Wyo. 157, 79 P.2d 481 (1938).

Filing of specifications of error in district court does not constitute filing for appeal for purpose of determining compliance with the Supreme Court rules. Federal Gold Mining Co. v. Pioneer Carissa Gold Mines, Inc., 75 Wyo. 170, 293 P.2d 923 (1956).

Time of filing record in district court. — Where the record was filed in the district court before the expiration of the period fixed by statute for such filing, the number of days less than the maximum permitted for filing the record in the district court could not be added to the 60-day period allowed for filing the record in the Supreme Court. North v. Hoffman, 76 Wyo. 345, 302 P.2d 757 (1956).

Brief considered although no statement of facts therein. — Although the appellant submitted a brief which did not contain a statement of facts, as the facts in the record were straightforward and the appellant's violation of Rule 70(e)(2) did not detract from judicial review, the court proceeded to consider the appellant's issues. Furman v. Rural Elec. Co., 869 P.2d 136 (Wyo. 1994).

Merits of appeal reached despite deficiencies in pro se appellant's brief. — Although the court may impose sanctions including, but not limited to, summary affirmance, on pro se litigants who fail to comply with the rules of appellate procedure, the court declined to summarily affirm the district court's denial of a motion to correct an illegal sentence; while the pro se brief did not contain a statement of the issues, a statement of the case or facts, or citation to the appellate record or pertinent authority, did not identify the district court action from which the appeal was taken, and did not present cogent argument, the brief was sufficient to enable the appellate court to discern the nature of the issue raised by defendant and the legal parameters of its resolution. Young v. State, 46 P.3d 295 (Wyo. 2002).

Transcript not designated but not objected to by motion considered part of the record. — Although appellee condemnor objected in its brief to the appellate court's consideration of transcripts not previously designated by appellant condemnees acting pro se, but nonetheless included by the district court clerk in the transmittal of the record to the appellate court, the court considered the certified record as submitted, finding that it was unreasonable to grant the condemnor's objection and disregard the transcripts when the condemnor itself failed to properly raise the issue by motion. Conner v. Bd. of County Comm'rs, 54 P.3d 1274 (Wyo. 2002).

Reply brief which repeats principal brief disregarded. — A reply brief submitted by counsel which repeated its principal brief was disregarded by the court. Furman v. Rural Elec. Co., 869 P.2d 136 (Wyo. 1994).

Appellate court may ignore extra pages in brief. — Where the appellant's brief was 77 pages long, seven pages over the limit, the appellate court deliberately ignored pages 71 through 77, a sanction specifically mentioned in this rule. JWR v. RG, 716 P.2d 984 (Wyo. 1986).

Judgment affirmed for deficiencies in pro se appellant's brief. — Reviewing court affirmed district court judgment because brief of pro se appellants was technically and substantively deficient and appellants were afforded leniency in the district court, which dealt with all claims of the appellants thoroughly and thoughtfully and sufficient evidence appeared in the record to support the court's action. Hamburg v. Heilbrun, 889 P.2d 967 (Wyo. 1995).

Pursuant to this rule, an appellate court summarily affirmed a summary judgment entered in favor of a creditor in debt collection proceedings because the debtor, who appeared pro se on appeal, violated numerous rules of appellate procedure; thus, the appeal was subject to summary affirmance pursuant to Wyoming. R. App. P. 1.02. The notice of appeal did not have an appendix containing all pleadings asserting a claim for relief and the final order as required by Wyo. R. App. P. 2.07(b)(1) and (3), and the debtor's brief was deficient in that it did not contain numerous items required by Wyo. R. App. P. 7.01. Snyder v. Direct Merchs. CR, 138 P.3d 675 (Wyo. 2006).

Summary affirmance. — Summary judgment in favor of insurer was summarily affirmed, because insured failed to comply with rules of appellate procedure, cite pertinent authority, or make cogent argument. Dewey Family Trust v. Mountain W. Farm Bureau Mut. Ins. Co., 3 P.3d 833 (Wyo. 2000).

Pursuant to W.R.A.P. 1.03, an administrative decision, finding that a claimant was disqualified from unemployment benefits under Wyo. Stat. Ann. § 27-3-311(a)(i)(A), was summarily affirmed, where the claimant failed to comply in several respects with the Wyoming Rules of Appellate Procedure. The title page did not contain the appropriate caption as required by W.R.A.P. 7.01(a)(1); the brief presented no clear statement of the issues; the statement of the case was insufficient as it contained facts not in the record; the argument was not cogent and did not contain citations to relevant statutes and parts of the record as required by W.R.A.P. 7.01(f)(1); the argument did not set forth a concise statement of the applicable standard of review; the brief did not have an appendix containing a copy of the final order appealed from; and the brief violated W.R.A.P. 7.05(b)(3)

in that on several pages of the brief portions of the font were less than 10 characters per inch. Nathan v. Am. Global Univ., 113 P.3d 32 (Wyo. 2005).

Motion to withdraw guilty plea will not toll time for appeal. Jessen v. State, 622 P.2d 1374 (Wyo. 1981).

Motion to dismiss appeal. — Resistance to motion to dismiss appeal for failure to file record in Supreme Court within time required cannot be treated as showing valid excuse for delay, in absence of supporting affidavit. Samuel v. Christensen-Garing, Inc., 47 Wyo. 331, 37 P.2d 680 (1934).

Jurisdiction was not lost. — Appellate court rejected the argument that a mother failed to comply with this rule because she had not appealed from the order dismissing an initial petition for neglect and that her entire argument related to the first case as opposed to the refiled, second case, because: the mother claimed that the juvenile court lost subject matter jurisdiction over the entire neglect action because it failed to hold a hearing within 90 days of the filing of the original petition; her argument carried forward in the second case; the juvenile court recognized the continued viability of the subject matter jurisdiction issue; the issue of whether the juvenile court had subject matter jurisdiction over the neglect action was effectively joined in the second case; and the appellate court had jurisdiction to consider the issue despite the fact that the mother did not file a notice of appeal of the order dismissing the first case without prejudice. JA v. State (In re DSB), 176 P.3d 633 (Wyo. 2008).

Dismissal of appeal erroneous. — Trial court erred in dismissing pursuant to Wyo. R. App. P. 12.06 a police officer's appeal of an order from a civil service commission dismissing the officer from service where the trial court's conclusions that it had no authority to allow the officer to amend the notice of appeal, that it had very limited discretion in resolving the issue before it, and that it had no other choice but to dismiss the case were contrary to Wyo. R. App. P. 1.03. Cook v. Card (In re Cook), 170 P.3d 122 (Wyo. 2007).

Issues considered, although appellants failed to provide statement of issues. — See 37 Gambling Devices (Cheyenne Elks Club & Cheyenne Music & Vending, Inc.) v. State, 694 P.2d 711 (Wyo. 1985).

Sanctions against an attorney. — When the award of sanctions is against the attorney and the attorney fails to file a notice of appeal in his or her name, W.R.A.P. 1.03 and 2.07 have not been satisfied, and the appellate court lacks jurisdiction to hear and decide the issue. Goglio v. Star Valley Ranch Ass'n, 48 P.3d 1072 (Wyo. 2002).

Where summary judgment was granted for the builder, on appeal, because the homeowners blatantly disregarded the rules which required them to designate an adequate record on appeal, and failed to provide cogent argument, and pertinent legal authority to support their contention, sanctions, costs and attorney fees, were proper. Orcutt v. Shober Invs. Inc., 69 P.3d 386 (Wyo. 2003).

Jurisdiction lost. — Judgment debtor's failure to appeal within 30 days under Wyo. R. App. P. 2.01 from the denial of his petition to enjoin an execution sale, which was a final appealable order under Wyo. R. App. P. 1.05(b), deprived the reviewing court of jurisdiction as to that issue pursuant to this section. Cook v. Swires, 202 P.3d 397 (Wyo. 2009).

Applied in Cline v. Safeco Ins. Cos., 614 P.2d 1335 (Wyo. 1980); Murry v. State, 631 P.2d 26 (Wyo. 1981); Horse Shoe Land & Livestock, Inc. v. Federal Land Bank, 740 P.2d 936 (Wyo. 1987); Apodaca v. Ommen, 807 P.2d 939 (Wyo. 1991); Little v. Kobos ex rel. Kobos, 877 P.2d 752 (Wyo. 1994); Farmer v. State, Dep't of Transp., 986 P.2d 165 (Wyo. 1999).

Quoted in Strang Telecasting, Inc. v. Ernst, 610 P.2d 1011 (Wyo. 1980); Elliott v. State, 626 P.2d 1044 (Wyo. 1981); Osborn v. Painter, 909 P.2d 960 (Wyo. 1996); Sheneman v. Division of Workers' Safety & Comp. Internal Hearing Unit, 956 P.2d 344 (Wyo. 1998); Basolo v. Gose, 994 P.2d 968 (Wyo. 2000); MTM v. State, 26 P.3d 1035 (Wyo. 2001); Paxton Res., L.L.C. v. Brannaman, 95 P.3d 796 (Wyo. 2004).

Stated in Fallis v. Louisiana Pac. Corp., 763 P.2d 1267 (Wyo. 1988); Thunder Hawk v. Union Pac. R.R., 891 P.2d 773 (Wyo. 1995).

Cited in Kost v. Thatch, 782 P.2d 230 (Wyo. 1989); Starr v. State, 821 P.2d 1299 (Wyo. 1991); Hamburg v. Heilbrun, 891 P.2d 85 (Wyo. 1995); Holmquist v. State, 902 P.2d 217 (Wyo. 1995); Ahearn v. Anderson-Bishop Partnership, 946 P.2d 417 (Wyo. 1997); Tusshani v. Allsop, 1 P.3d 1263 (Wyo. 2000); Steele v. Neeman, 6 P.3d 649 (Wyo. 2000); Contreras v. State, 7 P.3d 917 (Wyo. 2000); Hart v. State, 37 P.3d 1286 (Wyo. 2002); GGV v. JLR, 105 P.3d 474 (Wyo. 2005); Laughter v. Bd. of County Comm'rs, 110 P.3d 875 (Wyo. 2005); MJH v. AV (In re JRH), 138 P.3d 683 (Wyo. 2006); Shelhamer v. Shelhamer, 138 P.3d 665 (Wyo. 2006); Witherspoon v. Teton Laser Ctr., LLC, 149 P.3d 715 (Wyo. 2007).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Am. Jur. 2d, ALR and C.J.S. references. — Filing of notice of appeal as affecting jurisdiction of state trial court to consider motion to vacate judgment, 5 ALR5th 422.

Failure to appeal denial of double jeopardy claim within time limits of Rule 4, Federal Rules of Appellate Procedure, as precluding review of claim on appeal of conviction at retrial, 51 ALR Fed 770.

1.04. Review by supreme court and district court.

(a) A judgment or appealable order entered by a district court may be: affirmed, reversed, vacated, remanded, or modified by the supreme court for errors appearing on the record.

(b) A judgment or appealable order entered by an administrative agency or any court inferior in jurisdiction to the district court, upon an appeal or proceeding for judicial review, may be: affirmed, reversed, vacated, remanded, or modified by the district court for errors appearing on the record.

(c) An appeal will be dismissed, by either order or opinion, if the appellate court concludes it is without jurisdiction to decide the case.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 72(b) and (c), W.R.C.P.

Cross References. — For appeals from courts of limited jurisdiction, see § 5-2-119.

Denial of a motion to dismiss is not a final appealable order. Gooden v. State, 711 P.2d 405 (Wyo. 1985).

Appellate jurisdiction of small claims actions. — Actions for small claims are no different, other than the informal procedure, from any other civil actions triable in county courts or justice of the peace courts, and it follows that appellate jurisdiction is assigned to the district court within the same county. Johnson v. Statewide Collections, Inc., 778 P.2d 93 (Wyo. 1989).

Subject Matter Jurisdiction. — District court had subject matter jurisdiction because an airport had no duty to comply with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 when it was seeking redress for the independent acts of a lessee, which was not a bank or a financial institution. Sky Harbor Air Serv. v. Cheyenne Reg'l Airport Bd, — P.3d —, 2016 Wyo. LEXIS 17 (Wyo. 2016).

Appeal dismissed where noncompliance with Rule 54(b), W.R.C.P. — Where there has been noncompliance with Rule 54(b), W.R.C.P., in that the liabilities of fewer than all of the parties have been determined, and there has been no express determination that there is no just reason for delay, the appeal will be dismissed. Hoback Ranches, Inc. v. Urroz, 622 P.2d 948 (Wyo. 1981).

Matters raised for first time on appeal generally not considered. — The Supreme Court will not consider matters raised for the first time on appeal unless they go to jurisdiction or are otherwise of such a fundamental nature that the court must take cognizance of them. Nickelson v. People, 607 P.2d 904 (Wyo. 1980).

Great deal of deference is provided to trial court on appeal, as a judgment will be affirmed on any legal ground appearing in the record. Sheridan-Johnson Rural Electrification Ass'n v. Hopkins, 602 P.2d 374 (Wyo. 1979).

Supreme Court will affirm trial judge on any legal ground appearing in record. Jones v. State, 602 P.2d 378 (Wyo. 1979).

Consideration of evidence on review. — Supreme Court on review must consider the evidence most favorable to the prevailing party and every inference which the Supreme Court can give to it, and, if this evidence with its attendant inferences is sufficient to sustain the judgment, the Supreme Court will not disturb the decision of the trier of fact. Cardin v. Morrison-Knudsen, 603 P.2d 862 (Wyo. 1979).

Denial of motion for summary judgment is not appealable in that it is not a final order. Kimbley v. City of Green River, 663 P.2d 871 (Wyo. 1983).

Order finding no contempt was not final. — Because an order was not appealable under Wyo. R. App. P. 1.05(b) as it did not determine the action and did not fix the term of a mother's visitation due to there having been no final hearing on the terms of the mother's visitation, a father's appeal from the order, which found him not in contempt but issued several directives regarding the mother's visitation with the parties' children, was properly dismissed. Inman v. Williams, 187 P.3d 868 (Wyo. 2008).

Order denying transcript not final order. — An order of a district court denying a free transcript to an appellant is not a judgment or final order within the meaning and purpose of Rule 1.05. Escobedo v. State, 601 P.2d 1028 (Wyo. 1979).

Order not affecting substantial rights not final order. — District court's decision was not a final reviewable order where the order did not affect a substantial right of either party; the tone of the order was to advise the parties of their rights and duties concerning custody and visitation, the true thrust of the order was to admonish the parties concerning their actions, the divorce decree remained unchanged, and the parties remained free to pursue an action to modify custody. Stone v. Stone, 842 P.2d 545 (Wyo. 1992).

Order not resolving all issues was not a judgment. — Court order concluding that a mother failed to prove the statutory requirements for terminating a father's parental rights was not a judgment under Wyo. R. App. P. 1.04, and thus was not appealable because it did not resolve all the issues in the case. SEG v.

GDK, 173 P.3d 395 (Wyo. 2007).

Order restricting visitation. — Order that indefinitely denied mother visitation except under supervised conditions was a final order and not merely an interlocutory interpretation of a prior custody and visitation order. JLJ v. AFM, 942 P.2d 407 (Wyo. 1997).

Modification of damages judgment inappropriate on appeal. — In a negligence action against the state, where the jury found the state to be 100% negligent but awarded plaintiff only 30% of its damages, and there was no instruction given to the jury that would permit an apportionment of damages, it was not appropriate on appeal to modify the judgment; the case was remanded for a new trial on the question of damages. Martinez v. City of Cheyenne, 791 P.2d 949 (Wyo. 1990).

Probate order not final. — While it was true that a final judgment or an appealable order made by a trial court could be ruled upon by the state supreme court for errors appearing in the record, the state supreme court had to dismiss the appeal filed in the case at hand, by an estate's personal representative, from a trial court's order admitting the decedent's purported will to probate and appointing the personal representative, because no final judgment or appealable order existed, as the trial court's order did not resolve the merits of the controversy between the parties and did not affect the substantial rights of the parties. Estate of McLean v. Benson, 71 P.3d 750 (Wyo. 2003).

Motion to reconsider is nullity. — Mother's appeal of the trial court's denial of her motion to reconsider a child support abatement order was dismissed because the Wyoming Rules of Civil Procedure did not recognize a "motion for reconsideration"; therefore the trial court order purportedly denying the motion was void. Under W.R.A.P. 1.04(a) and 1.05, the Supreme Court of Wyoming has jurisdiction to entertain appeals only from final, appealable orders. Plymale v. Donnelly, 125 P.3d 1022 (Wyo. 2006).

Contempt of court. — Order adjudging a former wife in contempt of court for violating a temporary restraining order in her divorce case was not a final appealable order, as no order had been issued imposing punishment on the former wife. Former wife's appeal from the contempt order was dismissed for lack of jurisdiction. Hamilton v. Hamilton, 228 P.3d 51 (Wyo. 2010).

Applied in Mott v. England, 604 P.2d 560 (Wyo. 1979); Gifford v. Casper, 618 P.2d 547 (Wyo. 1980); Mauch v. Stanley Structures, Inc., 641 P.2d 1247 (Wyo. 1982); Bird v. Rozier, 948 P.2d 888 (Wyo. 1997); DH v. Wyo. Dep't of Family Servs. (In re 'H' Children), 79 P.3d 997 (Wyo. 2003).

Quoted in Connolly v. State, 610 P.2d 1008 (Wyo. 1980).

Stated in Jessen v. State, 622 P.2d 1374 (Wyo. 1981).

Cited in Hopkinson v. State, 664 P.2d 43 (Wyo. 1983); Huber v. City of Casper, 727 P.2d 1002 (Wyo. 1986); City of Laramie v. Hysong, 808 P.2d 199 (Wyo. 1991).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

For article, "A Critical Look at Wyoming Water Law," see XXIV Land & Water L. Rev. 307 (1989).

1.05. Appealable order defined.

An appealable order is:

(a) An order affecting a substantial right in an action, when such order, in effect, determines the action and prevents a judgment; or

(b) An order affecting a substantial right made in a special proceeding; or

(c) An order made upon a summary application in an action after judgment; or

(d) An order, including a conditional order, granting a new trial on the grounds stated in Rule 59(a) (4) and (5), Wyo. R. Civ. P.; if an appeal is taken from such an order, the judgment shall remain final and in effect for the purposes of appeal by another party; or

(e) Interlocutory orders and decrees of the district courts which:

(1) Grant, continue, or modify injunctions, or dissolve injunctions, or refuse to dissolve or modify injunctions; or

(2) Appoint receivers, or issue orders to wind up receiverships, or to take steps to accomplish the purposes thereof, such as directing sales or other disposition of property.

(See Rule 13 for additional guidance on review of interlocutory orders.)

Source. — Former Rule 72(a), W.R.C.P.

Cross References. — For appeals from courts of limited jurisdiction, see § 5-2-119.

Order leaving nothing for future consideration final. — Generally, a judgment or order which determines the merits of the con-

troversy and leaves nothing for future consideration is final and appealable, and it is not appealable unless it does those things. Public Serv. Comm'n v. Lower Valley Power & Light, Inc., 608 P.2d 660 (Wyo. 1980).

But order designed to obtain additional information not final. — An order not designed finally to dispose of a matter, but only to obtain additional information which should be considered by a lower tribunal, is not a final order. Public Serv. Comm'n v. Lower Valley Power & Light, Inc., 608 P.2d 660 (Wyo. 1980).

And order remanding to administrative agency is not. — A judgment of a district court remanding an administrative proceeding to the agency for further proceedings is not an appealable order under W.R.A.P. 1.05. Bd. of Trs. of Mem. Hosp. v. Martin, 60 P.3d 1273 (Wyo. 2003).

And order that does not determine the merits is not. — District court order in divorce action did not determine merits of controversy, and it was therefore not a final, appealable order, where it resolved jurisdictional issue and set a hearing date on substance of father's motion to modify visitation. Steele v. Neeman, 6 P.3d 649 (Wyo. 2000).

Appeal dismissed where noncompliance with Rule 54(b), W.R.C.P. — Where there has been noncompliance with Rule 54(b), W.R.C.P., in that the liabilities of fewer than all of the parties have been determined, and there has been no express determination that there is no just reason for delay, the appeal will be dismissed. Hoback Ranches, Inc. v. Urroz, 622 P.2d 948 (Wyo. 1981).

And no right of appeal where court errs in determining multiple claims. — There is no right of appeal where the trial court errs in determining that there are multiple claims within the contemplation of subdivision (b) of Rule 54, W.R.C.P., regarding entry of a final judgment. Griffin v. Bethesda Found., 609 P.2d 459 (Wyo. 1980).

Subsequent motion not required for review. — After summary judgment is granted and an order filed the judgment is final and appealable; no subsequent motion under Rule 60(b), W.R.C.P., is required. Wyoming Ins. Dep't v. Sierra Life Ins. Co., 599 P.2d 1360 (Wyo. 1979).

Order denying intervention as of right deemed final. — If, as stated in Rule 24(a)(2), W.R.C.P., a party is entitled to intervention if he "is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest," an order denying intervention to such a party as of right would always result in determining that action and preventing a judgment in it relative to the person seeking intervention, thus placing such order within the definition of a final order under this rule. James S. Jackson Co. v. Horseshoe Creek, Ltd., 650 P.2d 281 (Wyo. 1982).

Denial of a motion to intervene under W.R.C.P. 24(a)(2) was a final and appealable order pursuant to W.R.A.P. 1.05, but where the notice of appeal of was not filed within the 30-day period for final orders under W.R.A.P. 2.01(a), the court did not have jurisdiction to hear the appeal under W.R.A.P. 1.03. Yeager v. Forbes, 78 P.3d 241 (Wyo. 2003).

Remand to county board is final order. — Where a district court order remanded a case to the county board for a hearing on certain issues, this order affected a substantial right of the board and prevents a judgment in favor of the board's bypassing such a hearing; it is, therefore, a final appealable order. Big Horn County Comm'rs v. Hinckley, 593 P.2d 573 (Wyo. 1979).

Modification of child custody. — In a case involving a modification of child custody due to visitation interference, the order was appealable because it was a special proceeding; moreover, substantial rights were affected because the right to associate with family was a fundamental liberty protected by the state and federal constitutions. FML v. TW, 157 P.3d 455 (Wyo. 2007).

Order denying transcript not final order. — An order of a district court denying a free transcript to an appellant is not a judgment or final order within the meaning and purpose of this rule. Escobedo v. State, 601 P.2d 1028 (Wyo. 1979).

Order denying motion to strike not final order. — District court's order denying the mother's motion to strike documents attached to a petition to establish paternity and child support was not a final, appealable order under Wyo. R. App. P. 1.05, since mother did not take issue with the final support order; she did not contend that the documents affected the final support order in any manner. SLU v. Dep't of Family Servs., 142 P.3d 1133 (Wyo. 2006).

Finality of order holding bequests to subscribing witnesses void. — Order in which court held bequests to subscribing witnesses to be void became final upon the entry of the final decree of distribution and determination of heirship, and at that point became appealable. Watson v. Dailey, 673 P.2d 645 (Wyo. 1983).

Summary judgment ruling that resolves case. — When trial court grants one party's motion for summary judgment and denies opposing party's motion for summary judgment, and court's decision completely resolves the case, both the grant and denial of the motions for summary judgment are appealable. Lieberman v. Wyoming.com LLC, 11 P.3d 353 (Wyo. 2000).

Because a decision granting summary judgment in a labor dispute was an appealable order under Wyo. R. App. P. 1.05(a) since it left nothing for further consideration, a notice of appeal filed more than 30 days thereafter was untimely under Wyo. R. App. P. 2.01(a); dismissal entered in the case after summary judg-

ment was merely a nullity, and there was no equitable tolling principals recognized under Wyoming law. Merchant v. Gray, 173 P.3d 410 (Wyo. 2007).

Denial of motion for summary judgment is not appealable in that it is not a final order. Kimbley v. City of Green River, 663 P.2d 871 (Wyo. 1983); J Bar H, Inc. v. Johnson, 822 P.2d 849 (Wyo. 1991).

Nor is order denying motion to dismiss. — There is no right to appeal from the order denying the motion to dismiss, which is not a "final order" as defined in this rule. Stamper v. State, 672 P.2d 106 (Wyo. 1983).

Denial of motion for a new trial not appealable. — An order of the trial court denying the personal representatives' motion for a new trial following an adverse verdict in their wrongful death action was not an appealable final order, as the appeal had to be from the judgment entered on the verdict in order to bestow jurisdiction upon the Supreme Court to hear the appeal. Scott v. Sutphin, 109 P.3d 520 (Wyo. 2005).

Motion to reconsider is nullity. — Mother's appeal of the trial court's denial of her motion to reconsider a child support abatement order was dismissed because the Wyoming Rules of Civil Procedure did not recognize a "motion for reconsideration"; therefore the trial court order purportedly denying the motion was void. Under W.R.A.P. 1.04(a) and 1.05, the Supreme Court of Wyoming has jurisdiction to entertain appeals only from final, appealable orders. Plymale v. Donnelly, 125 P.3d 1022 (Wyo. 2006).

But "appeal" from such order considered as petition for writ of certiorari. — The defendant's "notice of appeal," seeking review of a district court order denying his motion to dismiss on the ground that a retrial placed him in double jeopardy, not being a "final order," was considered as a petition for a writ of certiorari. Stamper v. State, 701 P.2d 557 (Wyo. 1985).

Although a district court's order annulling a municipal candidate's election was not appealable because it granted only partial summary judgment and was not certified as immediately appealable by the district court, the supreme court converted the notice of appeal into a writ of review because the issues raised presented questions of significant state importance. Smith v. Brito, 173 P.3d 351 (Wyo. 2007).

Party not appealing "final order" cannot appeal from petition to reopen case's denial. — An employee was without standing to challenge the validity of a stipulation entered into with his employer because he failed to appeal the district court's "final order of award," which ruled that the stipulation, and the prior court order approving and enforcing the agreement, limited the benefits payable on account of the employee's injury and that the provisions of that prior order should be enforced, but instead filed a petition to reopen the case and appealed from a denial of that petition. Lea v. D & S Casing Serv., Inc., 707 P.2d 754 (Wyo. 1985).

Default entry is not final order. — An entry of default is not a final disposition of the controversy and is not a final appealable order; it is simply a clerical act performed by the clerk of court which determines liability but not relief. Lee v. Sage Creek Ref. Co., 876 P.2d 997 (Wyo. 1994).

Order, leaving nothing not disposed of, "final". — Where the Supreme Court had difficulty identifying matters not disposed of in the final order, the "Judgment and Final Order" entered by the court was a "final order" disposing of the claims raised for purposes of appellate review. Morris v. Bell, 726 P.2d 71 (Wyo. 1986).

Court order, reversing agency order allowing mining permit, final appealable order. — District court order reversing an order of the Environmental Quality Council which allowed a mining permit without consent from surface landowners adjacent to the land to be mined, was a final appealable order, since the district court order prevented a judgment in favor of the issuance of the mining permit. Wymo Fuels, Inc. v. Edwards, 723 P.2d 1230 (Wyo. 1986).

Order denying dismissal for immunity appealable. — An order denying dismissal of a claim based on qualified immunity is final and appealable because of the irreparable loss of immunity otherwise attendant to appellant. Park County v. Cooney, 845 P.2d 346 (Wyo. 1992), cert. denied, 510 U.S. 813, 114 S. Ct. 60, 126 L. Ed. 2d 30 (1993).

Partial summary judgment not appealable. — Because two partial summary judgment orders in favor of a former wife relating to a child support arrearage were not final under Wyo. R. Civ. P. 54(b), an appeal was dismissed. Moreover, the appeal did not fall under Wyo. R. App. P. 1.05 nor was it the type that warranted conversion to a petition for a writ of review under Wyo. R. App. P. 13. Witowski v. Roosevelt, 156 P.3d 1001 (Wyo. 2007).

Neglect finding and transfer order appealable as affecting substantial rights. — Court treated findings of fact and conclusions of law finding neglect and an order of transfer of physical placement as appealable orders because they had the effect of an adjudicatory decree and a dispositional order under this and other sections and they affect the mother's substantial rights. DH v. Wyo. Dep't of Family Servs. (In re 'H' Children), 79 P.3d 997 (Wyo. 2003).

Order denying appointment of independent medical examination in conservator action. — District Court's order denying wife's motions for independent medical examination and for competency hearing was an appealable order under W.R.A.P. 1.05 because the wife was

sufficiently affected to guarantee an actual justiciable controversy where she was properly situated with sufficient pecuniary, personal, and tangible interests at stake given a pending divorce action. McNeel v. McNeel (In re McNeel), 109 P.3d 510 (Wyo. 2005).

Order distributing assets of limited partnership was final, appealable order. — District court's order approving a plan for the winding up and distribution of the assets of a limited partnership was a final, appealable order for purposes of this section. Weiss v. Weiss, 178 P.3d 1091 (Wyo. 2008).

Order not affecting substantial rights not final order. — District court's decision was not a final reviewable order where the order did not affect a substantial right of either party; the tone of the order was to advise the parties of their rights and duties concerning custody and visitation, the true thrust of the order was to admonish the parties concerning their actions, the divorce decree remained unchanged, and the parties remained free to pursue an action to modify custody. Stone v. Stone, 842 P.2d 545 (Wyo. 1992).

Court order concluding that a mother failed to prove statutory requirements for terminating a father's parental rights was not an appealable order because it did not affect a substantial right. SEG v. GDK, 173 P.3d 395 (Wyo. 2007).

Order ruling that the Indian Child Welfare Act did not apply affecting an Indian tribe's substantial rights in juvenile neglect proceedings. — In juvenile neglect proceedings regarding a child who was an enrolled member of an Indian tribe, a district court's order ruling that the Indian Child Welfare Act was not applicable sufficiently affected a substantial right of the tribe pursuant to W.R.A.P. 1.05(b) because such an order effectively would have denied the tribe an opportunity to participate in the proceedings as an intervening party. SNK v. State, 78 P.3d 1032 (Wyo. 2003).

Order remanding to administrative agency. — Court dismissed one of the taxpayer's consolidated appeals of ad valorem personal property tax assessments on its coal mines for lack of jurisdiction because that the State Board of Equalization had remanded the case to the County Board of Equalization; therefore the taxpayer was the prevailing party and was not adversely affected as provided under Wyo. Stat. Ann. § 39-11-102.1, or "aggrieved" as provided in Wyo. Stat. Ann. § 39-13-109 and Wyo. R. App. P. 12.01. Thunder Basin Coal Co. v. Campbell County, 132 P.3d 801 (Wyo. 2006).

Appeal from judgment reinstated, upon defendant's appeal from transfer to penitentiary from hospital. — In its judgment and sentence, the trial court ordered the defendant to the Wyoming state hospital for treatment and, after conclusion of that treatment, to commitment at the Wyoming state penitentiary, the total length of commitment to be not less than 15 nor more than 20 years. Although this judgment and sentence was a final order, as defined by this rule, from which an appeal should have been taken within 15 days under Rule 2.01, the defendant failed to so act, but instead appealed from the order transferring him to the penitentiary, which was entered nearly one year after the judgment and sentence. However, since the defendant also asserted in his notice of appeal that he was appealing from the judgment and sentence, as well as the order of transfer, in order to ensure that he be afforded effective assistance of counsel, the appeal taken from the judgment and sentence was reinstated. Price v. State, 716 P.2d 324 (Wyo. 1986) (plurality opinion).

Posting supersedeas bond did not constitute payment made to trigger § 35-11-1418(c) (reimbursement for payment made pursuant to court order arising from release of underground storage tank); the supersedeas bond constituted security provided by the judgment debtor to avoid execution on the judgment and did not constitute accomplished payment until an unqualified right to the proceeds accrued after the judgment was affirmed on appeal. V-1 Oil Co. v. People, 799 P.2d 1199 (Wyo. 1990).

Probate judgment not final. — While it was true that a final judgment or an appealable order made by a trial court could be ruled upon by the state supreme court for errors appearing in the record, the state supreme court had to dismiss the appeal filed in the case at hand by an estate's personal representative from a trial court's order admitting the decedent's purported will to probate and appointing the personal representative, because no final judgment or appealable order existed, as the trial court's order did not resolve the merits of the controversy between the parties and did not affect the substantial rights of the parties. Estate of McLean v. Benson, 71 P.3d 750 (Wyo. 2003).

Judgment debtor's failure to appeal within 30 days under Wyo. R. App. P. 2.01 from the denial of his petition to enjoin an execution sale, which was a final appealable order under this section, deprived the reviewing court of jurisdiction as to that issue pursuant to Wyo. R. App. P. 1.03. Cook v. Swires, 202 P.3d 397 (Wyo. 2009).

Appeal notice treated as petition for writ of review. — Although a district court's order annulling a municipal candidate's election was not appealable because it granted only partial summary judgment and was not certified as immediately appealable by the district court, the supreme court converted the notice of appeal into a writ of review because the issues raised presented questions of significant state importance. Smith v. Brito, 173 P.3d 351 (Wyo. 2007).

Order denying motion to compel arbi-

tration. — Appeal from the denial of a motion to compel arbitration was proper because it was a final order of a district court under this section. Fox v. Tanner, 101 P.3d 939 (Wyo. 2004).

Applied in Peterson v. State, 586 P.2d 144 (Wyo. 1978); Jessen v. State, 622 P.2d 1374 (Wyo. 1981); Wetering v. Eisele, 682 P.2d 1055 (Wyo. 1984); Federal Land Bank v. Miller, 730 P.2d 122 (Wyo. 1986); Wyoming Health Servs., Inc. v. Deatherage, 773 P.2d 156 (Wyo. 1989); Barker Bros. v. Barker-Taylor, 823 P.2d 1204 (Wyo. 1992); Steele v. Neeman, 6 P.3d 649 (Wyo. 2000); Bd. of Trs. of Mem. Hosp. v. Martin, 60 P.3d 1273 (Wyo. 2003).

Quoted in State in Interest of C, 638 P.2d 165 (Wyo. 1981); Honan v. Honan, 809 P.2d 783 (Wyo. 1991); Ruppenthal v. State ex rel. Economic Dev. & Stabilization Bd., 849 P.2d 1316 (Wyo. 1993); Goodman v. Voss, 248 P.3d 1120 (Wyo. 2011).

Stated in Farrell v. Hursh Agency, Inc., 713 P.2d 1174 (Wyo. 1986); Mathewson v. Estate of Nielsen (In re Estate of Nielsen), 252 P.3d 958 (Wyo. 2011).

Cited in First Wyo. Bank v. Trans Mt. Sales & Leasing, Inc., 602 P.2d 1219 (Wyo. 1979); Weston County Hosp. Joint Powers Bd. v. Westates Constr. Co., 841 P.2d 841 (Wyo. 1992); Sandstrom v. Sandstrom, 880 P.2d 103 (Wyo. 1994); McWilliams v. Wilhelm, 893 P.2d 1147 (Wyo. 1995); Hilbert v. Benson, 917 P.2d 1152 (Wyo. 1996); JLJ v. AFM, 942 P.2d 407 (Wyo. 1997); Padilla v. State, 91 P.3d 920 (Wyo. 2004); HP v. State, 93 P.3d 982 (Wyo. 2004); GGV v. JLR, 105 P.3d 474 (Wyo. 2005); MJH v. AV (In re JRH), 138 P.3d 683 (Wyo. 2006).

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see XI Land & Water L. Rev. 27 (1976).

Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Am. Jur. 2d, ALR and C.J.S. references. — Appealability of state court's order granting or denying motion to disqualify attorney, 5 ALR4th 1251.

Appealability of federal court order denying motion for appointment of counsel for indigent party, 67 ALR Fed 925.

Standing of attorney to appeal federal court order denying, or limiting amount of, attorneys' fees to client, 72 ALR Fed 417.

Appealability, under 28 USC § 1291, of order awarding or denying attorneys' fees, 73 ALR Fed 271.

1.06. Joint appeals.

If two or more parties 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. Appellants filing jointly shall file only one combined brief and, if applicable, one combined reply brief.
(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 74, W.R.C.P.

1.07. Filing and service of documents by facsimile transmission in the supreme court.

(a) The supreme court will neither accept facsimile filings nor transmit any court documents, including orders, by facsimile transmission.

(b) In a death penalty case with a scheduled execution date, the prohibition against fax filing of an original proceeding or other documents may be waived by the supreme court.
(Adopted May 4, 2001, effective September 1, 2001; amended April 6, 2015, effective July 1, 2015.)

Rule 2. Processing appeal.

Rule 2.01. [Effective until November 1, 2017.] How and when taken; cross-appeals and dismissals.

(a) An appeal from a trial court to an appellate court shall be taken by filing the notice of appeal with the clerk of the trial court within 30 days from entry of the appealable order and concurrently serving the same in accordance with the provisions

of Rule 5, Wyo.R.Civ.P., (or as provided in Wyo.R.Cr.P. 32 (c)(4)). The pro se filing of a notice of appeal by an inmate confined in a penal institution is additionally subject to the provisions of Rule 14.04. Contemporaneously with the filing of the notice of appeal with the clerk of the trial court, a copy of the notice of appeal shall also be served on the clerk of the appellate court. See Rule 1.03. In criminal cases appealed to the supreme court, the notice of appeal shall be served upon the office of public defender and the office of attorney general. In cases specified in Wyo.Stat.Ann. § 14-12-101(a), the notice of appeal shall be served upon the Wyoming Guardian Ad Litem Program.

(1) Upon a showing of excusable neglect, the trial court in any action may extend the time for filing the notice of appeal to 45 days from entry of the appealable order, provided the application for extension of time is filed and the order entered prior to the expiration of 45 days from entry of the appealable order. Along with the application for extension of time, appellant shall submit a proposed notice of appeal, which the clerk of court shall retain. At the time of filing the application for extension of time, appellant shall also deliver to the clerk of the trial court the filing fee for docketing the case in the appellate court or a motion for leave to proceed in forma pauperis. See Rule 2.09(a). If the trial court grants the application for extension of time, the clerk of court shall file the proposed notice of appeal concurrently with entry of the order extending the time. If the trial court denies the application, any docketing fee shall be refunded to appellant. Appellant shall promptly serve appellee a copy of the order extending the time. If such an order is issued, it shall be appended to the notice of appeal that is served on the clerk of the appellate court.

(2) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within the time prescribed by Rule 2.01(a) or within 15 days of the date on which the first notice of appeal was filed.

(b) If an appeal has not been docketed with the appellate court, the parties, with the approval of the trial court, may dismiss the appeal by stipulation filed in that court, or that court may dismiss the appeal upon motion and notice by appellant.

(c) An amended notice of appeal shall be limited to the correction of clerical errors or omissions in the original notice of appeal. It may not be used for the purpose of appealing an order or judgment entered subsequent to the filing of the original notice of appeal, except as provided in 2.02(c) or when a subsequent order or judgment amends the order or judgment from which the appeal was initially taken. The amended notice shall be served and filed pursuant to the provisions of Rule 14.01, provided, however, that no filing fees need be paid.

(Amended May 4, 1999, effective October 1, 1999; amended July 26, 2006, effective December 1, 2006; amended April 14, 2010, effective July 1, 2010; amended April 6, 2015, effective July 1, 2015.)

Comment. — The 1997 amendment of this rule requires that a notice of appeal be filed with the clerk of the appellate court, rather than merely mailed. This amendment was deemed necessary because many appellants failed to mail a copy of the notice of appeal to the clerk of the appellate court. Also, see General Order 97-1 which provides for a $150.00 sanction for failure to comply with this rule.

Source. — Former Rule 73(a), W.R.C.P. — in general; premature filing, Kan. Appel. Prac. 2.03.

This rule controlled over conflicting statute. — Supreme court has authority to establish procedural rules for state's judicial branch that supersede conflicting statutes, and to the extent that § 5-5-142 dictated procedure in the inferior courts it was unconstitutional; this rule is controlling in determining time limit for filing appeal from county (now circuit) court to district court. Kittles v. Rocky Mt. Recovery, Inc., 1 P.3d 1220 (Wyo. 2000).

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appellant's presenting the notice for filing to the clerk of the district court and not upon the appellant's payment to the clerk of the transcript fee prescribed by § 5-3-206(a)(vii). Jung-Leonczynska v. Steup, 782 P.2d 578 (Wyo. 1989).

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Dismissal remedy for noncompliance with appellate procedure. — Compliance with rules promulgated by the Supreme Court is required and the sanction of dismissal for failure of the appellant to comply therewith may be the appropriate remedy. Dixon v. City of Worland, 595 P.2d 84 (Wyo. 1979).

District court's decision letter clearly stated that it was to constitute the district court's final, appealable order in the proceeding; because defendant's notice of appeal was filed 34 days thereafter and was untimely, the appellate court's jurisdiction was never invoked and defendant's appeal had to be dismissed. Cosco v. Uphoff, 66 P.3d 702 (Wyo. 2003), cert. denied, — U.S. —, 124 S. Ct. 121, 157 L. Ed. 2d 84 (2003).

Revival of lost opportunities to appeal impermissible. — The filing of a post-judgment motion and order of denial is not permitted to revive lost opportunities to appeal a judgment; tolling is only allowed in those instances provided by this rule. Jessen v. State, 622 P.2d 1374 (Wyo. 1981).

Appellant facing possible irreparable damages granted writ of certiorari. — Although a summary judgment partitioning real property did not dispose of all the claims in an action and, for this reason, was not a final order and not ordinarily appealable, since the appellant might have suffered irreparable damages by the partitioning before all claims could have been disposed of, the court treated his appeal as a grant of a writ of certiorari. Osborn v. Warner, 694 P.2d 730 (Wyo. 1985).

Motion to alter or amend. — Wife's motion to vacate and alter or amend a judgment of divorce on grounds that husband had perjured himself was, in essence, a motion to reconsider and did not stay the 30-day period for filing a notice of appeal. Morehouse v. Morehouse, 959 P.2d 179 (Wyo. 1998).

Denial of a motion for a new trial is non-appealable order. — An order of the trial court denying the personal representatives' motion for a new trial following an adverse verdict in their wrongful death action was not an appealable final order, as the appeal had to be from the judgment entered on the verdict in order to bestow jurisdiction upon the Supreme Court to hear the appeal. Scott v. Sutphin, 109 P.3d 520 (Wyo. 2005).

Relief from judgment under W.R.C.P. 60(b). — In order not to undermine the purpose of paragraph (a)(i), where a party does not learn of a judgment until after the time provided in that paragraph, relief under W.R.C.P. 60(b) is available only where the party has shown due diligence, sufficient reason for the lack thereof, or other special circumstances. Ahearn v. Anderson-Bishop Partnership, 946 P.2d 417 (Wyo. 1997).

Separate notice for appealing award of costs. — Where district court retained jurisdiction over an award of costs to a motorist in a suit arising out of a collision with a cyclist, and the cyclist, who appealed, failed to file a separate notice of appeal pertaining to his challenge to the award of costs, the appellate court lacked jurisdiction to hear this issue on appeal. Nish v. Schaefer, 138 P.3d 1134 (Wyo. 2006).

Agency's inaction deemed a denial. — District court erred in dismissing an employee's petition for judicial review of the denial of his request for a salary increase for lack of jurisdiction due to an untimely filing because there had been no final agency determination. A supervisor's equivocal e-mail informing the employee that his request had been denied and a statement agency letter informing the employee that his request for a grievance committee had been denied did not constitute a final decision; the employee could appeal, however, because the agency's inaction could be deemed a denial. Douglass v. Wyo. DOT, 187 P.3d 850 (Wyo. 2008).

Standard of excusable neglect. — Excusable neglect is measured on a strict standard to take care of genuine emergency conditions, such as death, sickness, undue delay in the mails and other situations where such behavior might be the act of a reasonably prudent person under the circumstances. Crossan v. Irrigation Dev. Corp., 598 P.2d 812 (Wyo. 1979); Elliott v. State, 626 P.2d 1044 (Wyo. 1981).

The trial court properly found excusable neglect in failing to timely file a notice of appeal.

See Martinez v. City of Cheyenne, 791 P.2d 949 (Wyo. 1990).

The appellant's failure to follow the proper procedure in perfecting an appeal of a W.R.C.P. 54(b) certification did not constitute excusable neglect and, therefore, did not entitle him to an extension of time to file his appeal. Tusshani v. Allsop, 1 P.3d 1263 (Wyo. 2000).

Ignorance of provisions of these rules is not excusable neglect as a matter of law. Crossan v. Irrigation Dev. Corp., 598 P.2d 812 (Wyo. 1979).

When remedial extensions of time available. — A remedial extension of time is and always has been available where some real or apparent breakdown in the procedure has occurred or where excusable neglect is demonstrated. Department of Revenue & Taxation v. Irvine, 589 P.2d 1295 (Wyo. 1979).

Extensions of time to file limited. — Extensions of time to file a notice of appeal may not be granted after the time that an extension could have run has expired. Graham v. Graham, 597 P.2d 967 (Wyo. 1979).

Factual presentation required. — A motion for an extension of time for filing a notice of appeal grounded upon a showing of excusable neglect is one of those motions that inherently requires a factual presentation. Venable v. State, 854 P.2d 714 (Wyo. 1993).

Time limitation for filing notice of appeal is mandatory and jurisdictional. — Denial of a motion to intervene under W.R.C.P. 24(a)(2) was a final and appealable order pursuant to W.R.C.P. 1.05, but where the notice of appeal of was not filed within the 30-day period for final orders under W.R.A.P. 2.01(a), the court did not have jurisdiction to hear the appeal under W.R.A.P. 1.03. Yeager v. Forbes, 78 P.3d 241 (Wyo. 2003); State v. Berger, 600 P.2d 708 (Wyo. 1979).

Period for filing not tolled. — The plaintiff's motion to reconsider a grant of summary judgment could not be considered a motion to alter or amend judgment so as to toll the period for filing a notice of appeal where the motion did not: (1) illustrate a change in controlling law; (2) present any evidence that became available subsequent to the hearing; or (3) show any necessity to correct a clear error of law or prevent manifest injustice. Sherman v. Rose, 943 P.2d 719 (Wyo. 1997).

When the district court entered an order on May 20, 2010 granting summary judgment and distributing the estate assets, appellant grandson's August 30, 2010, notice of appeal was untimely under this rule because it was not filed within 30 days after entry of a final appealable order. Grandson's motion for a new trial did not extend the time for appealing because no trial was held in the case and it was actually a motion for reconsideration. Mathewson v. Estate of Nielsen (In re Estate of Nielsen), 252 P.3d 958 (Wyo. 2011).

Father's appeal of a child support order was timely because a district court's letter to the parties had plainly contemplated further proceedings and was not a final order. Lee v. Lee, 303 P.3d 1128 (June 18, 2013).

Time runs from entry of judgment without regard for when judgment is actually received by a party. Department of Revenue & Taxation v. Irvine, 589 P.2d 1295 (Wyo. 1979).

Motion to amend writ of mandamus tolled time for filing notice of appeal. — Upon the court's denial of the motion, the movant had 15 days in which to file his notice of appeal from the issuance of the writ. Mills v. Campbell Co. Canvassing Bd., 707 P.2d 747 (Wyo. 1985).

Failure to serve necessary party contemporaneously with filing may result in dismissal. — Although the failure to timely serve a notice of appeal upon a necessary party is not a jurisdictional defect which automatically requires dismissal, the failure to serve a notice of appeal upon all parties contemporaneously with the filing of the notice may, and probably will, in most cases, result in the dismissal of the appeal. DS v. Department of Pub. Assistance, 607 P.2d 911 (Wyo. 1980) (decided under prior rule).

All parties in interest must be given opportunity to be heard before the Supreme Court will or can proceed to a decision upon the merits of the case. DS v. Department of Pub. Assistance, 607 P.2d 911 (Wyo. 1980).

As to what constitutes "continuance" within this rule, see Blake v. Rupe, 651 P.2d 1096 (Wyo. 1982), cert. denied, 459 U.S. 1208, 103 S. Ct. 1199, 75 L. Ed. 2d 442 (1983).

Cancellation of hearing by court considered continuance. — Where the trial court set a plaintiff's motion for additur for hearing within 60 days of the date judgment was entered, but the judge's secretary called counsel for the parties and cancelled the hearing, the court effectively granted a continuance, and no written order so stating was required. Martinez v. City of Cheyenne, 791 P.2d 949 (Wyo. 1990).

Appeal dismissed where time to file notice extended in response to telephone request. — An order for extension of time for which to file notice of appeal recited that the attorney for the appellant requested the extension by telephone. Since an application for extension of time must be a written application, and must encompass a showing of excusable neglect, the jurisdiction of the appellate court was not invoked and the appeal was dismissed. Wiens v. AMC, 717 P.2d 322 (Wyo. 1986).

Untimely appeal considered. — Supreme court considered merits of defendant's untimely appeal in order to ensure that defendant was afforded equal protection in his presentence confinement credit award. Eustice v. State, 871 P.2d 682 (Wyo. 1994).

Appeal from summary judgment untimely. — Because a decision granting summary judgment in a labor dispute was an ap-

pealable order under Wyo. R. App. P. 1.05(a) since it left nothing for further consideration, a notice of appeal filed more than 30 days thereafter was untimely under Wyo. R. App. P. 2.01(a); dismissal entered in the case after summary judgment was merely a nullity, and there was no equitable tolling principals recognized under Wyoming law. Merchant v. Gray, 173 P.3d 410 (Wyo. 2007).

Appeal from second partial summary judgment. — Plaintiff who failed to take an appeal from the first partial summary judgment did not waive her right to appeal from the second partial summary judgment. Rule 54(b) certifications are subject to review in the Wyoming supreme court for a determination as to whether certification would further the interests of judicial economy and the sound administration of the appellate process. Loghry v. Unicover Corp., 878 P.2d 510 (Wyo. 1994).

Notice of appeal neither defective nor untimely. — A juvenile's notice of appeal was not defective, for even though the juvenile's counsel did not correctly type the name of the hearing and order in the notice of appeal, it would have put form over substance to have denied appellate jurisdiction, where counsel correctly identified the object of the appeal as the juvenile court's order and also attached to the notice of appeal a copy of the order. Moreover, the notice of appeal was not untimely, where (1) the juvenile court, with the consent of both the state and the juvenile, reserved a restitutional order to a later time, and (2) when the juvenile court later held a restitution hearing and entered a final order on restitution, the juvenile timely appealed that final order. TPJ v. State, 66 P.3d 710 (Wyo. 2003).

Because appellant filed a motion to withdraw his guilty plea just two days after a judgment and sentence was entered, it was filed well within the 30 days allowed by this section, and, although his motion was not decided for approximately 20 months, the Wyoming Rules of Criminal Procedure did not impose a time limitation as they did for certain types of post-trial motions, and the supreme court was therefore able to reach the merits of the issue. Chapman v. State, 300 P.3d 864 (May 10, 2013).

Jurisdiction lost. — Judgment debtor's failure to appeal within 30 days under this section from the denial of his petition to enjoin an execution sale, which was a final appealable order under Wyo. R. App. P. 1.05(b), deprived the reviewing court of jurisdiction as to that issue pursuant to Wyo. R. App. P. 1.03. Cook v. Swires, 202 P.3d 397 (Wyo. 2009).

Applied in Zabaleta v. FMC Corp., 638 P.2d 648 (Wyo. 1981); Gaudina v. Haberman, 644 P.2d 159 (Wyo. 1982); Sanderson v. State, 649 P.2d 677 (Wyo. 1982); Price v. State, 716 P.2d 324 (Wyo. 1986); Miller v. Murdock, 788 P.2d 614 (Wyo. 1990); Stice v. State, 799 P.2d 1204 (Wyo. 1990); Stone v. Stone, 842 P.2d 545 (Wyo. 1992); Cardwell v. American Linen Supply, 843 P.2d 596 (Wyo. 1992); McWilliams v. Wilhelm, 893 P.2d 1147 (Wyo. 1995); Anderson v. Everett, 2000 U.S. App. LEXIS 5864 (10th Cir. Mar. 30, 2000), reported in table case format at 215 F.3d 1336 (10th Cir. 2000).

Quoted in Murry v. State, 631 P.2d 26 (Wyo. 1981); McAteer v. Stewart, 696 P.2d 72 (Wyo. 1985); Rialto Theatre, Inc. v. Commonwealth Theatres, Inc., 714 P.2d 328 (Wyo. 1986); Paxton Res., L.L.C. v. Brannaman, 95 P.3d 796 (Wyo. 2004).

Stated in Board of County Comm'rs v. Ridenour, 623 P.2d 1174 (Wyo. 1981); Cates v. Barb, 650 P.2d 1159 (Wyo. 1982); Ruppenthal v. State ex rel. Economic Dev. & Stabilization Bd., 849 P.2d 1316 (Wyo. 1993).

Cited in Big Horn County Comm'rs v. Hinckley, 593 P.2d 573 (Wyo. 1979); Hopkinson v. State, 664 P.2d 43 (Wyo. 1983); Parker v. Kahin, 758 P.2d 570 (Wyo. 1988); Colton v. Brann, 786 P.2d 880 (Wyo. 1990); Storseth v. Storseth, 792 P.2d 243 (Wyo. 1990); Racicky v. Simon, 831 P.2d 241 (Wyo. 1992); Barron v. Barron, 834 P.2d 685 (Wyo. 1992); Moriarity v. State ex rel. McBride, 899 P.2d 879; Holmquist v. State, 902 P.2d 217 (Wyo. 1995); Romberger v. VFW Post 1881, 918 P.2d 993 (Wyo. 1996); Harris v. Taylor, 969 P.2d 142 (Wyo. 1998); Orosco v. Schabron, 9 P.3d 264 (Wyo. 2000); Hart v. State, 37 P.3d 1286 (Wyo. 2002); Padilla v. State, 91 P.3d 920 (Wyo. 2004); GGV v. JLR, 105 P.3d 474 (Wyo. 2005); McNeel v. McNeel (In re McNeel), 109 P.3d 510 (Wyo. 2005); MJH v. AV (In re JRH), 138 P.3d 683 (Wyo. 2006).

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Am. Jur. 2d, ALR and C.J.S. references. — 4 Am. Jur. 2d Appellate Review § 1 et seq.

Right to perfect appeal, against party who has not appealed, by cross-appeal filed after time for direct appeal has passed, 32 ALR3d 1290.

Application of "fugitive disentitlement doctrine" to civil matters — State cases, 112 ALR5th 399.

4 C.J.S. Appeal and Error § 1 et seq.

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notice of appeal by an inmate confined in a penal institution is additionally subject to the provisions of Rule 14.04. Contemporaneously with the filing of the notice of appeal with the clerk of the trial court, a copy of the notice of appeal shall also be served on the clerk of the appellate court. See Rule 1.03. In criminal cases appealed to the supreme court, the notice of appeal shall be served upon the office of public defender and the office of attorney general. In cases specified in Wyo.Stat.Ann. § 14-12-101(a), the notice of appeal shall be served upon the Wyoming Guardian Ad Litem Program.

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Motion to alter or amend. — Wife's motion to vacate and alter or amend a judgment of divorce on grounds that husband had perjured himself was, in essence, a motion to reconsider and did not stay the 30-day period for filing a notice of appeal. Morehouse v. Morehouse, 959 P.2d 179 (Wyo. 1998).

Denial of a motion for a new trial is non-appealable order. — An order of the trial court denying the personal representatives' motion for a new trial following an adverse verdict in their wrongful death action was not an appealable final order, as the appeal had to be from the judgment entered on the verdict in order to bestow jurisdiction upon the Supreme Court to hear the appeal. Scott v. Sutphin, 109 P.3d 520 (Wyo. 2005).

Relief from judgment under W.R.C.P. 60(b). — In order not to undermine the purpose of paragraph (a)(i), where a party does not learn of a judgment until after the time provided in that paragraph, relief under W.R.C.P. 60(b) is available only where the party has shown due diligence, sufficient reason for the lack thereof, or other special circumstances. Ahearn v. Anderson-Bishop Partnership, 946 P.2d 417 (Wyo. 1997).

Separate notice for appealing award of costs. — Where district court retained jurisdiction over an award of costs to a motorist in a suit arising out of a collision with a cyclist, and the cyclist, who appealed, failed to file a separate notice of appeal pertaining to his challenge to the award of costs, the appellate court lacked jurisdiction to hear this issue on appeal. Nish v. Schaefer, 138 P.3d 1134 (Wyo. 2006).

Agency's inaction deemed a denial. — District court erred in dismissing an employee's petition for judicial review of the denial of his request for a salary increase for lack of jurisdiction due to an untimely filing because there had been no final agency determination. A supervisor's equivocal e-mail informing the employee that his request had been denied and a statement agency letter informing the employee that his request for a grievance committee had been denied did not constitute a final decision; the employee could appeal, however, because the agency's inaction could be deemed a denial. Douglass v. Wyo. DOT, 187 P.3d 850 (Wyo. 2008).

Standard of excusable neglect. — Excusable neglect is measured on a strict standard to take care of genuine emergency conditions, such as death, sickness, undue delay in the mails and other situations where such behavior might be the act of a reasonably prudent person under the circumstances. Crossan v. Irrigation Dev. Corp., 598 P.2d 812 (Wyo. 1979); Elliott v. State, 626 P.2d 1044 (Wyo. 1981).

The trial court properly found excusable neglect in failing to timely file a notice of appeal. See Martinez v. City of Cheyenne, 791 P.2d 949 (Wyo. 1990).

The appellant's failure to follow the proper procedure in perfecting an appeal of a W.R.C.P. 54(b) certification did not constitute excusable neglect and, therefore, did not entitle him to an extension of time to file his appeal. Tusshani v. Allsop, 1 P.3d 1263 (Wyo. 2000).

Ignorance of provisions of these rules is not excusable neglect as a matter of law. Crossan v. Irrigation Dev. Corp., 598 P.2d 812 (Wyo. 1979).

When remedial extensions of time available. — A remedial extension of time is and always has been available where some real or apparent breakdown in the procedure has occurred or where excusable neglect is demonstrated. Department of Revenue & Taxation v. Irvine, 589 P.2d 1295 (Wyo. 1979).

Extensions of time to file limited. — Extensions of time to file a notice of appeal may not be granted after the time that an extension could have run has expired. Graham v. Graham, 597 P.2d 967 (Wyo. 1979).

Factual presentation required. — A motion for an extension of time for filing a notice of appeal grounded upon a showing of excusable neglect is one of those motions that inherently requires a factual presentation. Venable v. State, 854 P.2d 714 (Wyo. 1993).

Time limitation for filing notice of appeal is mandatory and jurisdictional. — Denial of a motion to intervene under W.R.C.P. 24(a)(2) was a final and appealable order pursuant to W.R.C.P. 1.05, but where the notice of appeal of was not filed within the 30-day period for final orders under W.R.A.P. 2.01(a), the court did not have jurisdiction to hear the appeal under W.R.A.P. 1.03. Yeager v. Forbes, 78 P.3d 241 (Wyo. 2003); State v. Berger, 600 P.2d 708 (Wyo. 1979).

Period for filing not tolled. — The plaintiff's motion to reconsider a grant of summary judgment could not be considered a motion to alter or amend judgment so as to toll the period for filing a notice of appeal where the motion did not: (1) illustrate a change in controlling law; (2) present any evidence that became available subsequent to the hearing; or (3) show any necessity to correct a clear error of law or prevent manifest injustice. Sherman v. Rose, 943 P.2d 719 (Wyo. 1997).

When the district court entered an order on May 20, 2010 granting summary judgment and distributing the estate assets, appellant grandson's August 30, 2010, notice of appeal was untimely under this rule because it was not filed within 30 days after entry of a final appealable order. Grandson's motion for a new trial did not extend the time for appealing because no trial was held in the case and it was actually a motion for reconsideration. Mathewson v. Estate of Nielsen (In re Estate of Nielsen), 252 P.3d 958 (Wyo. 2011).

Father's appeal of a child support order was timely because a district court's letter to the parties had plainly contemplated further proceedings and was not a final order. Lee v. Lee, 303 P.3d 1128 (June 18, 2013).

Time runs from entry of judgment without regard for when judgment is actually received by a party. Department of Revenue & Taxation v. Irvine, 589 P.2d 1295 (Wyo. 1979).

Motion to amend writ of mandamus tolled time for filing notice of appeal. — Upon the court's denial of the motion, the movant had 15 days in which to file his notice of appeal from the issuance of the writ. Mills v. Campbell Co. Canvassing Bd., 707 P.2d 747 (Wyo. 1985).

Failure to serve necessary party contemporaneously with filing may result in dismissal. — Although the failure to timely serve a notice of appeal upon a necessary party is not a jurisdictional defect which automatically requires dismissal, the failure to serve a notice of appeal upon all parties contemporaneously with the filing of the notice may, and probably will, in most cases, result in the dismissal of the appeal. DS v. Department of Pub. Assistance, 607 P.2d 911 (Wyo. 1980) (decided under prior rule).

All parties in interest must be given opportunity to be heard before the Supreme Court will or can proceed to a decision upon the merits of the case. DS v. Department of Pub. Assistance, 607 P.2d 911 (Wyo. 1980).

As to what constitutes "continuance" within this rule, see Blake v. Rupe, 651 P.2d 1096 (Wyo. 1982), cert. denied, 459 U.S. 1208, 103 S. Ct. 1199, 75 L. Ed. 2d 442 (1983).

Cancellation of hearing by court considered continuance. — Where the trial court set a plaintiff's motion for additur for hearing within 60 days of the date judgment was entered, but the judge's secretary called counsel for the parties and cancelled the hearing, the court effectively granted a continuance, and no written order so stating was required. Martinez v. City of Cheyenne, 791 P.2d 949 (Wyo. 1990).

Appeal dismissed where time to file notice extended in response to telephone request. — An order for extension of time for which to file notice of appeal recited that the attorney for the appellant requested the extension by telephone. Since an application for extension of time must be a written application, and must encompass a showing of excusable neglect, the jurisdiction of the appellate court was not invoked and the appeal was dismissed. Wiens v. AMC, 717 P.2d 322 (Wyo. 1986).

Untimely appeal considered. — Supreme court considered merits of defendant's untimely appeal in order to ensure that defendant was afforded equal protection in his presentence confinement credit award. Eustice v. State, 871 P.2d 682 (Wyo. 1994).

Appeal from summary judgment un-

timely. — Because a decision granting summary judgment in a labor dispute was an appealable order under Wyo. R. App. P. 1.05(a) since it left nothing for further consideration, a notice of appeal filed more than 30 days thereafter was untimely under Wyo. R. App. P. 2.01(a); dismissal entered in the case after summary judgment was merely a nullity, and there was no equitable tolling principals recognized under Wyoming law. Merchant v. Gray, 173 P.3d 410 (Wyo. 2007).

Appeal from second partial summary judgment. — Plaintiff who failed to take an appeal from the first partial summary judgment did not waive her right to appeal from the second partial summary judgment. Rule 54(b) certifications are subject to review in the Wyoming supreme court for a determination as to whether certification would further the interests of judicial economy and the sound administration of the appellate process. Loghry v. Unicover Corp., 878 P.2d 510 (Wyo. 1994).

Notice of appeal neither defective nor untimely. — A juvenile's notice of appeal was not defective, for even though the juvenile's counsel did not correctly type the name of the hearing and order in the notice of appeal, it would have put form over substance to have denied appellate jurisdiction, where counsel correctly identified the object of the appeal as the juvenile court's order and also attached to the notice of appeal a copy of the order. Moreover, the notice of appeal was not untimely, where (1) the juvenile court, with the consent of both the state and the juvenile, reserved a restitutional order to a later time, and (2) when the juvenile court later held a restitution hearing and entered a final order on restitution, the juvenile timely appealed that final order. TPJ v. State, 66 P.3d 710 (Wyo. 2003).

Because appellant filed a motion to withdraw his guilty plea just two days after a judgment and sentence was entered, it was filed well within the 30 days allowed by this section, and, although his motion was not decided for approximately 20 months, the Wyoming Rules of Criminal Procedure did not impose a time limitation as they did for certain types of post-trial motions, and the supreme court was therefore able to reach the merits of the issue. Chapman v. State, 300 P.3d 864 (May 10, 2013).

Jurisdiction lost. — Judgment debtor's failure to appeal within 30 days under this section from the denial of his petition to enjoin an execution sale, which was a final appealable order under Wyo. R. App. P. 1.05(b), deprived the reviewing court of jurisdiction as to that issue pursuant to Wyo. R. App. P. 1.03. Cook v. Swires, 202 P.3d 397 (Wyo. 2009).

Applied in Zabaleta v. FMC Corp., 638 P.2d 648 (Wyo. 1981); Gaudina v. Haberman, 644 P.2d 159 (Wyo. 1982); Sanderson v. State, 649 P.2d 677 (Wyo. 1982); Price v. State, 716 P.2d 324 (Wyo. 1986); Miller v. Murdock, 788 P.2d 614 (Wyo. 1990); Stice v. State, 799 P.2d 1204 (Wyo. 1990); Stone v. Stone, 842 P.2d 545 (Wyo. 1992); Cardwell v. American Linen Supply, 843 P.2d 596 (Wyo. 1992); McWilliams v. Wilhelm, 893 P.2d 1147 (Wyo. 1995); Anderson v. Everett, 2000 U.S. App. LEXIS 5864 (10th Cir. Mar. 30, 2000), reported in table case format at 215 F.3d 1336 (10th Cir. 2000).

Quoted in Murry v. State, 631 P.2d 26 (Wyo. 1981); McAteer v. Stewart, 696 P.2d 72 (Wyo. 1985); Rialto Theatre, Inc. v. Commonwealth Theatres, Inc., 714 P.2d 328 (Wyo. 1986); Paxton Res., L.L.C. v. Brannaman, 95 P.3d 796 (Wyo. 2004).

Stated in Board of County Comm'rs v. Ridenour, 623 P.2d 1174 (Wyo. 1981); Cates v. Barb, 650 P.2d 1159 (Wyo. 1982); Ruppenthal v. State ex rel. Economic Dev. & Stabilization Bd., 849 P.2d 1316 (Wyo. 1993).

Cited in Big Horn County Comm'rs v. Hinckley, 593 P.2d 573 (Wyo. 1979); Hopkinson v. State, 664 P.2d 43 (Wyo. 1983); Parker v. Kahin, 758 P.2d 570 (Wyo. 1988); Colton v. Brann, 786 P.2d 880 (Wyo. 1990); Storseth v. Storseth, 792 P.2d 243 (Wyo. 1990); Racicky v. Simon, 831 P.2d 241 (Wyo. 1992); Barron v. Barron, 834 P.2d 685 (Wyo. 1992); Moriarity v. State ex rel. McBride, 899 P.2d 879; Holmquist v. State, 902 P.2d 217 (Wyo. 1995); Romberger v. VFW Post 1881, 918 P.2d 993 (Wyo. 1996); Harris v. Taylor, 969 P.2d 142 (Wyo. 1998); Orosco v. Schabron, 9 P.3d 264 (Wyo. 2000); Hart v. State, 37 P.3d 1286 (Wyo. 2002); Padilla v. State, 91 P.3d 920 (Wyo. 2004); GGV v. JLR, 105 P.3d 474 (Wyo. 2005); McNeel v. McNeel (In re McNeel), 109 P.3d 510 (Wyo. 2005); MJH v. AV (In re JRH), 138 P.3d 683 (Wyo. 2006).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Am. Jur. 2d, ALR and C.J.S. references. — 4 Am. Jur. 2d Appellate Review § 1 et seq.

Right to perfect appeal, against party who has not appealed, by cross-appeal filed after time for direct appeal has passed, 32 ALR3d 1290.

Application of "fugitive disentitlement doctrine" to civil matters — State cases, 112 ALR5th 399.

4 C.J.S. Appeal and Error § 1 et seq.

2.02. Effect of motion on time for filing notice of appeal in civil case.

(a) The time for appeal in a civil case ceases to run as to all parties when a party timely files of a motion for judgment under Rule 50(b), Wyo. R. Civ. P.; a motion to amend or make additional findings of fact under Rule 52(b), Wyo. R. Civ. P., whether or not alteration of the judgment would be required if the motion is granted; a motion to

alter or amend the judgment under Rule 59, Wyo. R. Civ. P., or a motion for a new trial under Rule 59, Wyo. R. Civ. P.

(b) The full time for appeal commences to run and is to be computed from the entry of any order granting or denying a motion for judgment; a motion to amend or make additional findings of fact; or a motion to alter or amend the judgment, or denying a motion for a new trial. If no order is entered, the full time for appeal commences to run when any such motion is deemed denied.

(c) If a party files a notice of appeal after the court announces or enters a judgment, but before it disposes of any motion listed in Rule 2.02(a), the notice becomes effective to appeal a judgment or order, in whole or in part, upon entry of a final order disposing of the last such remaining motion. If no order is entered, the notice becomes effective when the last such motion is deemed denied. Such an appeal shall not be docketed in the appellate court prior to the notice of appeal becoming effective. If the appealing party also intends to challenge the order disposing of the last remaining motion or the deemed denial of the such motion, that party must file an amended notice of appeal within the time prescribed by Rule 2.01. No additional fee is required to file such amended notice of appeal.

(Amended April 6, 2015, effective July 1, 2015.)

Deemed denied provision. — In an action where homeowners were awarded damages for breach of contract and breach of the duty of good faith and fair dealing, the developer's motions for judgment as a matter of law, a new trial, and remittitur were deemed denied before the district court heard and purported to determine them, such that the judgment had become final and appealable at the time the motions were deemed denied and the district court no longer had jurisdiction to determine the motions. Paxton Res., L.L.C. v. Brannaman, 95 P.3d 796 (Wyo. 2004).

Purpose of deemed denied provision. — Whole point of a deemed denied provision was that the judgment automatically became final and appealable upon passage of the specified period, such that an appeal that was not filed within 30 days after the post-trial motions were deemed denied was untimely. The developer's motions were deemed denied before the district court heard and purported to determine them, such that the judgment had become final and appealable at the time the motions were deemed denied and the district court no longer had jurisdiction to determine the motions. Paxton Res., L.L.C. v. Brannaman, 95 P.3d 796 (Wyo. 2004).

Period for filing not tolled. — The plaintiff's motion to reconsider a grant of summary judgment could not be considered a motion to alter or amend judgment so as to toll the period for filing a notice of appeal where the motion did not: (1) illustrate a change in controlling law; (2) present any evidence that became available subsequent to the hearing; or (3) show any necessity to correct a clear error of law or prevent manifest injustice. Sherman v. Rose, 943 P.2d 719 (Wyo. 1997).

Wife's motion to vacate and alter or amend a judgment of divorce on grounds that husband had perjured himself was, in essence, a motion to reconsider and did not stay the 30-day period for filing a notice of appeal. Morehouse v. Morehouse, 959 P.2d 179 (Wyo. 1998).

Cited in Orosco v. Schabron, 9 P.3d 264 (Wyo. 2000).

Am. Jur. 2d, ALR and C.J.S. references. — Tolling of time for filing notice of appeal in civil action in federal court under Rule 4(a)(4) of Federal Rules of Appellate Procedure, 74 ALR Fed 516.

2.03. Effect of motion on time for filing of notice of appeal in criminal case.

(a) The time for appeal in a criminal case is terminated by the timely filing of a motion for judgment of acquittal made pursuant to Rule 29(c), Wyo. R. Cr. P.; a motion for a new trial made pursuant to Rule 33, Wyo. R. Cr. P.; or a motion in arrest of judgment made pursuant to Rule 34, Wyo. R. Cr. P.

(b) The time for appeal commences to run and is to be computed from the latest of the following dates: entry of an order denying any such motion, the time any such motion is deemed denied, or entry of judgment.

(Amended April 6, 2015, effective July 1, 2015.)

Editor's notes. — Pursuant to a court order of December 15, 1983, former Rule 2.03, relating to the docketing statement, was deleted, effective 60 days after publication of notice in the regional case reporter.

Motion to withdraw guilty plea will not toll time for appeal. Jessen v. State, 622 P.2d 1374 (Wyo. 1981).

Because appellant's time to appeal the restitution provisions of the judgment and sentence entered on February 9, 2010, was not extended by the motion to withdraw his guilty plea, the notice of appeal filed in 2011 was untimely. Chapman v. State, 300 P.3d 864 (May 10, 2013).

Am. Jur. 2d, ALR and C.J.S. references. — Appealability of orders or rulings, prior to final judgment in criminal case, as to accused's mental competency, 16 ALR3d 714.

Existence and extent of right of litigant in civil case, or of criminal defendant, to represent himself before state appellate courts, 24 ALR4th 430.

Failure to appeal denial of double jeopardy claim within time limits of Rule 4, Federal Rules of Appellate Procedure, as precluding review of claim on appeal of conviction at retrial, 51 ALR Fed 770.

Bail bond forfeiture proceedings as civil or criminal for purposes of time for appeal under Rule 4 of Federal Rules of Appellate Procedure, 70 ALR Fed 952.

2.04. Premature notice of appeal.

A notice of appeal filed after the court announces a decision or order — but before entry of the judgment or order — is treated as filed on the date of and after the entry. A premature notice of appeal shall comply with Rule 2.07, to the extent possible. Once the judgment or order is entered, the appellant shall forward a copy of the judgment or order to the clerk of the appellate court for inclusion with the notice of appeal served on the clerk.

(Amended April 6, 2015, effective July 1, 2015.)

Editor's notes. — Former Rule 2.04, relating to motions to dismiss or affirm was deleted, effective July 1, 1980.

Premature notice of appeal treated as if filed on date of final decree. — Premature notice of appeal of district court order holding void bequests to subscribing witnesses was treated as if filed on date when the final decree of distribution and determination of heirship was entered. Watson v. Dailey, 673 P.2d 645 (Wyo. 1983).

Quoted in Paxton Res., L.L.C. v. Brannaman, 95 P.3d 796 (Wyo. 2004).

Am. Jur. 2d, ALR and C.J.S. references. — Untimely notice of appeal as motion for extension of time to appeal under Rule 4(a)(5) of Federal Rules of Appellate Procedure, 74 ALR Fed 775.

When will premature notice of appeal be retroactively validated in federal civil case, 76 ALR Fed 199.

2.05. [Effective until November 1, 2017.] Certification of transcript request; statement of evidence, or agreed statement.

(a) Concurrently with filing the notice of appeal, appellant must order and either make arrangements satisfactory to the court reporter for the payment for a transcript of the portions of the evidence deemed necessary for the appeal or make application for in forma pauperis status as provided in Rule 2.09. A certificate of compliance with this rule shall be endorsed upon the notice of appeal. If appellant does not intend to order a transcript, the certificate of compliance shall include a statement indicating whether appellant intends to procure a statement of evidence pursuant to Rule 3.03 or an agreed statement pursuant to Rule 3.08.

(b) If counsel certifies that transcripts have been ordered and arrangement for payment has been made, but fails to actually contact the court reporter and follow through on the request, the court reporter or the district court clerk shall notify the supreme court and the supreme court may take any action it deems appropriate pursuant to Rule 1.03.

(Amended May 4, 2001, effective September 1, 2001; amended July 26, 2006, effective December 1, 2006; amended April 6, 2015, effective July 1, 2015.)

The 2006 amendment added the third sentence.

2.05. [Effective November 1, 2017.] Certification of transcript request; statement of evidence, or agreed statement.

(a) Concurrently with filing the notice of appeal, appellant must order and either make arrangements satisfactory to the court reporter for the payment for a transcript of the portions of the evidence deemed necessary for the appeal or make application for in forma pauperis status as provided in Rule 2.09. A certificate of compliance with this rule shall be endorsed upon the notice of appeal. If appellant does not intend to order a transcript, the certificate of compliance shall include a statement indicating whether appellant intends to procure a statement of evidence pursuant to Rule 3.03 or an agreed statement pursuant to Rule 3.08.

(b) If counsel certifies that transcripts have been ordered and arrangement for payment has been made, but fails to actually contact the court reporter and follow through on the request, the court reporter shall prepare an affidavit, setting out the facts with the reporter's attempts to obtain payment. The reporter shall notify the supreme court and the supreme court may take any action it deems appropriate pursuant to Rule 1.03.

(Amended May 4, 2001, effective September 1, 2001; amended July 26, 2006, effective December 1, 2006; amended April 6, 2015, effective July 1, 2015; amended August 23, 2017, effective November 1, 2017.)

2.06. Time allowed court reporter to file transcript; certification to appellate court and parties that transcript has been filed in trial court.

(a) Within 60 days after the notice of appeal is filed, the court reporter shall file with the clerk of the trial court, the transcript, or such portions of the transcript that have been ordered as provided in Rule 2.05. Any redactions shall be made pursuant to Rules Governing Redactions from Court Records. After completion of redacted versions of the transcripts and contemporaneously with filing the transcript in the trial court, the reporter shall notify in writing or electronically the appellate court and all parties to the appeal that the transcript has been filed in the trial court.

(b) If the court reporter is not able to complete the requested transcript in the time allowed, the time for filing may be extended by the trial court for good cause shown. The motion shall state with specificity why the extension is necessary. A copy of the motion and order shall be served on all parties and the clerk of the supreme court.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 73(g), W.R.C.P.

Failure to timely file record on appeal is ground for dismissal of an appeal. Williams v. Wyoming Bank & Trust Co., 591 P.2d 884 (Wyo. 1979); Zabaleta v. FMC Corp., 638 P.2d 648 (Wyo. 1981).

Duty to cause timely filing of record on appeal is appellant's, and the failure of the clerk of the district court to do so will not prevent dismissal of the appeal. Williams v. Wyoming Bank & Trust Co., 591 P.2d 884 (Wyo. 1979); Zabaleta v. FMC Corp., 638 P.2d 648 (Wyo. 1981).

When failure to timely file not excused. — Where counsel had full control of the potential to file the record in the present case and docketing of the same at the same time that the record was sent supplemental to the record in a prior case, these factors prevented an effort to find diligence and causes beyond appellant's control in failure to timely file the record on appeal. Williams v. Wyoming Bank & Trust Co., 591 P.2d 884 (Wyo. 1979).

Delay to obtain transcript. — Delay of 179 days to obtain the transcript for the appeal was not significant enough to implicate due process. Hodge v. State, — P.3d —, 2015 Wyo. LEXIS 118 (Wyo. 2015).

Rule applicable to worker's compensation case. — The time within which to file a record on appeal in a worker's compensation case is to be governed by this rule, not by

§ 27-12-615 (now repealed). Zabaleta v. FMC Corp., 638 P.2d 648 (Wyo. 1981).

Applied in Jessen v. State, 622 P.2d 1374 (Wyo. 1981).

Stated in Wolfley v. Crook, 695 P.2d 159 (Wyo. 1985); Jung-Leonczynska v. Steup, 782 P.2d 578 (Wyo. 1989).

Cited in Starr v. State, 821 P.2d 1299 (Wyo. 1991); Bhutto v. State, 114 P.3d 1252 (Wyo. 2005).

Law reviews. — For case note, "Criminal Procedure — The Elimination of Dismissals for Lack of Prosecution from Wyoming Intermediate Appeals. Wood v. City of Casper, 660 P.2d 1163 (Wyo. 1983)," see XIX Land & Water L. Rev. 301 (1984).

Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

2.07. [Effective until November 1, 2017.] Notice of appeal; contents.

(a) The notice of appeal shall:

(1) Specify the party or parties taking the appeal;

(2) Identify the judgment or appealable order, or designated portion appealed;

(3) Name the court to which the appeal is taken;

(4) Include the certificate required by Rule 2.05(a); and

(5) Appellant(s) shall as clearly as possible indicate either in the body of the notice of appeal or on the certificate of service, alignment of the parties with their respective counsel when there are multiple appellees.

(b) In a civil case, the notice of appeal shall have as an appendix which shall include and be limited to the following:

(1) All pleadings that assert a claim for relief whether by complaint, counterclaim or cross-claim and all pleadings adding parties; and

(2) All orders or judgments disposing of claims for relief and all orders or judgments disposing of all claims by or against any party; and

(3) The judgment or final order and a copy of the trial court's decision letter if one was filed.

(c) In a criminal case, the notice of appeal shall have as an appendix the judgment and sentence or other dispositive order.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 73(b), W.R.C.P.

Nonparties right to intervene. — Appellants, two nonparties, had no right to intervene in a dispute concerning the approval of a parcel boundary adjustment application for the sole purpose of pursuing an appeal, because this rule limits an appeal to a "party." Hirshberg v. Coon, 268 P.3d 258 (Wyo. Jan. 10, 2012).

Sanctions against attorney. — Where plaintiffs appealed from an award of attorney's fees and sanctions against them and their attorney, but their attorney did not file a notice of appeal in his own name, the appellate court lacked jurisdiction to hear and decide the issue as to the attorney. Welch v. Hat Six Homes, 47 P.3d 199 (Wyo. 2002).

When the award of sanctions is against the attorney and the attorney fails to file a notice of appeal in his or her name, W.R.A.P. 1.03 and 2.07 have not been satisfied, and the appellate court lacks jurisdiction to hear and decide the issue. Goglio v. Star Valley Ranch Ass'n, 48 P.3d 1072 (Wyo. 2002).

Immediate dismissal proper for noncompliance. — Immediate dismissal and charging of attorney's fees should not be any surprise if the litigant does not handle the professional, technical work in compliance with these rules, in the same way that trained lawyers are expected to perform. Korrow v. Markle, 746 P.2d 434 (Wyo. 1987).

Dismissal of plaintiff's complaint against defendants under Wyo. R. App. P. 1.03 was affirmed where plaintiff's final notice of appeal and brief failed to comply with Wyo. R. App. P. 2.07, 7.01 in numerous instances; plaintiff's final notice of appeal did not comply with the requirements of Wyo. R. App. P. 2.07, as it misnamed the court and did not contain all pleadings that asserted a claim for relief in the appendix as required. Finch v. Pomeroy, 130 P.3d 437 (Wyo. 2006).

Separate notice of appeal required. — District court retained jurisdiction over an award of costs to a motorist in a suit arising out of a collision with a cyclist, and the cyclist, who appealed, failed to file a separate notice of appeal pertaining to his challenge to the award of costs; therefore, the appellate court lacked jurisdiction to hear this issue on appeal. Nish v. Schaefer, 138 P.3d 1134 (Wyo. 2006).

Nonparties right to intervene. — Appellants, two nonparties, had no right to intervene in a dispute concerning the approval of a parcel boundary adjustment application for the sole purpose of pursuing an appeal, because this

rule limits an appeal to a "party." Hirshberg v. Coon, 268 P.3d 258 (Wyo. Jan. 10, 2012).

Award of attorney fees and costs. — Former spouse was entitled to an award of attorney fees and costs incurred in responding to their former partner's appeals because their partner failed to attach the required appendices to their notice of appeal. Golden v. Guion, — P.3d —, 2016 Wyo. LEXIS 58 (Wyo. 2016).

Applied in Mills v. Campbell Co. Canvassing Bd., 707 P.2d 747 (Wyo. 1985); McWilliams v. Wilhelm, 893 P.2d 1147 (Wyo. 1995); JA v. State (In re DSB), 176 P.3d 633 (Wyo. 2008).

Quoted in Board of County Comm'rs v. Ridenour, 623 P.2d 1174 (Wyo. 1981); Watson v. Dailey, 673 P.2d 645 (Wyo. 1983); Little v. Kobos ex rel. Kobos, 877 P.2d 752 (Wyo. 1994); Capellen v. State, 161 P.3d 1076 (Wyo. 2007).

Stated in Jung-Leonczynska v. Steup, 782 P.2d 578 (Wyo. 1989).

Cited in Hopkinson v. State, 664 P.2d 43 (Wyo. 1983); Pawlowski v. Pawlowski, 925 P.2d 240 (Wyo. 1996).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

2.07. [Effective November 1, 2017.] Notice of appeal; contents.

(a) The notice of appeal shall:

(1) Specify the party or parties taking the appeal;

(2) Identify the judgment or appealable order, or designated portion appealed;

(3) Name the court to which the appeal is taken;

(4) Include the certificate required by Rule 2.05(a); and

(5) Appellant(s) shall as clearly as possible indicate either in the body of the notice of appeal or on the certificate of service, alignment of the parties with their respective counsel when there are multiple appellants or appellees.

(b) In a civil case, the notice of appeal shall have as an appendix which shall include and be limited to the following:

(1) All pleadings that assert a claim for relief whether by complaint, counterclaim or cross-claim and all pleadings adding parties; and

(2) All orders or judgments disposing of claims for relief and all orders or judgments disposing of all claims by or against any party; and

(3) The judgment or final order and a copy of the trial court's decision letter if one was filed.

(c) In a criminal case, the notice of appeal shall have as an appendix the judgment and sentence or other dispositive order.

(Amended April 6, 2015, effective July 1, 2015; amended August 23, 2017, effective November 1, 2017.)

Source. — Former Rule 73(b), W.R.C.P.

Nonparties right to intervene. — Appellants, two nonparties, had no right to intervene in a dispute concerning the approval of a parcel boundary adjustment application for the sole purpose of pursuing an appeal, because this rule limits an appeal to a "party." Hirshberg v. Coon, 268 P.3d 258 (Wyo. Jan. 10, 2012).

Sanctions against attorney. — Where plaintiffs appealed from an award of attorney's fees and sanctions against them and their attorney, but their attorney did not file a notice of appeal in his own name, the appellate court lacked jurisdiction to hear and decide the issue as to the attorney. Welch v. Hat Six Homes, 47 P.3d 199 (Wyo. 2002).

When the award of sanctions is against the attorney and the attorney fails to file a notice of appeal in his or her name, W.R.A.P. 1.03 and 2.07 have not been satisfied, and the appellate court lacks jurisdiction to hear and decide the issue. Goglio v. Star Valley Ranch Ass'n, 48 P.3d 1072 (Wyo. 2002).

Immediate dismissal proper for noncompliance. — Immediate dismissal and charging of attorney's fees should not be any surprise if the litigant does not handle the professional, technical work in compliance with these rules, in the same way that trained lawyers are expected to perform. Korrow v. Markle, 746 P.2d 434 (Wyo. 1987).

Dismissal of plaintiff's complaint against defendants under Wyo. R. App. P. 1.03 was affirmed where plaintiff's final notice of appeal and brief failed to comply with Wyo. R. App. P. 2.07, 7.01 in numerous instances; plaintiff's final notice of appeal did not comply with the requirements of Wyo. R. App. P. 2.07, as it misnamed the court and did not contain all pleadings that asserted a claim for relief in the appendix as required. Finch v. Pomeroy, 130 P.3d 437 (Wyo. 2006).

Separate notice of appeal required. — District court retained jurisdiction over an award of costs to a motorist in a suit arising out of a collision with a cyclist, and the cyclist, who

appealed, failed to file a separate notice of appeal pertaining to his challenge to the award of costs; therefore, the appellate court lacked jurisdiction to hear this issue on appeal. Nish v. Schaefer, 138 P.3d 1134 (Wyo. 2006).

Nonparties right to intervene. — Appellants, two nonparties, had no right to intervene in a dispute concerning the approval of a parcel boundary adjustment application for the sole purpose of pursuing an appeal, because this rule limits an appeal to a "party." Hirshberg v. Coon, 268 P.3d 258 (Wyo. Jan. 10, 2012).

Award of attorney fees and costs. — Former spouse was entitled to an award of attorney fees and costs incurred in responding to their former partner's appeals because their partner failed to attach the required appendices to their notice of appeal. Golden v. Guion, — P.3d —, 2016 Wyo. LEXIS 58 (Wyo. 2016).

Applied in Mills v. Campbell Co. Canvassing Bd., 707 P.2d 747 (Wyo. 1985); McWilliams v. Wilhelm, 893 P.2d 1147 (Wyo. 1995); JA v. State (In re DSB), 176 P.3d 633 (Wyo. 2008).

Quoted in Board of County Comm'rs v. Ridenour, 623 P.2d 1174 (Wyo. 1981); Watson v. Dailey, 673 P.2d 645 (Wyo. 1983); Little v. Kobos ex rel. Kobos, 877 P.2d 752 (Wyo. 1994); Capellen v. State, 161 P.3d 1076 (Wyo. 2007).

Stated in Jung-Leonczynska v. Steup, 782 P.2d 578 (Wyo. 1989).

Cited in Hopkinson v. State, 664 P.2d 43 (Wyo. 1983); Pawlowski v. Pawlowski, 925 P.2d 240 (Wyo. 1996).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

2.08. Designation of parties.

(a) In all appeals governed by these rules, the party taking the appeal shall be known as appellant and the adverse party as appellee, and in the caption of the cause in the appellate court appellant's name shall appear first.

(b) For purposes of simplicity and clarity, identifying terms such as injured worker, victim, seller/buyer, proper names (e.g. Jones, Smith, Brown), etc., appropriately may be used in the text of any pleading or brief, instead of the terms appellant and appellee. The parties shall comply with the current redaction rules.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 72(f), W.R.C.P.

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

2.09. Payment of filing fee, motion to proceed in forma pauperis, and disposition.

(a) At the time of filing the notice of appeal, an appellant shall deliver to the clerk of the trial court the filing fee for docketing the case in the appellate court and the filing fee for the trial court clerk to prepare the record or a motion for leave to proceed in forma pauperis together with a proposed order and an affidavit documenting the appellant's inability to pay fees and costs or to give security. Except as provided below, a docket fee shall be collected for each notice of appeal pursuant to Wyo.Stat.Ann. § 5-3-205 and § 5-9-135 and court rule. The fee for filing an appeal or other action in the supreme court shall be set by order of the court and published in Rules of the Supreme Court of Wyoming.

(b) In civil cases, the trial court may not permit an appellant to proceed on appeal in forma pauperis unless such status is permitted by statute or constitutional right. See e.g. *M.L.B. v. S.L.J.*, 519 U.S. 102, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996) (permitting indigent parent to proceed in forma pauperis in appeal challenging termination of parental rights). Incarceration alone does not confer in forma pauperis status.

(c) If the trial court denies the motion for leave to proceed in forma pauperis, an appellant may, within 30 days of entry of the order denying the motion, deliver to the clerk of the trial court the filing fee for docketing the case in the appellate court. If such fee is not paid within those 30 days, the appeal will not proceed further.

(d) A notice of appeal may be faxed to the clerk of the trial court; the notice of appeal shall not be filed until payment of the docket fees is received by the clerk of the trial court or a motion to proceed in forma pauperis is faxed to the clerk of the trial court, pursuant to this rule and Wyo.Stat.Ann. § 5-3-205.

(e) The clerk of the trial court shall forward the appellate court's filing fee to the clerk of the appellate court or an order granting leave to proceed in forma pauperis at the time the clerk of the trial court submits its notice that the record on appeal has been completed. The case shall then be docketed in the appellate court.

(f) If the appeal is dismissed prior to the notice from the clerk of the trial court to the clerk of the appellate court that the record on appeal has been completed, the filing fee for docketing the case in the appellate court shall be refunded to appellant. A subsequent dismissal by the appellate court of the appeal, whether by voluntary motion or involuntary order shall not entitle appellant to refund of the filing fee.

(g) All fees under this rule due from or payable by the State of Wyoming or its subdivisions will be paid to the clerk of the trial court by check, voucher or other appropriate fund transfer request in the proper form.

(Amended April 14, 2010, effective July 1, 2010; amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 73(g), W.R.C.P.

Failure to timely file record on appeal is ground for dismissal of an appeal. Williams v. Wyoming Bank & Trust Co., 591 P.2d 884 (Wyo. 1979); Zabaleta v. FMC Corp., 638 P.2d 648 (Wyo. 1981).

Duty to cause timely filing of record on appeal is appellant's, and the failure of the clerk of the district court to do so will not prevent dismissal of the appeal. Williams v. Wyoming Bank & Trust Co., 591 P.2d 884 (Wyo. 1979); Zabaleta v. FMC Corp., 638 P.2d 648 (Wyo. 1981).

When failure to timely file not excused. — Where counsel had full control of the potential to file the record in the present case and docketing of the same at the same time that the record was sent supplemental to the record in a prior case, these factors prevented an effort to find diligence and causes beyond appellant's control in failure to timely file the record on appeal. Williams v. Wyoming Bank & Trust Co., 591 P.2d 884 (Wyo. 1979).

Rule applicable to worker's compensation case. — The time within which to file a record on appeal in a worker's compensation case is to be governed by this rule, not by § 27-12-615 (now repealed). Zabaleta v. FMC Corp., 638 P.2d 648 (Wyo. 1981).

Applied in Jessen v. State, 622 P.2d 1374 (Wyo. 1981).

Stated in Wolfley v. Crook, 695 P.2d 159 (Wyo. 1985); Jung-Leonczynska v. Steup, 782 P.2d 578 (Wyo. 1989).

Cited in Starr v. State, 821 P.2d 1299 (Wyo. 1991); Van Riper v. Odekoven, 26 P.3d 325 (Wyo. 2001).

Law reviews. — For case note, "Criminal Procedure — The Elimination of Dismissals for Lack of Prosecution from Wyoming Intermediate Appeals. Wood v. City of Casper, 660 P.2d 1163 (Wyo. 1983)," see XIX Land & Water L. Rev. 301 (1984).

Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Am. Jur. 2d, ALR and C.J.S. references. — 4 C.J.S. Appeal and Error §§ 320 to 324.

Rule 3. Record.

3.01. Composition of record.

(a) The record shall consist of:

(1) The original papers and exhibits filed in the trial court;

(2) The transcript of proceedings or any designated portion (if the proceedings were not recorded or transcribed in accordance with these rules, the electronic audio recording of the proceedings, or any designated portion); and

(3) A certified copy of the docket entries prepared by the clerk of the trial court.

(b) The transmitted record shall consist of all portions of the record designated by the parties to the appeal for transmission to the appellate court, as described in Rule 3. 05 (b), (c) and (d).

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 75(a), W.R.C.P.

Supreme Court not forum for developing facts. — The Supreme Court, sitting in its customary role as an appellate court, is not the proper forum in which to develop facts. Gifford v. Casper Neon Sign Co., 618 P.2d 547 (Wyo. 1980).

Appellant should relate law to facts. — It

is not enough in presenting an appeal in this court to identify a potential issue, but, at a minimum, the appellant should make some attempt to relate the law to the facts. Hance v. Straatsma, 721 P.2d 575 (Wyo. 1986).

Failure to provide transcript to refute damages award. — Where, in its brief, the contractor set out the contractor's version of what transpired at trial, but failed to provide a transcript from the damages phase of the trial, or some alternative substitute for the transcript, such as a statement of evidence or proceedings, there was nothing in the record to refute the district court's finding on damages, and thus the Wyoming supreme court affirmed the award of damages and held the homeowner was entitled to costs and attorney's fees on appeal. However, the homeowner was not entitled to damages on appeal because the award of costs and attorney fees fully vindicated the supreme court's interest in enforcing the rules of appellate procedure. Chancler v. Meredith, 86 P.3d 841 (Wyo. 2004).

Police reports generally are not included in filed documents or record unless introduced as evidence in court proceedings by either party. Barron v. State, 819 P.2d 412 (Wyo. 1991); B & W Glass, Inc. v. Weather Shield Mfg., Inc., 829 P.2d 809 (Wyo. 1992).

Factual presentation required. — A motion for an extension of time for filing a notice of appeal grounded upon a showing of excusable neglect is one of those motions that inherently requires a factual presentation. Venable v. State, 854 P.2d 714 (Wyo. 1993).

Preservation for review of attorney fee award. — Where wife appealed from the $15,000 awarded to her for her attorney fees pursuant to her Wyo. Stat. Ann. § 20-2-111 motion, the appellate court could not review the factual basis for the district court's discretionary ruling where there was no transcript of the hearing on the wife's motion for attorneys' fees in the record. Seherr-Thoss v. Seherr-Thoss, 141 P.3d 705 (Wyo. 2006).

Violation of rules. — Defendant violated appellate rules 3.01 and 3.05 by failing to ensure that original documents were designated and transmitted to the appellate court, and by failing to file a designation for transmission to the appellate court of all parts of the record the defendant intended to call to the court's attention. Basolo v. Gose, 994 P.2d 968 (Wyo. 2000).

Although plaintiffs, a husband and wife, on review of a grant of summary judgment to a subcontractor in a negligence action, claimed that they referred to the documents at the summary judgment hearing, the court had no way of verifying what occurred at the hearing because a transcript was not included in the record on appeal as required to ensure proper consideration of the arguments. Hatton v. Energy Elec. Co., 148 P.3d 8 (Wyo. 2006).

Applied in Stone v. Stone, 842 P.2d 545 (Wyo. 1992); Cardwell v. American Linen Supply, 843 P.2d 596 (Wyo. 1992).

Quoted in Bearpaw v. State, 803 P.2d 70 (Wyo. 1990); Engle v. State, 821 P.2d 1285 (Wyo. 1991).

Stated in Ruppenthal v. State ex rel. Economic Dev. & Stabilization Bd., 849 P.2d 1316 (Wyo. 1993).

Cited in Chew v. Chew, 821 P.2d 582 (Wyo. 1991); Bird v. State, 901 P.2d 1123 (Wyo. 1995).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appellate Review §§ 484 to 532.

4 C.J.S. Appeal and Error §§ 440 to 577.

3.02. Transcript of proceedings.

(a) Transcripts in criminal and juvenile matters shall consist of all proceedings including, but not limited to, voir dire, opening statements and final arguments, conferences with the presiding judge, in addition to the testimony of the case and other essential materials.

(b) In all cases other than criminal and juvenile matters, if the proceedings in the trial court were reported by an official court reporter, appellant shall, contemporaneously with the filing of the notice of appeal, file and serve on appellee a description of the parts of the transcript which appellant intends to include in the record and unless the entire transcript is to be included, a statement of the issues appellant intends to present on appeal. If an appellant intends to assert on appeal that a finding or conclusion is unsupported by the evidence or contrary to the evidence, appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. If appellee deems a transcript of other parts of the proceedings to be necessary appellee shall, within 15 days after service of the designation of the partial transcript by appellant, order such parts from the reporter or procure an order from the trial court directing appellant to do so. At the time of ordering, a party must make arrangements satisfactory to the reporter for payment of the cost of the transcript.

(c) If the proceedings in the trial court were electronically recorded, the audio record of the proceedings shall be received by the district court, sitting as an appellate court, as prima facie evidence of the facts, testimony, evidence and proceedings in such audio record. No transcript of the proceedings shall be required, unless the district court finds that a transcript, or portion, is necessary for appellate disposition. If discretionary review is granted by the supreme court, the parties shall ensure that a true and correct transcript of the relevant trial court proceedings is timely prepared and filed in the trial court for transmission to the supreme court along with the designated portions of the record on appeal. Such transcript is not subject to the certification provision in (d).

(d) All transcripts of testimony, evidence and proceedings shall be certified by the official court reporter, or such other person designated by the trial court to prepare the transcript, to be true and correct in every particular, and when certified it shall be received as prima facie evidence of the facts, testimony, evidence, and proceedings set forth in the transcript. The transcript format shall be 8 ½ x 11 inches and a maximum of 25 lines per page and no more than 10 characters per inch. Condensed transcripts are disfavored by the supreme court. The reporter shall indicate at the bottom of each page the name of the witness, the name of counsel examining, and the type of examination (e.g., direct, cross). Appended to the transcript shall be a table with page references reflecting the names of the witnesses, the type of examination and the points at which exhibits were offered and admitted or refused. The reporter shall file the original of the completed transcript with the clerk of the trial court within the time fixed or allowed by these rules and the Rules Governing Redactions from Court Records. The transcript shall be certified by the clerk as a part of the trial court record.
(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 75(b), W.R.C.P. — modified.

Certification of transcript required. — The requirement for a proper certification of the transcript is binding, as the facts necessary to present a question for review must be properly before the court. Salt River Enters., Inc. v. Heiner, 663 P.2d 518 (Wyo. 1983).

Use of electronic recordings. — A transcript rather than electronic recordings should be provided in the Supreme Court if claims of error are asserted based upon matters in the record and no statement of the case has been prepared in accordance with Rule 3.03. Lindsey v. State, 725 P.2d 649 (Wyo. 1986).

Where the record as manifested by electronic tapes was essentially consistent with the statement of the case, and the tapes reflected some details of significant factual matters, the Supreme Court relied upon both sources to resolve the issues. Lindsey v. State, 725 P.2d 649 (Wyo. 1986).

Absent sufficient transcript, trial court's findings accepted. — Where there is no transcript or an insufficient transcript, the Supreme Court accepts the findings of the trial court as the only basis for deciding issues pertaining to the evidence. Waggoner v. GMC, 771 P.2d 1195 (Wyo. 1989).

Because heirs, among other things, provided no transcript of the hearing pursuant to this section, the court sustained the trial court's findings that a sale of estate property was proper. George v. Allen (In re Estate of George), 77 P.3d 1219 (Wyo. 2003).

Although the transcript on a mother's appeal from a district court's decision modifying child custody was insufficient because it was not certified in accordance with this section, in light of the interests at stake and the lack of objection from the father the court reviewed the record as reflected by the unofficial transcript. BB v. RSR, 149 P.3d 727 (Wyo. 2007).

And failure to provide transcript restrict review. — District court's decision letter and its findings of fact and conclusions of law did not constitute special findings as contemplated by Wyo. R. Civ. P. 52(a) and because the appellate court had no Wyo. R. App. P. 3.02(b) trial transcript, it therefore indulged the assumption that the evidence presented was sufficient to support the district court's findings that there had been no breach of contract. Arnold v. Day, 158 P.3d 694 (Wyo. 2007).

Omission did not require reversal. — Although a record on appeal from a death penalty case did not contain a transcript of the instructions conference that preceded the charge to the jury in the guilt/innocence phase and other off-the-record conferences, since defense counsel failed to attempt to augment the record as permitted by Wyo. R. App. P. 3.03 or 3.04, the omission of the conference did not require reversal. Eaton v. State, 192 P.3d 36 (Wyo. 2008).

Applied in City of Evanston v. Whirl Inn, Inc., 647 P.2d 1378 (Wyo. 1982); Whitfield v. Whitfield, 756 P.2d 1345 (Wyo. 1988); Honan v. Honan, 809 P.2d 783 (Wyo. 1991); Vigil v. State, 859 P.2d 659 (Wyo. 1993).

Quoted in Feaster v. Feaster, 721 P.2d 1095 (Wyo. 1986).

Cited in Wood v. Wood, 865 P.2d 616 (Wyo. 1993); Vernier v. Vernier, 92 P.3d 825 (Wyo. 2004); Befumo v. Johnson, 119 P.3d 936 (Wyo. 2005).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

3.03. Statement of 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, appellant may prepare a statement of the evidence or proceedings from the best available means including appellant's recollection. The statement shall be filed in the trial court and served on appellee within 35 days of the filing of the notice of appeal. Appellee may file and serve objections or propose amendments within 15 days after service. The trial court shall, within 10 days, enter its order settling and approving the statement of evidence, which shall be included by the clerk of the trial court in the record on appeal. If the trial court is unable to settle the record within 10 days, the judge shall notify the appellate court clerk, trial court clerk, and the parties of the delay and anticipated date of completion.
(Amended July 26, 2006, effective December 1, 2006; amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 75(c), W.R.C.P.

Use of this rule is permissive. Petersen v. State, 594 P.2d 978 (Wyo. 1979).

Failure to properly invoke rule restricted review. — Where the record before the appellate court did not reflect whether the district court adoption hearing was recorded, stenographically or otherwise, the statement in father's notice of appeal that "no transcript of this proceeding was made" was insufficient to invoke the use of W.R.A.P. 3.03, and the appellate court did not consider the agreed statement of proceedings submitted by the parties or any facts contained therein in rendering its decision; for purposes of review the appellate court looked to the findings of fact in the district court's order granting adoption to see whether the district court's findings of fact, taken as adequately supported by the evidence presented at the hearing, supported its ultimate legal conclusion that the requirements of the applicable statutory subsections had been satisfied by clear and convincing evidence. TOC v. TND, 46 P.3d 863 (Wyo. 2002).

Failure to settle record bars review. — Where, after it was discovered that the tape recording of the trial was broken and unusable, the defendant made no attempt to have the record settled, thus enabling him to present the Supreme Court with the allegedly inadmissible evidence contained on the tape and his objection thereto, the court will not discuss the issue. Petersen v. State, 594 P.2d 978 (Wyo. 1979).

Without an acceptable record of what the trial court said, the Supreme Court is unable to rule on an issue. SC v. DN, 659 P.2d 568 (Wyo. 1983).

If the appellant makes no attempt to have the record settled, appeals based upon issues which would have been revealed by that record will not be considered. Sharp v. Sharp, 671 P.2d 317 (Wyo. 1983).

And failure to provide transcript restricts review. — Failure to provide a transcript of evidence does not necessarily require a dismissal of an appeal; however, review is restricted to those allegations of error not requiring an inspection of the transcript. Schweer v. Manning, 646 P.2d 175 (Wyo. 1982).

Where the Supreme Court does not have a properly authenticated transcript before it, it must accept the trial court's findings of fact as that upon which any decision on issues pertaining to the evidence must be based. Salt River Enters., Inc. v. Heiner, 663 P.2d 518 (Wyo. 1983).

Where the appellant did not submit a statement of the evidence or proceedings to the trial court for settlement and approval, and did not provide the appellate court with a settled and approved statement, the appellate court was restricted in review to those allegations of error not requiring an inspection of the transcript. Stadtfeld v. Stadtfeld, 920 P.2d 662 (Wyo. 1996).

The trial court's finding was affirmed where appellant, who bears the burden of providing the court with a complete record on which to base a decision, failed to provide a transcript or approved statement of the hearing. Jordan v. Brackin, 992 P.2d 1096 (Wyo. 1999).

In absence of a transcript or an approved statement of the hearing, court on appeal cannot assume that trial court's findings were unsupported. Thomas v. Thomas, 983 P.2d 717 (Wyo. 1999).

In a mother's challenge to a divorce decree modification awarding the father visitation, because she failed to provide transcripts of the

proceedings below or other evidence to refute the findings of the trial court pursuant to W.R.A.P. 3.03, the appellate court had to assume the evidence was sufficient to support the trial court's findings. Carroll v. Law, 109 P.3d 544 (Wyo. 2005).

Where, on appeal of the order granting the mother's requests for reimbursement of the child's medical and education expenses, the father did not provide a transcript of the hearing or a statement of the evidence pursuant to this section, the Supreme Court of Wyoming was required to accept the district court's findings as being based upon sufficient evidence. Witowski v. Roosevelt, 199 P.3d 1072 (Wyo. 2009).

The appellate court could not assume the trial court's findings were incorrect where the hearing of a child support case was not reported, no transcript was available, and the statement of evidence provided by the father was not in accord with the rules of appellate procedure; while the father's statement might have been accurate in most respects, the supreme court could not accept it as a part of the record on appeal. Steele v. Steele, 108 P.3d 844 (Wyo. 2005).

It is properly appellant's burden to bring complete record upon which to base a decision. Schweer v. Manning, 646 P.2d 175 (Wyo. 1982).

Where defendant father asserted child support obligation was modified pursuant to a contempt proceeding, defendant had the burden to bring a sufficient record to the reviewing court upon which a decision could be based. Erhart v. Evans, 30 P.3d 542 (Wyo. 2001).

Failure to present adequate record for review. — Grant of custody in favor of the mother was proper where the father merely summarized alleged errors and gave his views of the evidence involved. He had the burden to bring a sufficient record to permit review of the district court's discretionary decisions, and he failed to do so. Beeman v. Beeman, 109 P.3d 548 (Wyo. 2005).

When the mother filed a second motion to modify child custody just nine days after the first motion to modify custody was decided, the district court dismissed the second motion on the basis of res judicata; because the record on appeal did not include a transcript or statement of the evidence presented at the hearing in accordance with this rule, the Supreme Court of Wyoming accepted the district court's finding that the issues the mother presented in her second motion were identical to those decided by the first order. In re Stith, — P.3d —, 2011 Wyo. LEXIS 72 (Wyo. Feb. 4, 2011).

Failure to report arguments not grounds for reversal. — The failure of the court reporter to report the arguments of counsel on the jury-demand motion is not alone grounds for reversal if there was something in those proceedings which appellants deemed crucial to their case; they had available to them this rule which is designed to reconstruct unreported proceedings into written form for appellate examination. Scherling v. Kilgore, 599 P.2d 1352 (Wyo. 1979).

No dismissal for failure to obtain approval of record. — Mother's failure to get court approval of the proposed record on appeal was not grounds for dismissal where objections filed by the father and sustained by the court revealed facts supporting the court's ultimate conclusion. JLJ v. AFM, 942 P.2d 407 (Wyo. 1997).

Transcript must be unavailable. — Procedures allowed for providing a settled statement of a proceeding can be utilized only if a transcript is unavailable, which happens only if the proceeding was not stenographically or otherwise recorded or if the recording is somehow lost or destroyed. TOC v. TND, 46 P.3d 863 (Wyo. 2002).

Transcript rather than electronic recordings should be provided in the Supreme Court if claims of error are asserted based upon matters in the record and no statement of the case has been prepared in accordance with this rule. Lindsey v. State, 725 P.2d 649 (Wyo. 1986).

Use of unofficial transcript. — If a certified transcript is unattainable, an appellant may provide an adequate appellate record by complying with this section and may find an unofficial transcript helpful in that regard. The Supreme Court of Wyoming would be able to consider an unofficial transcript, or relevant portions thereof, if incorporated into a properly approved and settled statement of the evidence. BB v. RSR, 149 P.3d 727 (Wyo. 2007).

Statement of evidence. — Where the hearing was not recorded, plaintiff did not take advantage of this rule and prepare or provide this court with a statement of the evidence. Williams v. Dietz, 999 P.2d 642 (Wyo. 2000).

Trial court approval required to settle statement. — Trial court approval of a statement must be obtained before it can properly be considered settled and become part of the record. TOC v. TND, 46 P.3d 863 (Wyo. 2002).

Statement of evidence appropriate to provide factual record. — Where the appellant filed a statement of the case ostensibly pursuant to Rule 3.08, but he apparently intended to provide a factual record, a statement of evidence pursuant to Rule 3.03 would have been the appropriate method. Parsons v. Parsons, 27 P.3d 270 (Wyo. 2001).

Record of variance proceeding was sufficient. — Appellate court had a sufficient record consisting of the appropriate documents relating to a board of county commissioners' action in denying a property owner's variance request; in the owner's briefing, there were several instances in which the owner's counsel inserted counsel's recollection of the discussions of some board members. Gilbert v. Bd. of

County Comm'rs, 232 P.3d 17 (Wyo. 2010).

Statement cannot be approved if court cannot recall true facts. — This rule clearly implies that a statement becomes part of the record only to the extent that it is settled and approved by the court; if a court states that it cannot recall the true facts from a proceeding, then the statement has not, and cannot, be approved or settled. Feaster v. Feaster, 721 P.2d 1095 (Wyo. 1986).

Statement not provided. — Because heirs, among other things, provided no statement of the evidence pursuant to this section, the court sustained the trial court's findings that a sale of estate property was proper. George v. Allen (In re Estate of George), 77 P.3d 1219 (Wyo. 2003).

Where a statement of the issues was omitted from the ex-husband's brief in violation of W.R.A.P. 7.01(d), a sufficient record was not provided to allow meaningful review of his claim of error under W.R.A.P. 3.03, and he failed to support his claim of error with pertinent legal authority or cogent argument, there was no reasonable cause for appeal and sanctions were proper under W.R.A.P. 10.05. Montoya v. Montoya, 125 P.3d 265 (Wyo. 2005).

Absent a transcript or a settled record, the evidence was presumed to support the district court's findings in distributing property in a divorce case. Kruse v. Kruse, 242 P.3d 1011 (Wyo. 2010).

When the husband filed his appeal, he had the burden to provide a complete record for the court to base its decision. but he did not provide an appropriate statement of the evidence in lieu of a transcript in accordance with the rule; without a record to indicate otherwise, it had to be assumed that the evidence supported the facts and formula used by the district court to calculate the amount owed to the wife. Waterbury v. Waterbury, — P.3d —, 2017 Wyo. LEXIS 11 (Wyo. 2017).

Procedures reviewable where court reporter waived. — The Supreme Court agreed to review the trial court's voir dire procedures even though they were unrecorded because defense counsel waived the court reporter, but had to presume that the court record correctly embodied the events in a later discussion between the judge and defense counsel. Valdez v. State, 727 P.2d 277 (Wyo. 1986).

Immediate dismissal proper for noncompliance. — Immediate dismissal and charging of attorney's fees should not be any surprise if the litigant does not handle the professional, technical work in compliance with these rules, in the same way that trained lawyers are expected to perform. Korkow v. Markle, 746 P.2d 434 (Wyo. 1987).

Where summary judgment was granted for the builder, on appeal, because the homeowners blatantly disregarded the rules which required them to designate an adequate record on appeal, and failed to provide cogent argument, and pertinent legal authority to support their contention, sanctions, costs and attorney fees, were proper. Orcutt v. Shober Invs. Inc., 69 P.3d 386 (Wyo. 2003).

Sufficient record not presented. — District court's judgment against the father was affirmed because there was nothing before the appellate court from which it could determine that the district court's findings and conclusions were in error; the father failed to present the appellate court with a sufficient record for review of the issues he presented. Smith v. Smith, 72 P.3d 1158 (Wyo. 2003).

Where the mother challenged the portion of her divorce decree granting the father primary child custody, but the record was sparse for appellate review and the mother failed to provide a transcript of the trial nor did she submit a statement of the evidence pursuant to W.R.A.P. 3.03, the appellate court was required to sustain the trial court's findings, and assume that the evidence presented was sufficient to support those findings. Lopez v. Lopez, 116 P.3d 1098 (Wyo. 2005).

Summary judgment appropriate. — Summary judgment was appropriate where there was no hearing transcript and no statement of the evidence presented at the hearing; in the absence of a transcript or an approved statement of the hearing as provided under this rule, the regularity of the trial court's judgment and the competency of the evidence upon which that judgment is based must be presumed. Kelley v. Watson, 77 P.3d 691 (Wyo. 2003).

Omission did not require reversal. — Although a record on appeal from a death penalty case did not contain a transcript of the instructions conference that preceded the charge to the jury in the guilt/innocence phase and other off-the-record conferences, since defense counsel failed to attempt to augment the record as permitted by Wyo. R. App. P. 3.03 or 3.04, the omission of the conference did not require reversal. Eaton v. State, 192 P.3d 36 (Wyo. 2008).

Relationship to federal law. — State court's delay in furnishing petitioner with the transcript did not establish a basis for equitable tolling of his federal habeas petition; petitioner had failed to take advantage of Wyo. R. App. P. 3.03. Heinemann v. Murphy, — F.3d —, 2010 U.S. App. LEXIS 21014 (10th Cir. Oct. 12, 2010).

Applied in Lapp v. City of Worland, 612 P.2d 868 (Wyo. 1980); Spilman v. State, 633 P.2d 183 (Wyo. 1981); Vrooman v. State, 642 P.2d 782 (Wyo. 1982); Eckert v. State, 680 P.2d 478 (Wyo. 1984); Nicholls v. Nicholls, 721 P.2d 1103 (Wyo. 1986); Parnell v. State ex rel. Wyo. Worker's Comp. Div., 735 P.2d 1367 (Wyo. 1987); Whitfield v. Whitfield, 756 P.2d 1345 (Wyo. 1988); Osborn v. Pine Mt. Ranch, 766 P.2d 1165 (Wyo. 1989); Jennings v. State, 806 P.2d 1299 (Wyo. 1991); Chew v. Chew, 821 P.2d 582 (Wyo. 1991); Wood v. Wood, 865 P.2d 616 (Wyo. 1993); Jacobs v. Jacobs, 895 P.2d 441 (Wyo. 1995); State Elec.

Bd. v. Hansen, 928 P.2d 482 (Wyo. 1996); Barela v. State, 936 P.2d 66 (Wyo. 1997); Ahearn v. Anderson-Bishop Partnership, 946 P.2d 417 (Wyo. 1997); Seherr-Thoss v. Seherr-Thoss, 141 P.3d 705 (Wyo. 2006); Witherspoon v. Teton Laser Ctr., LLC, 149 P.3d 715 (Wyo. 2007); BB v. RSR, 149 P.3d 727 (Wyo. 2007); Davis v. Gill, 150 P.3d 1181 (Wyo. 2007); Grenz v. Dep't of Family Servs., Child Support Enforcement, 249 P.3d 694 (Wyo. 2011).

Quoted in Bearpaw v. State, 803 P.2d 70 (Wyo. 1990); Olsen v. Olsen, 247 P.3d 77 (Wyo. 2011).

Cited in Jackson v. State, 624 P.2d 751 (Wyo. 1981); Elliott v. State, 626 P.2d 1044 (Wyo. 1981); W.E. Bill Sauer's Drilling Co. v. Gendron, 720 P.2d 909 (Wyo. 1986); Parker v. Parker, 750 P.2d 1313 (Wyo. 1988); NL Indus., Inc. v. Dill, 769 P.2d 920 (Wyo. 1989); Martin v. Martin, 798 P.2d 321 (Wyo. 1990); Amoco Prod. Co. v. Wyoming State Bd. of Equalization, 899 P.2d 855 (Wyo. 1995); Robinson v. U-Haul Int'l, Inc., 929 P.2d 1236 (Wyo. 1996); Weiss v. Pedersen, 933 P.2d 495 (Wyo. 1997); Brown v. Life Ins. Co. of N. Am., 8 P.3d 333 (Wyo. 2000); Johnson v. Johnson, 11 P.3d 948 (Wyo. 2000); Wilson v. Lucerne Canal & Power Co., 77 P.3d 412 (Wyo. 2003); Vernier v. Vernier, 92 P.3d 825 (Wyo. 2004); Bradley v. Bradley, 118 P.3d 984 (Wyo. 2005); Seherr-Thoss v. Seherr-Thoss, 141 P.3d 705 (Wyo. 2006); Witherspoon v. Teton Laser Ctr., LLC, 149 P.3d 715 (Wyo. 2007); BB v. RSR, 149 P.3d 727 (Wyo. 2007); Davis v. Gill, 150 P.3d 1181 (Wyo. 2007).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

3.04. Correction or modification of the record.

If any difference arises as to whether the record discloses what occurred in the trial 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, the parties by stipulation, or the trial court either before or after the record is transmitted to the appellate court, or the appellate court on motion or 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 appellate court by motion.

Source. — Former Rule 75(d), W.R.C.P.; former Rule 11, Sup. Ct.

Incorporating amendment of order into record. — Where amendment of order for new trial appealed from is incorporated into record on appeal on party's application, record need not be returned for correction since omissions may be incorporated by requiring clerk to certify thereto or by granting leave to file certified copy. Allen v. Lewis, 26 Wyo. 85, 177 P. 433 (1919) (decided under § 1-412, C.S. 1945).

Letter presented by both parties considered as part of record. — Where the district court's decision letter was not a part of the record on appeal, but was presented to the Supreme Court by both parties, it shall be considered as though it were a part of the record. Meuse-Rhine-Ijssel Cattle Breeders of Can. Ltd. v. Y-Tex Corp., 590 P.2d 1306 (Wyo. 1979).

Transcript not designated but not objected to by motion considered part of the record. — Although appellee condemnor objected in its brief to the appellate court's consideration of transcripts not previously designated by appellant condemnees acting pro se, but nonetheless included by the district court clerk in the transmittal of the record to the appellate court, the court considered the certified record as submitted, finding that it was unreasonable to grant the condemnor's objection and disregard the transcripts when the condemnor itself failed to properly raise the issue by motion. Conner v. Bd. of County Comm'rs, 54 P.3d 1274 (Wyo. 2002).

When jury instruction not subject of review. — Where there is no certification nor any order in the record, jury instruction is not properly before the appellate court nor is it the subject of review. Sanders v. Pitner, 508 P.2d 602 (Wyo. 1973).

Absent report, later discussion between judge and counsel relied upon. — The Supreme Court agreed to review the trial court's voir dire procedures even though they were unrecorded because defense counsel waived the court reporter, but had to presume that the court record correctly embodied the events in a later discussion between the judge and defense counsel. Valdez v. State, 727 P.2d 277 (Wyo. 1986).

Scope of supplemental record. — Where the supplemental materials which a defendant seeks to have included in the record are not included in the present appellate record because such were not made a matter of record below in support of any issue put before the trial court, those materials have had no part in the trial of the case, and Wyo. R. App. P. 3.04 justifies only the inclusion of materials omitted from the record on appeal. The rule does not offer a vehicle to augment the record made in

the trial court. There is no discerned abuse of discretion in a trial court's decision to deny a defendant's motion to supplement the appellate record by including them. Harlow v. State, 70 P.3d 179 (Wyo. 2003), cert. denied, — U.S. —, 124 S. Ct. 438, 157 L. Ed. 2d 317 (2003).

Standard of review. — The Wyoming supreme court will apply an abuse-of-discretion standard in reviewing the denial of a post-trial motion to supplement the record on appeal. Harlow v. State, 70 P.3d 179 (Wyo. 2003), cert. denied, — U.S. —, 124 S. Ct. 438, 157 L. Ed. 2d 317 (2003).

Record from codefendant's trial. — Wyoming supreme court reaffirmed denial of defendant's motion to supplement record with transcript of codefendant's trial, where supreme court's reference, in prior order, to this transcript (1) was made only in order to support proposition that particular witness testified consistently on one issue, and (2) explained limitation of witness' testimony with respect to defendant's alleged participation in killing. Harlow v. State, 70 P.3d 179 (Wyo. 2003), cert. denied, — U.S. —, 124 S. Ct. 438, 157 L. Ed. 2d 317 (2003).

Omission did not require reversal. — Although a record on appeal from a death penalty case did not contain a transcript of the instructions conference that preceded the charge to the jury in the guilt/innocence phase and other off-the-record conferences, since defense counsel failed to attempt to augment the record as permitted by Wyo. R. App. P. 3.03 or 3.04, the omission of the conference did not require reversal. Eaton v. State, 192 P.3d 36 (Wyo. 2008).

Applied in Lee v. Board of County Comm'rs, 644 P.2d 189 (Wyo. 1982); Eckert v. State, 680 P.2d 478 (Wyo. 1984); Seivewright v. State, 7 P.3d 24 (Wyo. 2000).

Quoted in Harrington v. Harrington, 660 P.2d 356 (Wyo. 1983).

Cited in Elliott v. State, 626 P.2d 1044 (Wyo. 1981); Wyoming State Farm Loan Bd. v. Farm Credit Sys. Capital Corp., 759 P.2d 1230 (Wyo. 1988); Halliburton Co. v. Claypoole, 868 P.2d 252 (Wyo. 1994); Chancler v. Meredith, 86 P.3d 841 (Wyo. 2004).

Law reviews. — For article, "Minimum Standards of Judicial Administration in Wyoming," see 5 Wyo. L.J. 159.

3.05. [Effective until November 1, 2017.] Designation, transmission and retention of record.

(a) Within three working days after the record has been completed (or as otherwise arranged with the clerk of the appellate court), the clerk of the trial court shall advise the clerk of the appellate court in writing that the record has been completed and certified in accordance with these rules, reciting that:

(1) Each page of original papers in a file has been numbered and an index of the papers has been prepared. The clerk of the trial court shall provide copies of the index to the clerk of the appellate court and to the parties;

(2) The transcript or parts ordered for inclusion and necessary exhibits, have been filed or notice that no transcript was created or ordered;

(3) Notification that the trial court has approved a statement of evidence pursuant to Rule 3.03 or an agreed statement pursuant to Rule 3.08.

(4) The date the notice of appeal was filed in the trial court and, if applicable, the filing date of a cross appeal.

(b) Appellant shall, contemporaneously with filing its brief in the appellate court and service of that brief upon appellee, file with the clerk of the trial court and serve on all parties and the appellate court clerk a designation for transmission of all parts of the record, without unnecessary duplication, to which appellant intends to direct the appellate court in its brief. See Rule 1.03.

(c) If appellee desires to designate additional parts of the record for transmission, appellee shall, contemporaneously with filing appellee's brief in the appellate court, file with the clerk of the trial court and serve upon all parties and the appellate court clerk a designation of those parts of the record desired by appellee. See Rule 1.03.

(d) Appellant may file an additional designation of record within the time any reply brief is to be filed and served. Service shall be on all parties and the appellate court clerk.

(e) Unless the case is a criminal proceeding, no party shall designate the entire record for transmission without an order of the appellate court. Unless specifically relevant to the issue(s) on appeal, record papers, including, but not limited to, setting

notices, subpoenas and documents relating to discovery shall not be designated for transmission to the appellate court. Any party who designates unnecessarily duplicative pleadings or other papers not relevant to the appeal may be subject to sanction as provided in Rule 1.03.

(f) After all of the briefs have been filed, the clerk of the appellate court shall request that the clerk of the trial court transmit the designated portions of the record within five working days. The record papers transmitted to the appellate court by the clerk of the trial court shall be securely fastened, in an orderly manner, in one or more volumes consisting of no more than 250 pages per volume, with pages numbered and with a cover page bearing the title of the case and containing the designation "Transmitted Record," followed by a complete index of all papers. The transmitted record on appeal shall be organized as follows:

(1) The designated pleadings;

(2) Transcripts, Statement of the Evidence or Agreed Statement and if appropriate, depositions;

(3) Confidential file;

(4) *Designated exhibits.* — Individual volumes of transcripts may be combined in an expanding folder. Confidential documents, including Presentence Investigation Reports shall be in a separate volume(s). The clerk of the trial court shall append a certificate identifying the papers with reasonable definiteness. Documents and exhibits of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless so directed by the clerk of the appellate court. A party must make advance arrangements with the clerks of both courts for the transportation to and from the appellate court of exhibits of unusual bulk or weight.

(g) If the appellate court enters an order that the record not be retained by the clerk of the trial court, the clerk of the trial court shall transmit that record to the appellate court in accordance with these rules.

(h) If one or more parties to the appeal fail to designate portions of the record or designate the entire record in a civil appeal, the clerk of the trial court shall promptly notify the clerk of the appellate court.

(Amended May 4, 1999, effective October 1, 1999; amended July 26, 2006, effective December 1, 2006; amended April 6, 2015, effective July 1, 2015.)

Comment. — The change is to correct a clerical error.

Source. — Former Rule 75(e) and (f), W.R.C.P.

The 2006 amendment added the second sentence.

Violation of rules. — Defendant violated appellate rules 3.01 and 3.05 by failing to ensure that original documents were designated and transmitted to the appellate court, and by failing to file a designation for transmission to the appellate court of all parts of the record the defendant intended to call to the court's attention. Basolo v. Gose, 994 P.2d 968 (Wyo. 2000).

Where summary judgment was granted for the builder, on appeal, because the homeowners blatantly disregarded the rules which required them to designate an adequate record on appeal, and failed to provide cogent argument, and pertinent legal authority to support their contention, sanctions, costs and attorney fees, were proper. Orcutt v. Shober Invs. Inc., 69 P.3d 386 (Wyo. 2003).

Transcript not designated but not objected to by motion considered part of the record. — Although appellee condemnor objected in its brief to the appellate court's consideration of transcripts not previously designated by appellant condemnees acting pro se, but nonetheless included by the district court clerk in the transmittal of the record to the appellate court, the court considered the certified record as submitted, finding that it was unreasonable to grant the condemnor's objection and disregard the transcripts when the condemnor itself failed to properly raise the issue by motion. Conner v. Bd. of County Comm'rs, 54 P.3d 1274 (Wyo. 2002).

Because neighbors filing complaint claiming adverse possession did not comply with the Wyoming Rules of Appellate Procedure, including a failure to provide any citation to the record under Wyo. R. App. P. 3.05, and because they did not provide relevant argument or legal authority to support their contentions, the owners were entitled to costs and attorney's fees in

defending the appeal. Shores v. Bucklin, 199 P.3d 1083 (Wyo. 2009).

Applied in Duncan v. Town of Jackson, 903 P.2d 548 (Wyo. 1995).

Stated in Little v. Kobos ex rel. Kobas, 877 P.2d 752 (Wyo. 1994).

Cited in Osborn v. Pine Mt. Ranch, 766 P.2d 1165 (Wyo. 1989); Painter v. Spurrier, 969 P.2d 548 (Wyo. 1998); Laughter v. Bd. of County Comm'rs, 110 P.3d 875 (Wyo. 2005).

3.05. [Effective November 1, 2017.] Designation, transmission and retention of record.

(a) Within three working days after the record has been completed (or as otherwise arranged with the clerk of the appellate court), the clerk of the trial court shall advise the clerk of the appellate court in writing that the record has been completed and certified in accordance with these rules, reciting that:

(1) Each page of original papers in a file has been numbered and an index of the papers has been prepared. The clerk of the trial court shall provide copies of the index to the clerk of the appellate court and to the parties;

(2) The transcript or parts ordered for inclusion and necessary exhibits, have been filed or notice that no transcript was created or ordered;

(3) Notification that the trial court has approved a statement of evidence pursuant to Rule 3.03 or an agreed statement pursuant to Rule 3.08.

(4) The date the notice of appeal was filed in the trial court and, if applicable, the filing date of a cross appeal.

(b) Appellant shall, contemporaneously with filing its brief in the appellate court and service of that brief upon appellee, file with the clerk of the trial court and serve on all parties and the appellate court clerk a designation for transmission of all parts of the record, without unnecessary duplication, to which appellant intends to direct the appellate court in its brief. See Rule 1.03.

(c) If appellee desires to designate additional parts of the record for transmission, appellee shall, contemporaneously with filing appellee's brief in the appellate court, file with the clerk of the trial court and serve upon all parties and the appellate court clerk a designation of those parts of the record desired by appellee. See Rule 1.03.

(d) Appellant may file an additional designation of record within the time any reply brief is to be filed and served. Service shall be on all parties and the appellate court clerk.

(e) Unless the case is a criminal proceeding, no party shall designate the entire record for transmission without an order of the appellate court. Unless specifically relevant to the issue(s) on appeal, record papers, including, but not limited to, setting notices, subpoenas and documents relating to discovery shall not be designated for transmission to the appellate court. Any party who designates unnecessarily duplicative pleadings or other papers not relevant to the appeal may be subject to sanction as provided in Rule 1.03.

(f) After all of the briefs have been filed, the clerk of the appellate court shall request that the clerk of the trial court transmit the designated portions of the record within five working days. The record papers transmitted to the appellate court by the clerk of the trial court shall be securely fastened, in an orderly manner, in one or more volumes consisting of no more than 250 pages per volume, with pages numbered and with a cover page bearing the title of the case and containing the designation "Transmitted Record," followed by a complete index of all papers. The transmitted record on appeal shall be organized as follows:

(1) The designated pleadings;

(2) Transcripts, Statement of the Evidence or Agreed Statement and if appropriate, depositions;

(3) Confidential file;

(4) *Designated exhibits.* — Individual volumes of transcripts may be combined in an expanding folder. Confidential documents, including Presentence Investigation Reports shall be in a separate volume(s). The clerk of the trial court shall append a certificate identifying the papers with reasonable definiteness. Documents and exhibits of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless so directed by the clerk of the appellate court. A party must make advance arrangements with the clerks of both courts for the transportation to and from the appellate court of exhibits of unusual bulk or weight.

(g) If the appellate court enters an order that the record not be retained by the clerk of the trial court, the clerk of the trial court shall transmit that record to the appellate court in accordance with these rules.

(h) If appellant/petitioner fails to designate portions of the record or designate the entire record in a civil appeal, the clerk of the trial court shall promptly notify the clerk of the appellate court.

(Amended May 4, 1999, effective October 1, 1999; amended July 26, 2006, effective December 1, 2006; amended April 6, 2015, effective July 1, 2015; amended August 23, 2017, effective November 1, 2017.)

Comment. — The change is to correct a clerical error.

Source. — Former Rule 75(e) and (f), W.R.C.P.

Violation of rules. — Defendant violated appellate rules 3.01 and 3.05 by failing to ensure that original documents were designated and transmitted to the appellate court, and by failing to file a designation for transmission to the appellate court of all parts of the record the defendant intended to call to the court's attention. Basolo v. Gose, 994 P.2d 968 (Wyo. 2000).

Where summary judgment was granted for the builder, on appeal, because the homeowners blatantly disregarded the rules which required them to designate an adequate record on appeal, and failed to provide cogent argument, and pertinent legal authority to support their contention, sanctions, costs and attorney fees, were proper. Orcutt v. Shober Invs. Inc., 69 P.3d 386 (Wyo. 2003).

Transcript not designated but not objected to by motion considered part of the record. — Although appellee condemnor objected in its brief to the appellate court's consideration of transcripts not previously designated by appellant condemnees acting pro se, but nonetheless included by the district court clerk in the transmittal of the record to the appellate court, the court considered the certified record as submitted, finding that it was unreasonable to grant the condemnor's objection and disregard the transcripts when the condemnor itself failed to properly raise the issue by motion. Conner v. Bd. of County Comm'rs, 54 P.3d 1274 (Wyo. 2002).

Because neighbors filing complaint claiming adverse possession did not comply with the Wyoming Rules of Appellate Procedure, including a failure to provide any citation to the record under Wyo. R. App. P. 3.05, and because they did not provide relevant argument or legal authority to support their contentions, the owners were entitled to costs and attorney's fees in defending the appeal. Shores v. Bucklin, 199 P.3d 1083 (Wyo. 2009).

Applied in Duncan v. Town of Jackson, 903 P.2d 548 (Wyo. 1995).

Stated in Little v. Kobos ex rel. Kobas, 877 P.2d 752 (Wyo. 1994).

Cited in Osborn v. Pine Mt. Ranch, 766 P.2d 1165 (Wyo. 1989); Painter v. Spurrier, 969 P.2d 548 (Wyo. 1998); Laughter v. Bd. of County Comm'rs, 110 P.3d 875 (Wyo. 2005).

3.06. Record for intermediate relief in appellate court.

If prior to the time the record is transmitted a party moves in the appellate court for any intermediate relief, then the clerk of the trial court at the request of the appellate court shall transmit to the appellate court such parts of the record as the appellate court shall designate.

Source. — Former Rule 75(g), W.R.C.P.

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

3.07. Return of record to the trial court.

After an appeal has been determined, the transmitted record shall be returned to the custody of the trial court when mandate issues or the appeal is dismissed.
(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 75(h), W.R.C.P.

Editor's notes. *— The following annotations are taken from cases decided under former Rule 75, W.R.C.P.*

Evidence of successful party is assumed to be true. — A fundamental rule of appeal is that the evidence of the successful party is assumed to be true and is given every favorable inference which may be reasonably and fairly drawn from it while leaving out of consideration entirely the evidence of the unsuccessful party. X v. Y, 482 P.2d 688 (Wyo. 1971).

Effect of failure to prepare statement of evidence. — An appeal cannot be dismissed merely because of appellant's failure to take advantage of Rule 75(c), W.R.C.P., allowing appellant to prepare a statement of the evidence where no report was made of trial. However, the failure to use this optional procedure may have adverse effects on an appeal. Minnehoma Fin. Co. v. Pauli, 565 P.2d 835 (Wyo. 1977).

Appeal will be dismissed where the Supreme Court cannot determine the issues sought to be raised by the appellant in the appeal because the trial of the matter in the district court was not reported, no transcript was made, and no statement of the evidence or proceedings filed. Wydisco, Inc. v. McMahon, 520 P.2d 218 (Wyo. 1974).

When jury instruction not properly subject of review. — Where there is no certification nor any order in the record, jury instruction is not properly before the appellate court nor is it the subject of review. Sanders v. Pitner, 508 P.2d 602 (Wyo. 1973).

Law reviews. — For article, "Wyoming Practice," see XII Wyo. L.J. 202 (1958).

Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Am. Jur. 2d, ALR and C.J.S. references. — Determination of indigency of accused entitling him to transcript or similar record for purposes of appeal, 66 ALR3d 954.

3.08. Agreed statement.

(a) In lieu of designations of the record, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the trial court, and may set forth those facts averred and proved, or sought to be proved, which are essential for review. The parties shall notify the clerk of the trial court, pursuant to Rule 2.05, in writing at the time the notice of appeal is filed that an agreed statement will be used as the record.

(b) The statement shall include: a concise statement of the points on which appellant relies; a copy of the judgment or appealable order; and a copy of the notice of appeal with its filing date. The statement shall be filed with the trial court within 45 days of filing the notice of appeal. The trial court shall, within 15 days, enter its order adopting the statement, or promptly set it for hearing to resolve any disputes. The order and statement shall be included by the clerk of the trial court in the record on appeal. If the trial court is unable to settle the record within 15 days, the judge shall notify the appellate court clerk, trial court clerk and the parties of the delay and anticipated date of completion.
(Amended July 26, 2006, effective December 1, 2006; amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 76, W.R.C.P.

The 2006 amendment, inserted the last clause of the fourth sentence and added the fifth sentence.

Statement of case not appropriate to provide factual record. — Where the appellant filed a statement of the case ostensibly pursuant to Rule 3.08, but he apparently intended to provide a factual record, a statement of evidence pursuant to Rule 3.03 would have been the appropriate method. Parsons v. Parsons, 27 P.3d 270 (Wyo. 2001).

Failure to provide statement of evidence. — When the mother filed a second motion to modify child custody just nine days after the first motion to modify custody was decided, the district court dismissed the second motion on the basis of res judicata; because the record on appeal did not include a transcript or statement of the evidence presented at the hearing in accordance with this rule, the Supreme Court of Wyoming accepted the district

court's finding that the issues the mother presented in her second motion were identical to those decided by the first order. Stephens v. Lavitt, 239 P.3d 634 (Wyo. 2010).

3.09. Withdrawing records.

(a) Either party, at that party's expense, may withdraw the record in a case, except the original exhibits, from the office of the clerk of the trial court during the time allowed for the filing of the brief. That party shall be responsible for its safekeeping and shall return it promptly when its brief is filed. A party may agree to transfer the record to another party, provided that notice of the transfer is given to the trial court. No other paper pertaining to a pending case, nor the original exhibits, shall be taken from the office of the trial court clerk without an order of the trial court. This rule supersedes any other court rule.

(b) In criminal cases, notwithstanding any conflicting provisions of paragraph (a), presentence investigation reports and other confidential documents may be withdrawn from the office of the clerk of the trial court without an order of that court by the office of the attorney general, public defender, or other appellate counsel of record.

(c) The transmitted record may not be withdrawn from the office of the clerk of the appellate court without an order from a judge or justice of that court.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 10, Sup. Ct.

Rule 4. Bonds.

4.01. Bond for costs.

Whenever a bond for costs on appeal is required by law, the bond shall be filed or equivalent security shall be deposited in the trial court with the notice of appeal.

Source. — Former Rule 73(c), W.R.C.P.

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appellate Review §§ 358 to 361.

4 C.J.S. Appeal and Error §§ 325 to 352.

4.02. Supersedeas bonds.

(a) Whenever an appellant so entitled desires a stay on appeal, appellant may present to the trial court a supersedeas bond in such amount as shall be fixed by the trial court and with surety or sureties to be approved by the court or by the clerk of court. 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 appellate court may adjudge and award.

(b) 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 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 the sum 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. When appellant has already filed a surety bond in the trial court, a separate supersedeas bond need not be given, except for the difference in amount as determined by the trial court to be attributable to the appeal.

(c) 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 trial court in which the judgment was rendered, there to remain and abide the judgment of the appellate court, and in such case appellant shall give bond only for costs on appeal and damages for delay.

(d) Executors, administrators and guardians shall be required to give a supersedeas bond.

Source. — Former Rule 73(d)(1), W.R.C.P.

Record insufficient for review. — In a dispute over a nuisance, review of a district court's decision that a property owner forfeited a portion of a supersedeas bond under Wyo. R. App. P. 4.02 was not possible because the record was incomplete; it was assumed that the evidence presented was sufficient to support the decision. Nickle v. Bd. of County Comm'rs, 162 P.3d 1208 (Wyo. 2007).

Posting supersedeas bond did not constitute payment made to trigger § 35-11-1418(c) (reimbursement for payment made pursuant to court order arising from release of underground storage tank); the supersedeas bond constituted security provided by the judgment debtor to avoid execution on the judgment and did not constitute accomplished payment until an unqualified right to the proceeds accrued after the judgment was affirmed on appeal. V-1 Oil Co. v. People, 799 P.2d 1199 (Wyo. 1990).

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appellate Review 464 to 466. 4 C.J.S. Appeal and Error §§ 408 to 439.

4.03. Restitution undertaking by appellee.

(a) In an action on a contract for the payment of money only, or in an action for injuries to the person, if appellee gives adequate security to make restitution in case the judgment is reversed or modified, appellee may, on leave obtained from the trial court, proceed to enforce the judgment notwithstanding the execution of a supersedeas bond. This security must be an undertaking executed to appellant, with sufficient surety, to the effect that if the judgment be reversed or modified appellee will make full restitution to appellant of the money received under the judgment.

(b) The provisions of paragraph (a) shall not apply to judgments recovered in actions for libel, slander, malicious prosecution, false imprisonment or assault and battery.

Source. — Former Rule 73(d)(2), W.R.C.P.

Applied in Jacobs v. Jacobs, 895 P.2d 441 (Wyo. 1995).

Cited in CSP v. DDC, 842 P.2d 528 (Wyo. 1992).

4.04. 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, a bond may be filed at such time as may be fixed by the trial court.

Source. — Former Rule 73(e), W.R.C.P.

4.05. Judgment against surety.

The provisions of Rule 65.1, Wyo. R. Civ. P., apply to a surety upon an appeal or supersedeas bond given pursuant to Rules 4.01, 4.02 and 4.03.

Source. — Former Rule 73(f), W.R.C.P.

Editor's notes. — *Most of the following annotations are taken from cases decided under*

former Rule 73, W.R.C.P., and its statutory and rule antecedents.

I. GENERAL CONSIDERATION.

Nonappealing party may not attack ultimate effect of judgment below but may support it by any matter appearing in the record. Wyoming State Treas. v. City of Casper, 551 P.2d 687 (Wyo. 1976).

II. HOW AND WHEN TAKEN.

Former Rule 72 (a), W.R.C.P., assumes entry of judgment or final order as specified in Rule 58, W.R.C.P. Olmstead v. Cattle, Inc., 541 P.2d 49 (Wyo. 1975).

And judgment not final when motion pending. — A judgment is not final for purposes of appeal when a timely motion such as a motion for new trial is pending. Rutledge v. Vonfeldt, 564 P.2d 350 (Wyo. 1977).

Written order may not extend time for appeal. — The entry of a written order denying Rule 59, W.R.C.P., motions after they have been deemed denied does not extend the time for appeal, absent stipulation and court order. Johnson v. Hauffe, 567 P.2d 735 (Wyo. 1977).

Thirty-day limitation for filing notice of appeal is mandatory and jurisdictional. Sun Land & Cattle Co. v. Brown, 387 P.2d 1004 (Wyo. 1964); Jackson v. State, 547 P.2d 1203 (Wyo. 1976); Carr v. Hopkin, 556 P.2d 221 (Wyo. 1976); Johnson v. Hauffe, 567 P.2d 735 (Wyo. 1977).

The timely filing of a notice of appeal is a jurisdictional requirement, resulting in the dismissal of an appeal by the court, of its own motion, if not accomplished. Bosler v. Morad, 555 P.2d 567 (Wyo. 1976).

Timely filing of the notice of appeal is a strict requirement. Bowman v. Worland Sch. Dist., 531 P.2d 889 (Wyo. 1975); Jackson v. State, 547 P.2d 1203 (Wyo. 1976).

The time limitation for filing a notice of appeal is jurisdictional and strict, and untimeliness may be raised by the Supreme Court without suggestion of the appellee. McMullen v. McMullen, 559 P.2d 37 (Wyo. 1977).

Or court without jurisdiction. — Where the notices of appeal have been filed more than 30 days from the entry of the judgment and sentence from which the appeal seeks to be taken, the Supreme Court does not have jurisdiction. Compton v. State, 555 P.2d 232 (Wyo. 1976).

The Supreme Court has no authority, since it is without jurisdiction, to afford any relief for the untimely filing of a notice of appeal. Bosler v. Morad, 555 P.2d 567 (Wyo. 1976).

Notice of appeal on day judgment entered. — There is no rule against serving a notice of appeal on the same day that the trial court enters judgment. Town of Worland v. Odell & Johnson, 79 Wyo. 1, 329 P.2d 797 (1958).

But premature notice of appeal ineffective. — A notice of appeal served and filed before the judgment appealed from is entered is premature and ineffective to bring the case to the Supreme Court for review. Jackson v. State, 547 P.2d 1203 (Wyo. 1976).

A notice of appeal prematurely filed is ineffective, and in such an instance the Supreme Court lacks jurisdiction of the appeal. Rutledge v. Vonfeldt, 564 P.2d 350 (Wyo. 1977).

Court cannot properly excuse compliance with this rule upon a case by case basis dependent upon whether the point is raised by a motion to dismiss. Bowman v. Worland Sch. Dist., 531 P.2d 889 (Wyo. 1975).

Notice of appeal and record held filed late. — Where the record disclosed that judgment was entered on May 18, notice of appeal filed on June 18, and the record filed in the Supreme Court on August 20, the notice of appeal was filed one day late and the record on appeal three days late in noncompliance with former Rules 73(a) and (f), W.R.C.P. King v. State, 376 P.2d 871 (Wyo. 1962).

Excusable neglect for untimely filing. — If a party places the notice of appeal in the mail in time to have it delivered to the clerk's office in ordinary course but it is not so delivered, the district court may find excusable neglect. Bosler v. Morad, 555 P.2d 567 (Wyo. 1976).

As authority of district court to extend time for filing. — The authority to extend the time for filing a notice of appeal upon a showing of excusable neglect is vested exclusively in the district court, and involves the exercise of discretion by the district court. Bosler v. Morad, 555 P.2d 567 (Wyo. 1976).

Order denying extension of time for appeal is an appealable order. Bosler v. Morad, 555 P.2d 567 (Wyo. 1976).

Motion for new trial, although premature, is sufficient to stay running of time for appeal. Wyoming Wool Mktg. Ass'n v. Urruty, 394 P.2d 905 (Wyo. 1964).

Joinder of motions does not extend time to appeal. — The fact that the motion for judgment notwithstanding the verdict was joined with a motion for new trial could not in the proper administration of justice be allowed to effect an extension of time for appeal. This was not the Supreme Court's intention at the time the rules were adopted, and any such interpretation of the rules would permit an appellant by the addition of a motion for judgment notwithstanding the verdict to effect a delay. Brasel & Sims Constr. Co. v. Neuman

Transit Co., 378 P.2d 501 (Wyo. 1963).

Extension beyond 90 days where motion for new trial filed. — Where a motion for new trial has been filed, the time for filing the notice of appeal may be extended further than 90 days only by compliance with Rule 59(f), W.R.C.P. McMullen v. McMullen, 559 P.2d 37 (Wyo. 1977).

Applicability of criminal motions. — Former Rule 73(a), W.R.C.P., makes reference only to the civil rules, concerning various motions which will terminate the running of the time for appeal and makes no reference to their criminal counterparts. The courts are, therefore, unable to read that subdivision as automatically including criminal motions concerning the timing of an appeal. However, before the courts will dismiss an appeal for failure to file a timely notice of appeal, there must be clear grounds for doing so, and those grounds do not exist when there is a state of confusion in regard to the applicability of the subdivision to criminal motions. Downs v. State, 581 P.2d 610 (Wyo. 1978) (For motions in criminal case which terminated running of time for appeal, see Rule 2.03, W.R.A.P.)

Effect of timely filing of transcript. — Failure to provide written evidence of having ordered and paid for the transcript is not a basis for dismissal where the transcript is filed within time even though less than the full transcript is provided. Phelan v. Read Constr. Co., 379 P.2d 829 (Wyo. 1963).

When the record on appeal including the transcript of evidence is filed within the time permitted the reason and necessity for compliance with the provision of this rule, requiring the ordering and paying for a necessary transcript of evidence, disappears, and noncompliance is, therefore, not a ground for dismissal of an appeal otherwise properly taken. Butler v. McGee, 363 P.2d 791 (Wyo. 1961).

III. SUPERSEDEAS BOND.

Courts need recourse to procedures which will maintain litigated issues in status quo pending decision so that the subsequent judgment will be effective. Wyoming Bancorporation v. Bonham, 563 P.2d 1382 (Wyo. 1977).

Guidelines for establishing boundaries of supersedeas bond. — Former subdivisions (d)(1) and (e) of Rule 73 and Rules 62(e), 72.1(e) and 65, W.R.C.P., provided the Supreme Court with the necessary guidelines for establishing the boundaries of a supersedeas bond. Wyoming Bancorporation v. Bonham, 563 P.2d 1382 (Wyo. 1977).

Jurisdiction to consider damages in bond liability after remand. — District court has jurisdiction to consider damages when liability on the supersedeas bond is sought to be enforced after remand from the appellate courts. Wyoming Bancorporation v. Bonham, 563 P.2d 1382 (Wyo. 1977).

But when damages limited to maximum stated in bond. — Where the action was upon supersedeas bond without surety, nothing in excess of the face of the bond was recoverable by way of damages, since neither the Supreme Court's stay order nor the rules indicate an intent to extend liability on the bond beyond the maximum stated therein. Wyoming Bancorporation v. Bonham, 563 P.2d 1382 (Wyo. 1977).

IV. JUDGMENT AGAINST SURETY.

Enforcement procedures on bond where sureties involved. — Where the question relates to the ability of a district court to assess damages on a supersedeas bond after an unsuccessful appeal, and sureties are involved, former Rules 73(f) and 65.1, W.R.C.P., clearly provide for the enforcement of liability by motion rather than by independent action. Wyoming Bancorporation v. Bonham, 563 P.2d 1382 (Wyo. 1977).

When no right of jury presented. — When the motion or summary procedure is utilized, there is no right of jury trial on the issues presented. Such a proceeding assessing damages is ancillary to the main action and is determined as a part of it without a right to a jury trial. Wyoming Bancorporation v. Bonham, 563 P.2d 1382 (Wyo. 1977).

V. DOCKETING OF APPEAL; FILING OF RECORD.

Dismissal of appeal. — Appeal dismissed for the failure of appellants to timely complete the record; or to timely move for an extension of time to do so; or to make proper application for permission to file the absent portions of the record out of time. Douglas Reservoirs Water Users Ass'n v. Garst, 451 P.2d 451 (Wyo. 1969).

When order extending time to file record on appeal to be made. — An order extending the time to file the record on appeal must ordinarily be made before the expiration of the time fixed by statute or rule of court for service in the first instance, or within the limit of a previous valid extension of time; otherwise the order of extension will be invalid. Martens v. State Hwy. Comm'n, 354 P.2d 222 (Wyo. 1960).

An order of the court extending the time for filing of the record on appeal made within the 60-day period and not exceeding the 90-day limit for extension was timely even though it did not expressly state that appellants had until a given date to file the record on appeal and docket the appeal in the Supreme Court. Butler v. McGee, 363 P.2d 791 (Wyo. 1961).

And extension beyond 90 days exceeds court's authority. — An order extending the time for filing the record beyond 90 days after the filing of notice of appeal is without force and effect as purporting to exceed the authority permitted under this rule. Wilson v. Burridge, 365 P.2d 195 (Wyo. 1961).

Diligence warranting special consideration for failing to docket in time not shown. — Where defendants registered no objection to the fact that a "Supplement to the Pretrial Conference Order" was not made and entered at the time required, and they failed to request that the court sign and file the order prior to the judgment, this failure, if not an actual waiver, at least showed a lack of such diligence as would warrant special consideration for failure to docket their appeal within the 90-day period. Ramsay v. Boland, 364 P.2d 824 (Wyo. 1961).

Where supplementing record on appeal justified. — Where the record discloses that appellant had been diligent in an effort to procure a transcript of evidence, and if by affidavit it is shown the transcript was still unavailable when the record on appeal was required to be filed, the Supreme Court would be justified in granting an application to supplement the record on appeal by the addition of the transcript of evidence. Butler v. McGee, 363 P.2d 791 (Wyo. 1961).

"Written evidence". — The statements referred to in the notice of appeal and in the memorandum in opposition to dismissal of the appeal fail to constitute the kind of written evidence required with respect to the late filing of the transcript of evidence. Douglas Reservoirs Water Users Ass'n v. Garst, 451 P.2d 451 (Wyo. 1969).

VI. JURISDICTION.

Supreme Court does not take jurisdiction until after the docketing of an appeal. Butler v. McGee, 363 P.2d 791 (Wyo. 1961).

VII. BAIL.

Concurrent jurisdiction to admit defendant to bail. — Under this section the judge of the trial court and any justice of the Supreme Court have concurrent jurisdiction to admit defendant to bail on appeal being perfected in a criminal case, and there is no mention in the section that any justice of the Supreme Court has greater power or greater duty in granting bail than has the judge of the trial court. State v. Helton, 72 Wyo. 105, 261 P.2d 46 (1953) (decided under § 3-5414, C.S. 1945).

But application to trial judge first. — Justices of the Supreme Court should not exercise their discretion as to bail after a conviction for second degree murder before an application has been made to the judge of the district court. State v. Helton, 72 Wyo. 105, 261 P.2d 46 (1953) (decided under § 3-5414, C.S. 1945).

Execution of sentence suspended. — Where defendant has been released on bail, sentence cannot be executed until default of bail conditions as provided by statute. Ex parte Irwin, 33 Wyo. 314, 239 P. 288 (1925) (decided under § 3-5414, C.S. 1945).

District court jurisdiction. — District court retains jurisdiction to revoke suspension of sentence and to commit a petitioner who has not perfected his appeal. Genero v. Roach, 39 Wyo. 40, 270 P. 152 (1928) (decided under § 3-5414, C.S. 1945).

Rule 5. Stay of execution in death and other criminal cases.

5.01. Stay of execution and relief pending appeal.

(a) *Death.* — A sentence of death shall be stayed pending appeal.

(b) *Imprisonment.* — A sentence of imprisonment shall be stayed if defendant appeals and is admitted to bail by the trial court.

(c) *Fine.* — If defendant appeals, a sentence to pay a fine may be stayed by the trial court upon such terms as the trial court deems proper. The trial court may require that defendant deposit the entire fine or costs, or any portion, with the clerk of the trial court, or give bond for the payment, or submit to an examination of assets, and restrain defendant from dissipating the assets.

(d) *Probation.* — If defendant appeals, an order placing defendant on probation will not be stayed, unless a specific order granting stay, or granting admission to bail, or both, is entered by the trial court.

(e) *Admission to bail.* — Admission to bail upon appeal shall be as provided in Rules 46 to 46.2, Wyo. R. Cr. P.

Source. — Former Rule 39, W.R. Cr. P.

Applied in Hopkinson v. State, 704 P.2d 1323 (Wyo. 1985); Jacobs v. Jacobs, 895 P.2d 441 (Wyo. 1995).

Cited in McDonald v. State, Dep't of Revenue & Taxation, 846 P.2d 694 (Wyo. 1993); Frenzel v. State, 849 P.2d 741 (Wyo. 1993); Harlow v. State, — P.3d —, 2003 Wyo. LEXIS 86 (Wyo. May 29, 2003); BB v. RSR, 149 P.3d 727 (Wyo. 2007).

Rule 6. Docketing appeal.

6.01. Docketing appeal and jurisdiction.

(a) The case shall be docketed in the appellate court when the notice of the completion of the record, as provided in Rule 3.05(a), is transmitted to the appellate court together with the filing fee or an order granting leave to proceed in forma pauperis on appeal. The clerk of the appellate court shall serve the parties to the appeal notice that the appeal has been docketed and set forth the briefing schedule in accord with Rule 7.

(b) The appellate court shall acquire jurisdiction over the matters appealed when the case is docketed. In all cases, the trial court retains jurisdiction over all matters and proceedings not the subject of the appeal, including all matters covered by Rules 4 and 5, unless otherwise ordered by the appellate court.

(c) A district court shall have jurisdiction of appeals from interlocutory orders of administrative agencies and circuit courts and municipal courts, and questions certified pursuant to Rule 11, and petitions pursuant to Rule 13.

(d) The supreme court shall have jurisdiction of appeals from interlocutory orders of a district court, and questions certified pursuant to Rules 11 or 12, and petitions pursuant to Rule 13.

(e) The appellate court has authority to ascertain its jurisdiction of the appeal once the case is docketed by the clerk of the appellate court.

(Amended May 4, 2001, effective September 1, 2001; amended December 2, 2002, effective January 6, 2003; amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 73(h), W.R.C.P.

District court order subsequent to Supreme Court opinion but prior to mandate. — Where an opinion was handed down by the Supreme Court affirming the trial court's judgment and sentence, but the mandate has not issued, so the appeal is still pending, a subsequent order of the district court in a matter incident to the trial but not related to the guilt or innocence of the defendant is made and entered when the district court had no jurisdiction in the case. Hayes v. State, 599 P.2d 569 (Wyo. 1979).

Retention of jurisdiction. — The trial court retained jurisdiction to decide issues of custody, support, and visitation where an appeal contesting paternity was pending. KC v. KM, 941 P.2d 46 (Wyo. 1997).

When appellee trust beneficiary filed a lawsuit seeking an order directing appellant trustees to pay to him funds from the family trust to provide for his support, the district court issued an order allocating trust assets and directing payments to the beneficiary; the decision was affirmed on appeal. On remand, the district court properly exercised its jurisdiction under this rule by directing the trustees to reimburse the family trust for amounts the trustees withdrew from the trust for payment of their attorneys' fees and costs; the trustees's failure to submit billing statements and the statutorily required application for fees and costs did not deprive the district court of its jurisdiction to issue the reimbursement order. Garwood v. Garwood, 233 P.3d 977 (Wyo. 2010).

Applied in DS v. Department of Pub. Assistance & Social Servs., 607 P.2d 911 (Wyo. 1980).

Quoted in Capellen v. State, 161 P.3d 1076 (Wyo. 2007).

Stated in Jones v. State, 602 P.2d 378 (Wyo. 1979); Jessen v. State, 622 P.2d 1374 (Wyo. 1981).

Cited in Bhutto v. State, 114 P.3d 1252 (Wyo. 2005).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Rule 7. Briefs.

Supreme Court will not search record to discover possible errors assigned by the petition in error and where plaintiff in error fails to comply with former Rule 12(a) and (d), Sup. Ct., proceedings will, on motion, be dismissed pursuant to former Rule 12(j), W.R.C.P. Pearce v. Holm, 23 Wyo. 417, 152 P. 787 (1915).

Whenever two assignments of error raise the same question it may be presented under either of the assignments. Pierce v. Rothwell, 38 Wyo. 267, 267 P. 86 (1928) (decided under § 1-414, C.S. 1945).

Where litigants disregard requirement to refer specifically to the record, court may decline to consider question sought to be raised. Simpson v. Occidental Bldg. & Loan

Ass'n, 45 Wyo. 425, 19 P.2d 958 (1933) (decided under § 1-414, C.S. 1945).

Appeal was properly dismissed where appellant's papers, intended to be a brief on appeal, failed to comply with this rule. Zier v. City of Powell, 526 P.2d 63 (Wyo. 1974).

But may obtain permission to file reference supplement. — Where appellant disregarded the Supreme Court rule requiring that briefs should refer specifically to the page or portion of the record where the question under discussion arose, but promptly attempted to supply the deficiencies by obtaining permission to file a reference supplement containing the omitted references, the Supreme Court did not decline to consider the questions sought to be raised. Rafferty v. Northern Util. Co., 73 Wyo. 287, 278 P.2d 605 (1955) (decided under § 1-414, C.S. 1945).

Omission of subject index, table of cases, and names of counsel. — Where there is no subject index table of cases, or listing on the first page of the brief of the names of counsel and the persons represented by them, this rule is not complied with. Crozier v. Malone, 366 P.2d 125 (Wyo. 1961).

Dismissal remedy for noncompliance with appellate rules. — Compliance with rules promulgated by the Supreme Court is required and the sanction of dismissal for failure of the appellant to comply therewith may be the appropriate remedy. Dixon v. City of Worland, 595 P.2d 84 (Wyo. 1979).

Am. Jur. 2d, ALR and C.J.S. references. — 4 C.J.S. Appeal and Error §§ 605 to 630.

7.01. [Effective until November 1, 2017.] Brief of appellant.

The brief of appellant shall contain under appropriate headings and in the order indicated:

(a) A title page which must include:

(1) The appellate court caption and appellate court case number;

(2) Identification of party filing the brief; and

(3) The name(s), address(es) and telephone number(s) of the attorney(s) or pro se party(ies) preparing the brief. Members of the Wyoming Bar shall include their Wyoming Bar number.

(b) A table of contents, with page references;

(c) A table of cases alphabetically arranged (in one list or by jurisdiction), statutes and other authorities cited, with references to the pages where they appear;

(d) A statement of the issues presented for review;

(e) A statement of the case including:

(1) The nature of the case, the course of proceedings, and the disposition in the trial court; and

(2) A statement of the facts relevant to the issues presented for review with citations to the parts of the designated record on appeal relied on.

(f) An argument (which may be preceded by a summary) setting forth:

(1) Appellant's contentions with respect to the issues presented and the reasons therefor, with citations to the authorities, statutes and parts of the designated record on appeal relied on; and

(2) For each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues).

(g) A short conclusion stating the precise relief sought;

(h) The signature(s) of counsel or pro se party(ies) submitting the brief;

(i) A certificate of service; and

(j) An appendix, which shall contain (1) a copy of the judgment or final order appealed from; (2) the trial court's decision letter or other written and/or oral reasons for judgment, if any; and (3) the statement of costs required by rule 10.01.

(Amended May 4, 2001, effective September 1, 2001; amended April 6, 2015, effective July 1, 2015.)

Source. — Rule 28(a), F.R.A.P.

Purpose of appellate rules concerning

briefs is to help focus the facts, issues and authorities. Strang Telecasting, Inc. v. Ernst, 610 P.2d 1011 (Wyo. 1980).

Court may refuse to consider contentions of party not listing issues. — The absence of a list of issues is a serious problem, for which the court may refuse to consider the contentions of the party violating this rule. Cline v. Safeco Ins. Cos., 614 P.2d 1335 (Wyo. 1980).

Issues considered, although appellants failed to provide statement of issues. — See 37 Gambling Devices (Cheyenne Elks Club & Cheyenne Music & Vending, Inc.) v. State, 694 P.2d 711 (Wyo. 1985).

Court considers issues not set forth in brief due to unintentional error. — Although the appellants in their brief set forth only one issue for review, because of the table of contents and the topical arrangement of the arguments presented therein, the court considered the statement of the issues to be in the nature of a typographical or unintentional error of omission and recognized all of the claims stated by the appellants in their original complaint. Allen v. Safeway Stores, Inc., 699 P.2d 277 (Wyo. 1985).

Brief considered although no statement of facts therein. — Although the appellant submitted a brief which did not contain a statement of facts, as the facts in the record were straightforward and the appellant's violation of this rule did not detract from judicial review, the court proceeded to consider the appellant's issues. Furman v. Rural Elec. Co., 869 P.2d 136 (Wyo. 1994).

Unsupported arguments not considered. — Where appellants cited no pertinent authority nor made a cogent argument in behalf of any of their arguments, but rather incorporated by reference trial briefs contained in the record, the Supreme Court will not consider the contentions. Scherling v. Kilgore, 599 P.2d 1352 (Wyo. 1979).

Sanctions granted in favor of the wife on appeal in the parties' divorce action were proper where there was no reasonable cause for the husband's appeal; pro se litigants were not excused from the requirements set forth in W.R.A.P. 7.01 and the issues deciphered from the husband's brief were not supported by the record, cogent argument, or pertinent legal authority. Welch v. Welch, 81 P.3d 937 (Wyo. 2003).

No concise statement of standard of review. — Contrary to the dictates of this section, a mother's brief did not contain a concise statement of the applicable standard of review; however, the court perceived the issue as a question of sufficiency of the evidence and addressed the issue accordingly. DH v. Wyo. Dep't of Family Servs. (In re 'H' Children), 79 P.3d 997 (Wyo. 2003).

The Supreme Court will not consider issues which are not supported by proper citation of authority and cogent argument, or which are not clearly defined. Knadler v. Adams, 661 P.2d 1052 (Wyo. 1983); Gulf Oil Corp. v. Wyoming Oil & Gas Conservation Comm'n, 693 P.2d 227 (Wyo. 1985).

The Supreme Court will not consider points which have not been briefed or where no authority is cited or where the authority which is cited does not constitute a cogent argument for the proposition for which the appellant contends. Zanetti v. Zanetti, 689 P.2d 1116 (Wyo. 1984).

Failure to cite to authority. — Mother's procedural due process rights were not violated even though she alleged that orders were not circulated for approval as required, and instead the orders were made available to the mother's counsel for five days after being prepared by the State; the mother failed to cite to any legal authority in her brief on the issue, and nothing was provided to the court that justified reversing the trial court on the issue. DH v. Wyo. Dep't of Family Servs. (In re 'H' Children), 79 P.3d 997 (Wyo. 2003).

Failure to cite to record. — Mother's vague assertions that the district court erred by permitting pre-order evidence as a benchmark to determine whether there had been a material change in circumstances allowing a change in custody, unsupported by citation to the record, did not comply with the requirements of this rule and, therefore, the court did not consider her contention. BB v. RSR, 149 P.3d 727 (Wyo. 2007).

Failure to cite to authority or show prejudice. — Court declined to address the merits of whether the State, trial court, or family services department failed to comply with this section, other sections, and various department rules in connection with the alleged lack of formal written reports and written case plan or the delay in setting an adjudicatory hearing, and the court affirmed the trial court to that extent, because the mother (1) failed to support her grievances with citations to relevant precedent, and (2) failed to show how any alleged deficiencies in the trial court prejudiced her; but the court did not retreat from its conviction that the judicial system had to be diligent in protecting parental rights, nor did the court imply that the department or any administrative agency was free to ignore statutes, agency rules, or court orders. DH v. Wyo. Dep't of Family Servs. (In re 'H' Children), 79 P.3d 997 (Wyo. 2003).

Inadequate citation to legal authority. — Court rejected a mother's contention that her procedural due process rights under this section were violated by the trial court's denial of motions for continuance because she did not support her contention with citation to legal authority, aside from citing certain rules by themselves, and there was no evidence in the record that showed that the continuance caused any prejudice or hardship. DH v. Wyo.

Dep't of Family Servs. (In re 'H' Children), 79 P.3d 997 (Wyo. 2003).

Court rejected the employer's motion to dismiss the ex-employee's appeal based on the employee's noncompliance with W.R.A.P. 7.01(e)(2) in that the employee's brief failed to provide citations to the record in support of his factual summary. Although the brief was deficient, the court had discretion under W.R.A.P. 1.03 to decline to impose the sanction requested by the employer where the facts in this case were straightforward, and the violation of Rule 7.01(e)(2) did not affect or detract from the court's ability to review the matter. Kruzich v. Martin-Harris Gallery, LLC, 126 P.3d 867 (Wyo. 2006).

And costs assessed against appellant. — The appellant presented no statement of the issues in her brief and did not support her position with cogent arguments or authority. Accordingly, the court assessed costs against her. Garlach v. Tuttle, 705 P.2d 828 (Wyo. 1985).

Appellant's burden in attacking factual conclusions. — In attacking a trial judge's factual conclusion, an appellant has the burden of directing the court's attention to those parts of the record on which he relies. State Sur. Co. v. Lamb Constr. Co., 625 P.2d 184 (Wyo. 1981).

Rule does not contemplate prolix and rambling narrative, and a failure to provide a list of issues violates the rule. Walker v. Karpan, 726 P.2d 82 (Wyo. 1986).

Conclusionary statement that "issues exist" unsatisfactory. — Compliance by appellant with subdivision (e)(2) of this rule is hardly satisfied by his statement, "genuine issues of fact or facts exist which preclude the granting of summary judgment in favor of the plaintiffs," since the area of dispute of contended factual issues or legal questions is not defined. J & M Invs. v. Davis, 726 P.2d 96 (Wyo. 1986).

Appeal moot. — Issues arising from the confirmation of an arbitration award were moot because trustees failed to challenge the dispositive rulings of a trial court, as required by Wyo. R. App. P. 7.01. Specifically, they failed to challenge the finding of a breach of a settlement agreement or a waiver of the right to seek judicial review on certain issues. Morrison v. Clay, 149 P.3d 696 (Wyo. 2006).

Plaintiff violated rule. — Plaintiff violated this rule by failing to include in her brief a statement of relevant facts, cites to the record, or a copy of the district court's order. Williams v. Dietz, 999 P.2d 642 (Wyo. 2000).

Court refused to consider positions not supported by cogent argument or pertinent authority. — See Kipp v. Brown, 750 P.2d 1338 (Wyo. 1988).

Where a tenant failed to comply with the appellate rules by supporting arguments with citations to authority and the record, as required under this rule, the court refused to consider other contentions under Wyo. R. App. P. 1.03. However, the court refused to impose additional sanctions because of the tenant's pro se status and his presentation of one proper argument for meaningful review. Kinstler v. RTB South Greeley, LTD., LLC, 160 P.3d 1125 (Wyo. 2007).

Judgment of district court was summarily affirmed and sanctions against pro se appellants imposed, where appeal failed to present cogent argument or pertinent authority to support the claims of error, and there was a failure to adequately cite to the record. Baker v. Reed, 965 P.2d 1153 (Wyo. 1998).

Summary affirmance of decision below. — Appellant's brief was void of cogent argument or legal authority, thus warranting summary affirmance of the decision below, where it revealed only argument and hyperbole, raised new issues on appeal, and included conclusions without supporting reasoning and a total lack of pertinent authority. State ex rel. Reece v. Wyoming State Bd. of Outfitters & Professional Guides, 931 P.2d 958 (Wyo. 1997).

The court summarily affirmed the order appealed from where, other than including a title page with an appropriate caption, case number, and identification of the party filing the brief, the pro se appellant failed to comply with the numerous other requirements of the rule. MTM v. State, 26 P.3d 1035 (Wyo. 2001).

Summary affirmance was appropriate where appellants failed to comply with this section and the appellate brief was not supported by the record, cogent argument, or pertinent authority; the brief failed to include any facts or information pertaining to the appeal at issue, the nature of the case on appeal, the course of proceedings, or the disposition in the trial court, as required by subsection (e). Kelley v. Watson, 77 P.3d 691 (Wyo. 2003).

Vague references to statute, "evidence," unsatisfactory. — Vague references to the Uniform Partnership Act and "the evidence" did not comply with this rule, which states that the argument section of a brief shall contain "citations to the authorities, statutes and parts of the record relied on." Weisbrod v. Ely, 767 P.2d 171 (Wyo. 1989).

Failure to provide transcript to refute damages award. — Where, in its brief, the contractor set out the contractor's version of what transpired at trial but the contractor failed to provide a transcript from the damages phase of the trial, or some alternative substitute for the transcript, such as a statement of evidence or proceedings, there was nothing in the record to refute the district court's finding on damages, and thus the Wyoming supreme court affirmed the award of damages and held the homeowner was entitled to costs and attorney's fees on appeal. However, the homeowner was not entitled to damages on appeal because the award of costs and attorney fees fully vindicated the supreme court's interest in enforcing the rules of appellate procedure. Chancler v.

Meredith, 86 P.3d 841 (Wyo. 2004).

Immediate dismissal proper for noncompliance. — Immediate dismissal and charging of attorney's fees should not be any surprise if the litigant does not handle the professional, technical work in compliance with these rules, in the same way that trained lawyers are expected to perform. Korkow v. Markle, 746 P.2d 434 (Wyo. 1987).

Dismissal of plaintiff's complaint against defendants under Wyo. R. App. P. 1.03 was affirmed where plaintiff's final notice of appeal and brief failed to comply with Wyo. R. App. P. 2.07, 7.01 in numerous instances; plaintiff's brief did not comply with Wyo. R. App. P. 7.01, in eleven instances. Finch v. Pomeroy, 130 P.3d 437 (Wyo. 2006).

Dismissal unwarranted where court can remedy failure. — The dismissal of an appeal was too harsh and unwarranted a remedy for the appellant's failure to make appropriate page references to the record, where the record was not lengthy and the portions of the record relevant to the issues presented for review were easily found. Jung-Leonczynska v. Steup, 782 P.2d 578 (Wyo. 1989).

Failure to abide by the briefing requirements in this section, such as by citation to hundreds of pages of the record, rather than citation to specific pages, could result in the summary affirmance of a district court's judgment. While the supreme court continued to adhere to that precept, and while the contractor's brief did lack precision in its citation to the record, the drastic route of a summary affirmance was not taken because the supreme court was readily able to discern the relevant facts from the record. Three Way, Inc. v. Burton Enters., 177 P.3d 219 (Wyo. 2008).

The sanction of dismissal will not be used in criminal cases; sanctions will be addressed to counsel personally, as members of the bar who represent appellants in criminal cases. Leger v. State, 855 P.2d 359 (Wyo. 1993).

Attorney fees awarded. Where a statement of the issues was omitted from the ex-husband's brief in violation of W.R.A.P. 7.01(d), a sufficient record was not provided to allow meaningful review of his claim of error under W.R.A.P. 3.03, and he failed to support his claim of error with pertinent legal authority or cogent argument, there was no reasonable cause for appeal and sanctions were proper under W.R.A.P. 10.05. Montoya v. Montoya, 125 P.3d 265 (Wyo. 2005).

Award of attorney fees and costs incurred. — Former spouse was entitled to an award of attorney fees and costs incurred in responding to their former partner's appeals because their partner's briefs were deficient as they failed to include many record cites, cogent argument, or the appropriate appendices. Golden v. Guion, — P.3d —, 2016 Wyo. LEXIS 58 (Wyo. 2016).

Applied in Skurdal v. State ex rel. Stone, 708 P.2d 1241 (Wyo. 1985); Ogle v. Caterpillar Tractor Co., 716 P.2d 334 (Wyo. 1986); E.C. Cates Agency, Inc. v. Barbe, 764 P.2d 274 (Wyo. 1988); Gist v. State, 768 P.2d 1054 (Wyo. 1989); Epple v. Clark, 804 P.2d 678 (Wyo. 1991); B & W Glass, Inc. v. Weather Shield Mfg., Inc., 829 P.2d 809 (Wyo. 1992); Amrein v. Wyoming Livestock Bd., 851 P.2d 769 (Wyo. 1993); BLT v. State, 856 P.2d 1128 (Wyo. 1993); Halliburton Co. v. Claypoole, 868 P.2d 252 (Wyo. 1994); Hamburg v. Heilbrun, 889 P.2d 967 (Wyo. 1995); Rawson v. State, 900 P.2d 1136 (Wyo. 1995); Johnson v. Griffin, 922 P.2d 860 (Wyo. 1996); 40 North Corp. v. Morrell, 964 P.2d 423 (Wyo. 1998); Basolo v. Gose, 994 P.2d 968 (Wyo. 2000); Hodgins v. State, 1 P.3d 1259 (Wyo. 2000); Wayt v. Urbigkit, 152 P.3d 1057 (Wyo. 2007); Dunsmore v. Dunsmore, 173 P.3d 389 (Wyo. 2007).

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Stated in Mariner v. Marsden, 610 P.2d 6 (Wyo. 1980); Jackson v. State, 624 P.2d 751 (Wyo. 1981); State, Wyo. Game & Fish Comm'n v. Thornock, 851 P.2d 1300 (Wyo. 1993); Osborn v. Painter, 909 P.2d 960 (Wyo. 1996).

Cited in Wood v. City of Casper, 660 P.2d 1163 (Wyo. 1983); Cordova v. Gosar, 719 P.2d 625 (Wyo. 1986); Short v. Spring Creek Ranch, Inc., 731 P.2d 1195 (Wyo. 1987); Waggoner v. GMC, 771 P.2d 1195 (Wyo. 1989); Smithco Eng'g, Inc. v. International Fabricators, Inc., 775 P.2d 1011 (Wyo. 1989); King v. State, 780 P.2d 943 (Wyo. 1989); State ex rel. Wyo. Workers' Comp. Div. v. Halstead, 795 P.2d 760 (Wyo. 1990); Coulthard v. Cossairt, 803 P.2d 86 (Wyo. 1990); Nauman v. CIT Group/Equipment Fin., Inc., 816 P.2d 883 (Wyo. 1991); WR v. Lee, 825 P.2d 369 (Wyo. 1992); Hoke v. Moyer, 865 P.2d 624 (Wyo. 1993); Davis v. Big Horn Basin Newspapers, Inc., 884 P.2d 979 (Wyo. 1994); Earlywine v. Peterson, 885 P.2d 861 (Wyo. 1994); Hamburg v. Heilbrun, 891 P.2d 85 (Wyo. 1995); Vargas-Rocha v. State, 891 P.2d 763 (Wyo. 1995); Thunder Hawk v. Union Pac. R.R., 891 P.2d 773 (Wyo. 1995); Gray v. Wyoming State Bd. of Equalization, 896 P.2d 1347 (Wyo. 1995); Southworth v. State, 913 P.2d 444 (Wyo. 1996); Medrano v. State, 914 P.2d 804 (Wyo. 1996); Dolence v. State, 921 P.2d 1103 (Wyo. 1996); GWJ v. MH, 930 P.2d 371 (Wyo. 1996); Pawlowski v. Pawlowski, 925 P.2d 240 (Wyo. 1996); Painter v. Spurrier, 969 P.2d 548 (Wyo. 1998); Farmer v. State, Dep't of Transp., 986 P.2d 165 (Wyo. 1999); Dewey Family Trust v. Mountain W. Farm Bureau Mut. Ins. Co., 3 P.3d 833 (Wyo. 2000); Mace v. Nocera, 101 P.3d 921 (Wyo. 2004); Nathan v. Am. Global Univ., 113 P.3d 32 (Wyo. 2005); Shelhamer v. Shelhamer, 138 P.3d 665 (Wyo. 2006); Amin v. State, 138 P.3d 1143 (Wyo. 2006); Habco v. L&B Oilfield

Serv., 138 P.3d 1162 (Wyo. 2006); Black v. William Insulation Co., 141 P.3d 123 (Wyo. 2006); Hembree v. State, 143 P.3d 905 (Wyo. 2006); Witherspoon v. Teton Laser Ctr., LLC, 149 P.3d 715 (Wyo. 2007); BB v. RSR, 149 P.3d 727 (Wyo. 2007); Vogt v. MBNA Am. Bank, 178 P.3d 405 (Wyo. 2008).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

7.01. [Effective November 1, 2017.] Brief of appellant.

The brief of appellant shall contain under appropriate headings and in the order indicated:

(a) A title page which must include:

(1) The appellate court caption and appellate court case number;

(2) Identification of party filing the brief; and

(3) The name(s), address(es) and telephone number(s) of the attorney(s) or pro se party(ies) preparing the brief. Members of the Wyoming Bar shall include their Wyoming Bar number.

(b) A table of contents, with page references;

(c) A table of cases alphabetically arranged (in one list or by jurisdiction), statutes and other authorities cited, with references to the pages where they appear;

(d) A statement of jurisdiction in the appellate court. The statement shall include a concise statement of the facts material to the finality of an order being appealed, the timeliness of the appeal, any other facts effecting jurisdiction and a reference to the provisions of statute, rule or case law on which jurisdiction rests;

(e) A statement of the issues presented for review;

(f) A statement of the case, presented in any efficient order, identifying the nature of the case, setting out the facts relevant to the issues presented for review, describing the relevant procedural history, and identifying the rulings presented for review, with citations to the designated record on appeal.

(g) An argument (which may be preceded by a summary) setting forth:

(1) Appellant's contentions with respect to the issues presented and the reasons therefor, with citations to the authorities, statutes and parts of the designated record on appeal relied on; and

(2) For each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues).

(h) A short conclusion stating the precise relief sought;

(i) The signature(s) of counsel or pro se party(ies) submitting the brief;

(j) A certificate of service; and

(k) An appendix, which shall contain:

(1) copy of the judgment or final order appealed from;

(2) the trial court's decision letter or other written and/or oral reasons for judgment, if any; and

(3) the statement of costs required by rule 10.01.

(Amended May 4, 2001, effective September 1, 2001; amended April 6, 2015, effective July 1, 2015; amended August 23, 2017, effective November 1, 2017.)

Source. — Rule 28(a), F.R.A.P.

Purpose of appellate rules concerning briefs is to help focus the facts, issues and authorities. Strang Telecasting, Inc. v. Ernst, 610 P.2d 1011 (Wyo. 1980).

Court may refuse to consider contentions of party not listing issues. — The absence of a list of issues is a serious problem, for which the court may refuse to consider the contentions of the party violating this rule. Cline v. Safeco Ins. Cos., 614 P.2d 1335 (Wyo. 1980).

Issues considered, although appellants failed to provide statement of issues. — See 37 Gambling Devices (Cheyenne Elks Club & Cheyenne Music & Vending, Inc.) v. State, 694 P.2d 711 (Wyo. 1985).

Court considers issues not set forth in

brief due to unintentional error. — Although the appellants in their brief set forth only one issue for review, because of the table of contents and the topical arrangement of the arguments presented therein, the court considered the statement of the issues to be in the nature of a typographical or unintentional error of omission and recognized all of the claims stated by the appellants in their original complaint. Allen v. Safeway Stores, Inc., 699 P.2d 277 (Wyo. 1985).

Brief considered although no statement of facts therein. — Although the appellant submitted a brief which did not contain a statement of facts, as the facts in the record were straightforward and the appellant's violation of this rule did not detract from judicial review, the court proceeded to consider the appellant's issues. Furman v. Rural Elec. Co., 869 P.2d 136 (Wyo. 1994).

Unsupported arguments not considered. — Where appellants cited no pertinent authority nor made a cogent argument in behalf of any of their arguments, but rather incorporated by reference trial briefs contained in the record, the Supreme Court will not consider the contentions. Scherling v. Kilgore, 599 P.2d 1352 (Wyo. 1979).

Sanctions granted in favor of the wife on appeal in the parties' divorce action were proper where there was no reasonable cause for the husband's appeal; pro se litigants were not excused from the requirements set forth in W.R.A.P. 7.01 and the issues deciphered from the husband's brief were not supported by the record, cogent argument, or pertinent legal authority. Welch v. Welch, 81 P.3d 937 (Wyo. 2003).

No concise statement of standard of review. — Contrary to the dictates of this section, a mother's brief did not contain a concise statement of the applicable standard of review; however, the court perceived the issue as a question of sufficiency of the evidence and addressed the issue accordingly. DH v. Wyo. Dep't of Family Servs. (In re 'H' Children), 79 P.3d 997 (Wyo. 2003).

The Supreme Court will not consider issues which are not supported by proper citation of authority and cogent argument, or which are not clearly defined. Knadler v. Adams, 661 P.2d 1052 (Wyo. 1983); Gulf Oil Corp. v. Wyoming Oil & Gas Conservation Comm'n, 693 P.2d 227 (Wyo. 1985).

The Supreme Court will not consider points which have not been briefed or where no authority is cited or where the authority which is cited does not constitute a cogent argument for the proposition for which the appellant contends. Zanetti v. Zanetti, 689 P.2d 1116 (Wyo. 1984).

Failure to cite to authority. — Mother's procedural due process rights were not violated even though she alleged that orders were not circulated for approval as required, and instead the orders were made available to the mother's counsel for five days after being prepared by the State; the mother failed to cite to any legal authority in her brief on the issue, and nothing was provided to the court that justified reversing the trial court on the issue. DH v. Wyo. Dep't of Family Servs. (In re 'H' Children), 79 P.3d 997 (Wyo. 2003).

Failure to cite to record. — Mother's vague assertions that the district court erred by permitting pre-order evidence as a benchmark to determine whether there had been a material change in circumstances allowing a change in custody, unsupported by citation to the record, did not comply with the requirements of this rule and, therefore, the court did not consider her contention. BB v. RSR, 149 P.3d 727 (Wyo. 2007).

Failure to cite to authority or show prejudice. — Court declined to address the merits of whether the State, trial court, or family services department failed to comply with this section, other sections, and various department rules in connection with the alleged lack of formal written reports and written case plan or the delay in setting an adjudicatory hearing, and the court affirmed the trial court to that extent, because the mother (1) failed to support her grievances with citations to relevant precedent, and (2) failed to show how any alleged deficiencies in the trial court prejudiced her; but the court did not retreat from its conviction that the judicial system had to be diligent in protecting parental rights, nor did the court imply that the department or any administrative agency was free to ignore statutes, agency rules, or court orders. DH v. Wyo. Dep't of Family Servs. (In re 'H' Children), 79 P.3d 997 (Wyo. 2003).

Inadequate citation to legal authority. — Court rejected a mother's contention that her procedural due process rights under this section were violated by the trial court's denial of motions for continuance because she did not support her contention with citation to legal authority, aside from citing certain rules by themselves, and there was no evidence in the record that showed that the continuance caused any prejudice or hardship. DH v. Wyo. Dep't of Family Servs. (In re 'H' Children), 79 P.3d 997 (Wyo. 2003).

Court rejected the employer's motion to dismiss the ex-employee's appeal based on the employee's noncompliance with W.R.A.P. 7.01(e)(2) in that the employee's brief failed to provide citations to the record in support of his factual summary. Although the brief was deficient, the court had discretion under W.R.A.P. 1.03 to decline to impose the sanction requested by the employer where the facts in this case were straightforward, and the violation of Rule 7.01(e)(2) did not affect or detract from the court's ability to review the matter. Kruzich v. Martin-Harris Gallery, LLC, 126 P.3d 867 (Wyo. 2006).

And costs assessed against appellant. — The appellant presented no statement of the issues in her brief and did not support her position with cogent arguments or authority. Accordingly, the court assessed costs against her. Garlach v. Tuttle, 705 P.2d 828 (Wyo. 1985).

Appellant's burden in attacking factual conclusions. — In attacking a trial judge's factual conclusion, an appellant has the burden of directing the court's attention to those parts of the record on which he relies. State Sur. Co. v. Lamb Constr. Co., 625 P.2d 184 (Wyo. 1981).

Rule does not contemplate prolix and rambling narrative, and a failure to provide a list of issues violates the rule. Walker v. Karpan, 726 P.2d 82 (Wyo. 1986).

Conclusionary statement that "issues exist" unsatisfactory. — Compliance by appellant with subdivision (e)(2) of this rule is hardly satisfied by his statement, "genuine issues of fact or facts exist which preclude the granting of summary judgment in favor of the plaintiffs," since the area of dispute of contended factual issues or legal questions is not defined. J & M Invs. v. Davis, 726 P.2d 96 (Wyo. 1986).

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Plaintiff violated rule. — Plaintiff violated this rule by failing to include in her brief a statement of relevant facts, cites to the record, or a copy of the district court's order. Williams v. Dietz, 999 P.2d 642 (Wyo. 2000).

Court refused to consider positions not supported by cogent argument or pertinent authority. — See Kipp v. Brown, 750 P.2d 1338 (Wyo. 1988).

Where a tenant failed to comply with the appellate rules by supporting arguments with citations to authority and the record, as required under this rule, the court refused to consider other contentions under Wyo. R. App. P. 1.03. However, the court refused to impose additional sanctions because of the tenant's pro se status and his presentation of one proper argument for meaningful review. Kinstler v. RTB South Greeley, LTD., LLC, 160 P.3d 1125 (Wyo. 2007).

Judgment of district court was summarily affirmed and sanctions against pro se appellants imposed, where appeal failed to present cogent argument or pertinent authority to support the claims of error, and there was a failure to adequately cite to the record. Baker v. Reed, 965 P.2d 1153 (Wyo. 1998).

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Failure to provide transcript to refute damages award. — Where, in its brief, the contractor set out the contractor's version of what transpired at trial but the contractor failed to provide a transcript from the damages phase of the trial, or some alternative substitute for the transcript, such as a statement of evidence or proceedings, there was nothing in the record to refute the district court's finding on damages, and thus the Wyoming supreme court affirmed the award of damages and held the homeowner was entitled to costs and attorney's fees on appeal. However, the homeowner was not entitled to damages on appeal because the award of costs and attorney fees fully vindicated the supreme court's interest in enforcing the rules of appellate procedure. Chancler v. Meredith, 86 P.3d 841 (Wyo. 2004).

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Quoted in Dechert v. Christopulos, 604 P.2d 1039 (Wyo. 1980); Armed Forces Coop. Insuring Ass'n v. Department of Ins., 622 P.2d 1318 (Wyo. 1980); V-1 Oil Co. v. Ranck, 767 P.2d 612 (Wyo. 1989); Kost v. Thatch, 782 P.2d 230 (Wyo. 1989).

Stated in Mariner v. Marsden, 610 P.2d 6 (Wyo. 1980); Jackson v. State, 624 P.2d 751 (Wyo. 1981); State, Wyo. Game & Fish Comm'n v. Thornock, 851 P.2d 1300 (Wyo. 1993); Osborn v. Painter, 909 P.2d 960 (Wyo. 1996).

Cited in Wood v. City of Casper, 660 P.2d 1163 (Wyo. 1983); Cordova v. Gosar, 719 P.2d 625 (Wyo. 1986); Short v. Spring Creek Ranch, Inc., 731 P.2d 1195 (Wyo. 1987); Waggoner v. GMC, 771 P.2d 1195 (Wyo. 1989); Smithco Eng'g, Inc. v. International Fabricators, Inc., 775 P.2d 1011 (Wyo. 1989); King v. State, 780 P.2d 943 (Wyo. 1989); State ex rel. Wyo. Workers' Comp. Div. v. Halstead, 795 P.2d 760 (Wyo. 1990); Coulthard v. Cossairt, 803 P.2d 86 (Wyo. 1990); Nauman v. CIT Group/Equipment Fin., Inc., 816 P.2d 883 (Wyo. 1991); WR v. Lee, 825 P.2d 369 (Wyo. 1992); Hoke v. Moyer, 865 P.2d 624 (Wyo. 1993); Davis v. Big Horn Basin Newspapers, Inc., 884 P.2d 979 (Wyo. 1994); Earlywine v. Peterson, 885 P.2d 861 (Wyo. 1994); Hamburg v. Heilbrun, 891 P.2d 85 (Wyo. 1995); Vargas-Rocha v. State, 891 P.2d 763 (Wyo. 1995); Thunder Hawk v. Union Pac. R.R., 891 P.2d 773 (Wyo. 1995); Gray v. Wyoming State Bd. of Equalization, 896 P.2d 1347 (Wyo. 1995); Southworth v. State, 913 P.2d 444 (Wyo. 1996); Medrano v. State, 914 P.2d 804 (Wyo. 1996); Dolence v. State, 921 P.2d 1103 (Wyo. 1996); GWJ v. MH, 930 P.2d 371 (Wyo. 1996); Pawlowski v. Pawlowski, 925 P.2d 240 (Wyo. 1996); Painter v. Spurrier, 969 P.2d 548 (Wyo. 1998); Farmer v. State, Dep't of Transp., 986 P.2d 165 (Wyo. 1999); Dewey Family Trust v. Mountain W. Farm Bureau Mut. Ins. Co., 3 P.3d 833 (Wyo. 2000); Mace v. Nocera, 101 P.3d 921 (Wyo. 2004); Nathan v. Am. Global Univ., 113 P.3d 32 (Wyo. 2005); Shelhamer v. Shelhamer, 138 P.3d 665 (Wyo. 2006); Amin v. State, 138 P.3d 1143 (Wyo. 2006); Habco v. L&B Oilfield Serv., 138 P.3d 1162 (Wyo. 2006); Black v. William Insulation Co., 141 P.3d 123 (Wyo. 2006); Hembree v. State, 143 P.3d 905 (Wyo. 2006); Witherspoon v. Teton Laser Ctr., LLC, 149 P.3d 715 (Wyo. 2007); BB v. RSR, 149 P.3d 727 (Wyo. 2007); Vogt v. MBNA Am. Bank, 178 P.3d 405 (Wyo. 2008).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

7.02. Brief of appellee.

The brief of appellee shall conform to the requirements of Rule 7.01, except that a statement of the issues, or of the case, is not required.

Source. — Rule 28(b), F.R.A.P.
Cited in Shelhamer v. Shelhamer, 138 P.3d 665 (Wyo. 2006).

7.03. Reply brief.

(a) Appellant may file a brief in reply which shall comply with the requirements of Rule 7.01 (a), (b), (c), (f), (g), (h), and (i). In lieu of any statement of the issues, the reply brief shall precisely and concisely set forth on the first page those new issues and arguments raised by the brief of the appellee which are addressed in the reply brief. A reply brief is limited to such new issues and arguments, and a failure to comply with these requirements may subject the party to sanctions under these rules including the reviewing court disregarding appellant's reply brief.

(b) If two or more appellees file briefs and new issues and arguments are raised in two or more briefs, the appellant may file a single reply brief addressing those issues. If a single reply brief is filed, the deadline for filing shall be based on the filing of the last brief of appellee.

(Amended May 4, 1999, effective October 1, 1999; amended April 6, 2015, effective July 1, 2015.)

Source. — Rule 28(c), F.R.A.P. — basically.

Reply brief which repeats principal brief disregarded. — A reply brief submitted by counsel which repeated its principal brief was disregarded by the court. Furman v. Rural Elec. Co., 869 P.2d 136 (Wyo. 1994); Idaho Migrant Council, Inc. v. Warila, 890 P.2d 39 (Wyo. 1995).

Additional issues raised. — Wyoming Supreme Court may affirm the judgment of the court below for any reason supported by the record, and the corporation's insistence that appellees were precluded from raising an argument in support of the judgment was contrary to this rule; Wyo. R. App. P. 7.03 plainly contemplated that an appellee, in its brief, may raise additional issues and arguments, and appellees were not required to file a cross-appeal. GOB, LLC v. Rainbow Canyon, Inc., 197 P.3d 1269 (Wyo. 2008).

Applied in Budd-Falen Law Offices, P.C. v. Rocky Mt. Recovery, Inc., 114 P.3d 1284 (Wyo. 2005).

Quoted in W.E. Bill Sauer's Drilling Co. v. Gendron, 720 P.2d 909 (Wyo. 1986).

Cited in Cargill v. State, Dep't of Health, 967 P.2d 999 (Wyo. 1998); Gilbert v. Bd. of County Comm'rs, 232 P.3d 17 (Wyo. 2010); Town of Evansville Police Dep't v. Porter, 256 P.3d 476 (Wyo. 2011).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

7.04. Additional authorities.

When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party may file a Notice of Additional Authority, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the Notice of Additional Authority shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

(Amended May 4, 1999, effective October 1, 1999; amended April 6, 2015, effective July 1, 2015.)

Comment. — The revision adopts the language of Fed. R. App. P. 28(j).

Applied in Wardell v. McMillan, 844 P.2d 1052 (Wyo. 1992); Wilder v. Cody Country Chamber of Commerce, 868 P.2d 211 (Wyo.

1994); Hamburg v. Heilbrun, 889 P.2d 967 (Wyo. 1995).

7.05. Length, format, binding and number of briefs.

(a) Length of Briefs.

(1) Except by permission of the appellate court, principal briefs shall not exceed 70 pages, and reply briefs shall not exceed 20 pages, exclusive of pages containing the title page, table of contents, table of authorities, certificate of service and appendices.

(b) Format of Briefs.

(1) Brief pages shall not exceed 8½ by 11 inches. Margins shall not be less than one inch on all sides;

(2) Text of briefs shall be double-spaced (except quotations of more than 50 words);

(3) Briefs must be in an easily readable font, with no smaller type or font than 13 point.

(4) Footnotes shall be in the same size of type as the text of the brief and double-spaced except quotations of 50 words or more; and

(5) Appendices on legal-sized paper should be reduced to 8½ by 11 inch paper and readily legible.

(c) Binding of briefs.

Briefs shall be bound only at the upper left-hand corner by staple, paper clip or binder clip.

(d) Number of briefs filed is governed by Rule 1.01.

(e) The paper copy of the brief submitted for filing shall be an identical version of the brief electronically filed and accepted by the appellate court except the original signature(s).

(Amended May 4, 1999, effective October 1, 1999; amended April 6, 2015, effective July 1, 2015.)

Comment. — The suggested fonts are included in recognition that most work is now done on word processors rather than typewriters. While the original rule language was intended for typewritten briefs, the number 10 has been interpreted as referring to font sizes which generally produce more than 10 characters per inch and are difficult to read as well as infringing upon intended page limitations for briefs.

Source. — Rule 28(g), F.R.A.P.

Cross References. — For additional requirements for preparing briefs, see Appendix II at the end of this set of rules.

Supreme Court will strike briefs which are not submitted on proper size paper and may in its discretion refuse to grant leave to refile such briefs. Hance v. Straatsma, 721 P.2d 575 (Wyo. 1986).

And may ignore extra pages in brief. — Where the appellant's brief was 77 pages long, seven pages over the limit, the appellate court deliberately ignored pages 71 through 77, a sanction specifically mentioned in Rule 1.02. JWR v. RG, 716 P.2d 984 (Wyo. 1986).

Father's brief violated this rule, as it exceeded 80 pages and was single-spaced, and the court ignored the fourth issue as a result. Olsen v. Olsen, 310 P.3d 888 (Wyo. 2013).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Cited in Nathan v. Am. Global Univ., 113 P.3d 32 (Wyo. 2005).

7.06. Time for filing and serving briefs.

(a) Filing of briefs is subject to Rule 1.01.

(b) Brief of appellant.

(1) Appellant shall file its brief within 45 days after service of the notice that the case is docketed in the appellate court as provided in Rule 6.01 and, in cases where service is not accomplished through CTEF, concurrently serve one copy of that brief on each party.

(c) Brief of appellee.

(1) Appellee shall file, its brief within 45 days after service of appellant's brief and, in cases where service is not accomplished through CTEF, shall concurrently serve one copy on each party.

(d) Reply brief.

(1) Appellant may file its reply brief within 15 days after the service of appellee's brief and, in cases where service is not accomplished through CTEF, shall concurrently serve one copy on each party.

(e) Abbreviated schedule.

(1) The appellate court may order a shorter time to file and serve briefs.

(2) In all cases involving termination of parental rights, adoptions, abuse and neglect, juvenile delinquency and CHINS, the supreme court will not entertain a motion to extend briefing by any party.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 12(d), Sup. Ct.

Summary dismissal for failure to file timely brief, absent excusable neglect. — As a matter of practice, the Supreme Court summarily dismisses all cases in which the appellant fails to file a brief on the date due, even though it may be only one day late, unless the appellant is able to show excusable neglect, such as, failure in the mail service. Elliott v. State, 626 P.2d 1044 (Wyo. 1981).

Excusable neglect is measured on strict standard to take care of genuine emergency conditions such as death, sickness, undue delay in the mail and other situations where such behavior might be the act of a reasonably prudent person under the circumstances. Elliott v. State, 626 P.2d 1044 (Wyo. 1981).

Dismissal for failure to file timely brief. — Where briefs for plaintiff in error are not filed and served within time required by rules, no application for extension is made and granted, and no sufficient excuse for such failure is presented, proceeding in error must, upon motion of adverse party, be dismissed. Grippen v. State, 20 Wyo. 486, 124 P. 764 (1912), rehearing denied, 128 P. 622 (1912) (decided under § 1-415, C.S. 1945).

Where appellant failed to file brief within the 60 days allowed motion to dismiss appeal was granted. Nelson v. Sunset Oil Co., 36 Wyo. 245, 254 P. 127 (1927) (decided under § 1-415, C.S. 1945).

Failure to file briefs within 60 days after filing of appeal record, no extension of time having been asked or granted, constitutes ground for dismissal. "W" Sheep Co. v. Pine Dome Oil Co., 29 Wyo. 59, 210 P. 389 (1922); Brown v. Brown, 29 Wyo. 60, 210 P. 390 (1922) (both decided under § 1-415, C.S.)

And brief stricken. — Brief of plaintiff in error which was not filed within 60 days after filing of petition in error, as required by this rule, was stricken. Brooks v. State, 29 Wyo. 114, 210 P. 944 (1922), and Woodruff v. Cokeville Light & Power Co., 38 Wyo. 70, 264 P. 704 (1928) (both decided under § 1-415, C.S. 1945).

Appellant's brief filed one day after expiration of 60-day period after filing record on appeal was too late. State ex rel. Bishop v. Bramblette, 42 Wyo. 405, 295 P. 800 (1931) (decided under § 1-415, C.S. 1945).

Effect of dismissal. — Dismissal for failure of plaintiff in error timely to file brief and abstract does not affirm judgment so as to prevent commencement of second proceeding in error within statutory time. Stanolind Oil & Gas Co. v. Bunce, 48 Wyo. 517, 49 P.2d 241 (1935) (decided under § 1-415, C.S. 1945).

Where an appeal or writ of error has been dismissed voluntarily or by the court for failure to comply with some requirement of law governing the proceeding rendering the appeal ineffective, a second appeal or writ of error is not barred if taken in due time. Boner v. Fall River County Bank, 25 Wyo. 260, 168 P. 726 (1917) (decided under § 1-415, C.S. 1945).

Extension of time after original filing time has expired. — The Supreme Court has authority to grant an extension of time in which to file a brief after the expiration of the time in which a brief is required by the rules to be filed in extreme cases or for other valid reasons. Spence v. Nicks Motor Co., 68 Wyo. 433, 235 P.2d 346 (1951) (decided under § 1-415, C.S. 1945); In re Savage, 451 P.2d 796 (Wyo. 1969).

Although extension power to be exercised sparingly. — In nonjurisdictional matters the Supreme Court, perhaps, has power to extend the time of filing after the expiration of the time allowed by statute or by rule of the court, but that power should be exercised sparingly and only in extreme cases to prevent an apparent injustice. Martens v. State Hwy. Comm'n, 354 P.2d 222 (Wyo. 1960); Fried v. Guiberson, 28 Wyo. 208, 201 P. 854 (1921) (decided under § 1-415, C.S. 1945).

Insufficient excuse for untimely filing. — Where the only reason given by counsel for not filing his brief within 60 days is error of counsel, there is not a sufficient reason for so extending the time. Martens v. State Hwy. Comm'n, 354 P.2d 222 (Wyo. 1960).

Failure of plaintiffs in error to file briefs within required time is not excused by sickness

and absence of resident attorney, where nonresident attorney should have known time for filing briefs had arrived, knew of resident attorney's absence, and made no effort to ascertain from clerk whether brief had been filed. Boner v. Fall River County Bank, 25 Wyo. 88, 164 P. 1140 (1917) (decided under § 1-415, C.S. 1945).

Or for untimely request for extension of filing time. — The belief of counsel for appellant that opposing counsel would readily agree to an extension was not a sufficient excuse for failure to make application for an extension of time in which to file a brief in time. Spence v. Nicks Motor Co., 68 Wyo. 433, 235 P.2d 346 (1951) (decided under § 1-415, C.S. 1945).

Inability to procure record in time to file briefs within 60 days after filing petition in error does not excuse failure to apply for extension of time within the 60-day period and appeal will be dismissed. Inman v. City of Cheyenne, 40 Wyo. 72, 275 P. 115 (1929) (decided under § 1-415, C.S. 1945).

Effect of failure to file required number of briefs. — Where only one copy of trial briefs is encompassed within a record, the Supreme Court normally would refuse to notice matters not properly presented by the filing of six briefs in accordance with its rules. Budd v. Bishop, 543 P.2d 368 (Wyo. 1975).

Appellant did not file an acceptable brief where the "brief" merely referred to briefs filed with the district court and appearing in the record but did not attach copies. Stephenson v. Mitchell ex rel. Workmen's Comp. Dep't, 569 P.2d 95 (Wyo. 1977).

Time for filing briefs extended by grant of application to supplement record. — An order granting an application to supplement a record on appeal by the addition of the transcript of evidence should also specify that the time for filing and serving briefs would be from the date of filing the supplement to the record rather than from the original filing of the record on appeal. Butler v. McGee, 363 P.2d 791 (Wyo. 1961).

Duty of party to see to service of briefs. — It is duty of party required to file briefs to see to the service thereof: it is not part of the duties of the Supreme Court clerk to see that they are served or mailed, especially when he has not been requested to do so. Ford v. Townsend, 22 Wyo. 397, 143 P. 356 (1914), reh. denied, 143 P. 1199 (1914) (decided under § 1-415, C.S. 1945).

Motion made for order shortening time for filing briefs, under alleged existence of emergency sufficient to justify earlier maturity of cause for hearing, held supported by the record and granted. In re Greybull Valley Irrigation Dist., 48 Wyo. 523, 52 P.2d 410 (1935).

Worker's compensation case. — Rule that in worker's compensation cases brief shall be filed within 15 days after filing petition in error or record on appeal was not invalid as inconsistent with statute providing that record on appeal from compensation award must be filed within 70 days from date of decision and that 15 days shall be allowed thereafter for filing brief. Harvey v. Stanolind Oil & Gas Co., 53 Wyo. 495, 84 P.2d 755 (1938), reh. denied, 86 P.2d 735 (1939) (decided under § 1-415, C.S. 1945).

Ignorance of 15-day rule deemed no excuse. — Failure of compensation claimant to file brief in Supreme Court clerk's office within 15 days after filing record requires dismissal of error proceeding, though neither claimant nor his counsel knew of amendment to court rule requiring brief to be filed within 15 days after filing petition in error. Harvey v. Stanolind Oil & Gas Co., 53 Wyo. 495, 84 P.2d 755 (1938), reh. denied, 86 P.2d 735 (1939) (decided under § 1-415, C.S. 1945).

Applied in Fallis v. Louisiana Pac. Corp., 763 P.2d 1267 (Wyo. 1988); Reisig v. Union Ins. Co., 870 P.2d 1066 (Wyo. 1994).

Stated in Nuspl v. Nuspl, 717 P.2d 341 (Wyo. 1986); Little v. Kobos ex rel. Kobos, 877 P.2d 752 (Wyo. 1994).

Cited in Geringer v. Bebout, 10 P.3d 514 (Wyo. 2000); Shelhamer v. Shelhamer, 138 P.3d 665 (Wyo. 2006).

Law reviews. — For case note, "Criminal Procedure — The Elimination of Dismissals for Lack of Prosecution from Wyoming Intermediate Appeals. Wood v. City of Casper, 660 P.2d 1163 (Wyo. 1983)," see XIX Land & Water L. Rev. 301 (1984).

Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

7.07. Service of briefs on attorney general.

In all cases in which the state is a party, or in which any of its property is involved, or in which a statute, ordinance or franchise is alleged to be unconstitutional, including criminal cases upon reserved questions, and cases arising upon exceptions taken in a criminal case by the district attorney, counsel shall also serve a copy of the brief upon the attorney general.

Source. — Former Rule 12(e), Sup. Ct.

Scope of rule. — This rule expands the scope of former Supreme Court Rule 12(e) to include any appeal in which a party questions the constitutionality of a statute, and the fact that the language of the rule parallels the language of § 1-37-113 does not imply any intent to limit the scope of the rule to constitu-

tional challenges which arise by the way of declaratory judgments, as the need for the state's chief legal officer to protect the public interest does not depend upon the classification of the proceeding in which the constitutional challenge arises. Ririe v. Board of Trustees, 674 P.2d 214 (Wyo. 1983).

Belated compliance. — Although failure to comply with this rule can render an appeal vulnerable to dismissal, appellant's failure was cured by his belated compliance, so that in fact the court was not asked to render a decision on the constitutionality of a state statute without the benefit of the viewpoint of the attorney general. Ririe v. Board of Trustees, 674 P.2d 214 (Wyo. 1983).

Effect of failure to properly serve copies of brief. — In criminal case in which state was represented by attorney general on appeal, failure of appellant to serve copy of his brief on attorney general as provided by court rule, required dismissal of appeal. State v. De Wald, 50 Wyo. 39, 57 P.2d 685 (1936) (decided under § 1-416, C.S. 1945).

Where record lacked bill of exceptions and plaintiff in error did not file nor serve abstract of record and brief upon attorney general or prosecuting attorney within 60 days, writ of error based solely on overruling of motion for new trial must be dismissed. Thayer v. State, 55 Wyo. 50, 95 P.2d 80 (1939) (decided under § 1-416, C.S. 1945).

Failure to serve brief on attorney general is sufficient ground for dismissal on appeal. State v. Kelly, 33 Wyo. 420, 240 P. 207 (1925) (decided under § 1-416, C.S. 1945).

Failure to serve brief upon attorney general in worker's compensation case. — Where no brief of any kind was ever served upon the attorney general of Wyoming so that he could protect the interests of the state, in connection with its worker's compensation fund, in a case to be decided under the Worker's Compensation Act, wherein the state is a necessary party, the case must be dismissed for failure to comply with the Rules of the Supreme Court. In re Hughes, 355 P.2d 204 (Wyo. 1960).

Acceptance of service not waiver of time limits. — Merely by accepting service of brief of plaintiff in error in criminal case, attorney general does not waive the failure to file and serve such brief within time required by rules of court. Grippen v. State, 20 Wyo. 486, 124 P. 764 (1912), reh. denied, 128 P. 622 (1912) (decided under § 1-416, C.S. 1945).

Nor filing motion to dismiss. — Attorney general does not waive the failure of plaintiff in error in criminal case to file and serve his brief within time required by moving to dismiss proceedings in error on the ground that bill of exceptions was insufficient. Grippen v. State, 20 Wyo. 486, 124 P. 764 (1912), reh. denied, 128 P. 622 (1912) (decided under § 1-416, C.S. 1945).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

7.08. Briefs in criminal cases upon exceptions of district attorney.

In criminal cases arising upon the filing of a bill of exceptions by the district attorney, the time for filing and serving briefs shall be governed by Rule 7.06, computed from the time the bill is filed with the supreme court. In case of delay in the appointment of counsel to argue the case against the exceptions beyond the time allowed for the briefs on behalf of the state, counsel shall have the full time allowed that side after the appointment and service of the opposing brief.

Source. — Former Rule 13(f), Sup. Ct.

7.09. Pleadings in original cases.

(a) In all cases originally commenced in the supreme court, the party shall file that pleading along with the filing fee required by Rule 2.09 or a motion to proceed in forma pauperis, with the clerk of the supreme court. Any party against whom such relief is sought shall file such response and briefs as the court may direct.

(b) Rule 1.01 applies.

(Amended April 6, 2015, effective July 1, 2015.)

Noncompliance where no brief filed. — A petitioner has failed to comply with the requirements of former Rule 12(h), Sup. Ct., if he has not filed a brief supporting his position. Storm v. Sheriff ex rel. Dist. Court, 478 P.2d 59 (Wyo. 1970).

7.10. Extension of time.

(a) An extension of time in which to file briefs may only be obtained from the appellate court upon a motion certifying good cause made before the time to file the brief expires. A motion for extension of time shall be filed at least 3 working days before the brief is due. If the motion is filed less than 3 working days before the brief is due, then the motion shall detail why the party was unable to make the request in a timely manner. Motions filed in the district court must be accompanied by an order in the proper form.

(b) Good cause, as used in this rule, includes such things as a death in counsel's immediate family, serious illness, or other unanticipated circumstances which justify delay of the appellate process. Generalities such as "counsel is too busy" are not a sufficient reason for granting an extension.

(c) Absent extraordinary circumstances, motions to extend the time to file reply briefs will not be considered.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 12(i), Sup. Ct.

No extension if period has elapsed. — There can be no extension of a filing period which has already elapsed, as a valid order extending the time can only be made prior to the expiration of the time allowed by a previous court order. Elliott v. State, 626 P.2d 1044 (Wyo. 1981).

Court may extend time for filing. — By consent of parties, or for good cause shown, before expiration of the time allowed, Supreme Court or a justice thereof in vacation may extend time for filing briefs. Fried v. Guiberson, 28 Wyo. 208, 201 P. 854 (1921) (decided under § 1-420, C.S. 1945).

Insufficient excuse for untimely filing. — Failure to file brief and abstract on sixtieth day after record came into Supreme Court clerk's office, through inadvertence, is not excused and appeal will be dismissed. In re Nat'l Bldg. & Loan Ass'n of Am., 52 Wyo. 195, 72 P.2d 1113 (1937) (decided under § 1-420, C.S. 1945).

Since timely application for extension of time to file briefs is proper remedy where bill of exceptions is incomplete, or cannot be procured or filed before expiration of time for filing briefs, excuse that bill of exceptions was incomplete, is insufficient. Grippen v. State, 20 Wyo. 486, 124 P. 764 (1912), reh. denied, 128 P. 622 (1912).

That counsel for plaintiff in error who had completed brief two days before expiration of time for filing and serving same, was unable to find opposing counsel to serve them with copy until last day was not sufficient excuse for failure to file briefs within prescribed time. Small v. Johnson County Sav. Bank, 16 Wyo. 126, 92 P. 289 (1907) (decided under § 1-420, C.S. 1945).

Mere filing of application for extension of time before expiration of period allowed by statute, without submitting it to court until after expiration of such period, does not extend power of court. Coffee v. Harris, 27 Wyo. 394, 197 P. 649 (1921), reh. denied, 27 Wyo. 494, 199 P. 931 (1921) (decided under § 1-420, C.S. 1945).

And extension after briefs due only in extreme cases. — Application for extension of time within which to file briefs after expiration of time allowed for filing briefs will not be granted except in extreme cases. Brown v. Brown, 29 Wyo. 60, 210 P. 390 (1922) (decided under § 1-420, C.S. 1945).

As must show counsel prevented from seeking extension. — In absence at least of showing that counsel was unavoidably prevented from seeking extension of time for filing briefs, and default occurs, party cannot be permitted to file briefs after expiration of time allowed, over objection of adverse party and motion to dismiss having been filed. Robertson v. Shorow & Co., 10 Wyo. 368, 69 P. 1 (1902) (decided under § 1-420, C.S. 1945).

Cited in Wood v. City of Casper, 660 P.2d 1163 (Wyo. 1983); Shelhamer v. Shelhamer, 138 P.3d 665 (Wyo. 2006).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

7.11. Failure to file.

(a) If in any case the party holding the affirmative fails to file a brief within the time fixed by law or the rules herein, the case shall be dismissed on the ground of want of prosecution.

(b) When the party holding the negative has failed to file and serve a brief as is required by these rules, and the brief of the party holding the affirmative has been duly

filed and served within the time required, the party holding the affirmative may submit the case, with or without oral argument, and the other party shall not be heard. (Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 12(j), Sup. Ct. — with deletion of the final paragraph to avoid redundancy.

Summary dismissal for failure to file timely brief, absent excusable neglect. — As a matter of practice, the Supreme Court summarily dismisses all cases in which the appellant fails to file a brief on the date due, even though it may be only one day late, unless the appellant is able to show excusable neglect, such as, failure in the mail service. Elliott v. State, 626 P.2d 1044 (Wyo. 1981).

Excusable neglect is measured on strict standard to take care of genuine emergency conditions such as death, sickness, undue delay in the mail and other situations where such behavior might be the act of a reasonably prudent person under the circumstances. Elliott v. State, 626 P.2d 1044 (Wyo. 1981).

Dismissal proper for failure to file and serve briefs. — Where time for filing and serving briefs by plaintiff in error had been extended by order, but briefs were not filed and served within the time allowed by such order, there is nothing for court to do but dismiss the cause. Sheehan v. First Macy Ditch Co., 12 Wyo. 176, 73 P. 964 (1903) (decided under § 1-421, C.S. 1945).

Failure to serve briefs upon a party would make an appeal subject to dismissal. Carr v. Hopkin, 556 P.2d 221 (Wyo. 1976).

Failure to file briefs or to apply for, or secure, extension of time in accordance with this rule, is sufficient ground for sustaining motion to dismiss. Atkins v. Hunsaker, 29 Wyo. 411, 213 P. 757 (1923) (decided under § 1-421, C.S. 1945).

Where, without presenting any excuse, plaintiff in error failed to file briefs and did not apply for extension of time, motion to dismiss for that reason must be granted. Lobell v. Stock Oil Co., 21 Wyo. 342, 132 P. 433 (1913) (decided under § 1-421, C.S. 1945).

Where brief in criminal case was not filed after filing of petition in error, but motion to dismiss for failure so to file and serve brief was, counsel for plaintiff in error not appearing to resist the motion, dismissal of case was proper. Yeager v. State, 22 Wyo. 194, 136 P. 1195 (1913) (decided under § 1-421, C.S. 1945).

Failure of appellant to file brief within time prescribed by rule requires dismissal. Lawer Auto Supply v. Teton Auto. Co., 43 Wyo. 349, 5 P.2d 306 (1931) (decided under § 1-421, C.S. 1945).

And where brief stricken from files. — Where bill of exceptions and brief filed on behalf of plaintiff in error have been stricken from the files, case is in condition for dismissal, though such dismissal was not asked for by motion. Brooks v. State, 29 Wyo. 114, 210 P. 944 (1922), and Woodruff v. Cokeville Light & Power Co., 38 Wyo. 70, 264 P. 704 (1928) (both decided under § 1-415, C.S. 1945) (decided under § 1-421, C.S. 1945).

Inadvertence does not prevent dismissal. — Where when filing briefs counsel left with clerk extra copy of briefs which he intended to request clerk to mail to counsel for defendants in error, but through oversight neglected so to request, his inadvertence did not prevent dismissal of proceedings in error. Ford v. Townsend, 22 Wyo. 397, 143 P. 356 (1914), reh. denied, 143 P. 1199 (1914) (decided under § 1-421, C.S. 1945).

But court not deprived of jurisdiction. — Failure by plaintiff in error to file or serve his brief within time required by the rules will not deprive court of jurisdiction, but such failure may be waived. Nicholson v. State, 23 Wyo. 482, 153 P. 749 (1915) (decided under § 1-421, C.S. 1945).

Second proceeding. — Where proceedings in error were dismissed for failure to file briefs within time required by rules and before expiration of 30 days allowed for application for rehearing, second proceeding in error was commenced and record refiled in Supreme Court, it was unnecessary to return papers to district court clerk for recertification and return to Supreme Court. Boner v. Fall River County Bank, 25 Wyo. 260, 168 P. 726 (1917) (decided under § 1-421, C.S. 1945).

Applied in Hayes v. State, 599 P.2d 569 (Wyo. 1979); Irwin v. State, 658 P.2d 64 (Wyo. 1983); Reed v. Hunter, 663 P.2d 513 (Wyo. 1983); Fallis v. Louisiana Pac. Corp., 763 P.2d 1267 (Wyo. 1988); Richardson v. Richardson, 868 P.2d 259 (Wyo. 1994).

Quoted in Nuspl v. Nuspl, 717 P.2d 341 (Wyo. 1986).

Cited in Meeker v. Lanham, 604 P.2d 556 (Wyo. 1979); Swasso v. State ex rel. Worker's Comp. Div., 751 P.2d 887 (Wyo. 1988); NL Indus., Inc. v. Dill, 769 P.2d 920 (Wyo. 1989); Osborn v. Emporium Videos, 848 P.2d 237 (Wyo. 1993); State ex rel. Mahoney v. St. John, 964 P.2d 1242 (Wyo. 1998); Shelhamer v. Shelhamer, 138 P.3d 665 (Wyo. 2006).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

7.12. Amicus curiae.

(a) A brief of an amicus curiae may be filed only by leave of court granted on motion or the request of the appellate court.

(b) The motion must be accompanied by a separate proposed brief and state:

(1) the movant's interest in the issues raised in the case;

(2) the reasons an amicus brief is appropriate and desirable;

(3) the view of the movant with respect to whether a party is not represented competently or is not represented at all;

(4) the interest of the amicus in some other case that may be affected by the decision in the case before the court; and

(5) any unique information or perspective the amicus has that can be of assistance to the court beyond that the lawyers for both parties can provide.

(c) The amicus brief shall comply with Rule 7.01 except that no statement of issues, statement of the case, or an appendix shall be required. In addition the cover page must identify the party or parties supported and indicate whether the brief supports affirmance or reversal.

(d) The amicus brief shall not exceed 35 pages, and shall otherwise conform to the requirements of Rule 7.05.

(e) An amicus curiae must file its motion not later than 11 days after the principal brief of the party being supported is filed. An amicus curiae who does not support either party must file its brief not later than 11 days after the first brief of any party is filed.

(f) An amicus curiae is not permitted to file a reply brief.

(g) The motion will be considered by the court and, if granted, the proposed brief shall be filed as part of the case. If the motion is denied, then the proposed brief shall not be filed and will not be made part of the case.

(h) Participation in oral arguments by the amicus curiae shall be granted only with the court's permission and the consent of the party supported, and only for extraordinary reasons with the time used to be charged against the party whose contentions amicus curiae supports.

(Amended May 4, 1999, effective October 1, 1999; amended April 6, 2015, effective July 1, 2015.)

Source. — Rule 29, F.R.A.P.

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Am. Jur. 2d, ALR and C.J.S. references. — 4 Am. Jur. 2d Amicus Curiae § 1 et seq.

7.13. Guardian ad litem.

(a) A lawyer appointed as a guardian *ad litem* (GAL) by a district court, or a lawyer retained to represent a GAL, may participate in any appeal involving the matter for which the GAL has been appointed.

(b) *Brief of GAL.* — A GAL may submit a brief in support of any party to an appeal. If the GAL does not support any party, the GAL may submit a brief only with the permission of the court, which may be granted upon motion of the GAL made on or before the time specified in Rule 7.12. All provisions of Rule 7.12 shall apply to a GAL who does not support any party. If the GAL supports a party:

(1) The brief of the GAL shall be submitted on or before the time specified for the party whom the GAL supports.

(2) The brief of the GAL shall comply with Rule 7.01, except that no statement of issues, statement of the case, or an appendix shall be required. In addition, the cover page must identify that the brief is being submitted by a GAL and indicate whether the brief supports affirmance or reversal.

(3) The brief of the GAL shall not exceed 35 pages, and shall otherwise conform to the requirements of Rule 7.05.

(4) A GAL who supports an appellant is not permitted to file a reply brief.

(c) *Oral argument.* — Participation in oral argument by the GAL shall be granted only with the court's permission and only for extraordinary reasons. The GAL's argument shall not exceed 10 minutes, which shall be in addition to the time allotted to the parties pursuant to Rule 8.02.

(Added July 26, 2006, effective December 1, 2006; amended April 6, 2015, effective July 1, 2015.)

Rule 8. Oral arguments.

8.01. Settings and appearance.

(a) In the supreme court there will be two disposition dockets:

(1) *The brief only docket.* — Cases assigned to this docket will be considered submitted upon entry of an order assigning case to the brief only docket, without oral argument; and

(2) *The oral argument docket.* — Cases assigned to this docket will not be considered submitted until the oral argument has been held.

(b) Any party may request submission of its case upon its brief without oral argument upon written notice to the clerk.

(c) The clerk of the appellate court shall promptly notify all parties if a case is assigned to the brief only docket. Any party may move, with good cause shown, not later than 15 days after the entry of the order assigning a case to the brief only docket, to have the case reassigned to the argument docket. The case may be reassigned in the discretion of the appellate court.

(d) The clerk shall notify parties of cases set for oral argument. A motion to vacate an oral argument may be considered by the court without hearing. If counsel has a conflict with other court proceedings, then the motion to vacate oral argument shall include the reasons why those proceedings should take priority over the case before the appellate court. In cases where two or more attorneys represent a party or parties and one or more of the attorneys is unavailable for oral argument, the court expects appearance of other counsel of record.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 4, Sup. Ct. — with modification.

Cited in Wood v. City of Casper, 660 P.2d 1163 (Wyo. 1983).

Law reviews. — For case note, "Criminal Procedure — The Elimination of Dismissals for Lack of Prosecution from Wyoming Intermediate Appeals. Wood v. City of Casper, 660 P.2d 1163 (Wyo. 1983)," see XIX Land & Water L. Rev. 301 (1984).

Am. Jur. 2d, ALR and C.J.S. references. — Existence and extent of right of litigant in civil case, or of criminal defendant, to represent himself before state appellate courts, 24 ALR4th 430.

8.02. Procedure; time allowed for argument.

(a) In oral argument, appellant shall be entitled to the opening. Appellee may then be heard. Appellant may then conclude. Unless otherwise ordered by the court, each side may not exceed 30 minutes in argument. If more time is desired, the request must be made by filing a motion no less than 15 days before oral argument. The court may order additional time as it deems proper.

(b) When two or more cases are consolidated or otherwise combined for oral argument, it will be limited to 1 hour unless otherwise ordered by the court. If there are multiple appellants or appellees, 30 minutes is allotted for each side and the attorneys are expected to divide the time.

Note. — The reduction in time for oral arguments from forty-five (45) to thirty (30) minutes is comparable with the comparison states and the federal rule.

Source. — Former Rule 5, Sup. Ct.

(Amended July 26, 2006, effective December 1, 2006; amended April 6, 2015, effective July 1, 2015.)

The 2006 amendment inserted the third sentence.

Law reviews. — For case note, "Criminal Procedure — The Elimination of Dismissals for Lack of Prosecution from Wyoming Intermediate Appeals. Wood v. City of Casper, 660 P.2d 1163 (Wyo. 1983)," see XIX Land & Water L. Rev. 301 (1984).

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appellate Review §§ 579 to 590.

5 C.J.S. Appeal and Error §§ 668 to 671.

Rule 9. Decisions, rehearing, mandate.

9.01. Opinions.

The decision of the appellate court shall be set forth in a written opinion or order and filed with the clerk.

Source. — Former Rule 13, Sup. Ct.

Cross References. — For statutory provision requiring decisions of Supreme Court to be in writing, see § 5-2-110. As to authority of Supreme Court to contract for publication of its opinions, see § 5-2-401.

Purpose of mandate. — The mandate serves two purposes: (1) it communicates the decision and directions of the appellate court to the lower court, and (2) it returns to the court below the proceedings that have been brought up by the appeal, revesting jurisdiction in the lower court. Gillis v. F & A Enters., 934 P.2d 1253 (Wyo. 1997).

Statute of limitations. — When a new cause of action is created by the reversal of a judgment on appeal, the statute of limitations for that action begins to run on the date the written appellate opinion is issued. Gillis v. F & A Enters., 934 P.2d 1253 (Wyo. 1997).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

9.02. Reversal in part.

If a judgment or appealable order is reversed in part, for error relating only to an issue which is not dependent for its proper trial on any other issue or issues found to have been properly tried, then a partial new trial may be directed by the appellate court, if a trial on that issue does not prejudice or work an injustice on any party.

Source. — Former Rule 72(h), W.R.C.P.

Limitations on judicial review. — Wyoming Supreme Court was justified in accepting a utility company's appeal of an order from the Public Service Commission denying its request for a surcharge to recover the cost of increased power requirements from retail customers, pursuant to W.R.A.P. 9.02, even though the order was not appealed in its entirety because the issues were sufficiently distinct, providing that the court's analysis was carefully limited to the specific legal challenges brought by the utility company. PacifiCorp v. PSC, 103 P.3d 862 (Wyo. 2004).

9.03. Proceedings after reversal.

When a judgment or an appealable order is reversed in the appellate court, either in whole or in part, the court reversing shall proceed to render that judgment as the trial court should have rendered, or remand the cause to the trial court for judgment or additional proceedings as the appellate court may direct. If an appellate court reverses or affirms the judgment or appealable order, it shall not issue execution in causes that are brought before it but shall send a mandate to the trial court, as the case may require, for execution, and the trial court to which the mandate is sent shall proceed in the same manner as if the judgment or appealable order had been rendered in that court.

Source. — Former Rule 72(i), W.R.C.P. — with a minor deletion.

Modification of damages judgment inappropriate on appeal. — In a negligence ac-

tion against the state, where the jury found the state to be 100% negligent but awarded plaintiff only 30% of its damages, and there was no instruction given to the jury that would permit an apportionment of damages, it was not appropriate on appeal to modify the judgment; the case was remanded for a new trial on the question of damages. Martinez v. City of Cheyenne, 791 P.2d 949 (Wyo. 1990).

Cited in Gillis v. F & A Enters., 934 P.2d 1253 (Wyo. 1997).

9.04. Harmless error.

Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded by the reviewing court.

Source. — Former Rule 49(a), W.R. Cr. P.

This rule is merely declaratory of old principles of law and does not alter or diminish the substantive law of this state as it previously existed. ABC Bldrs., Inc. v. Phillips, 632 P.2d 925 (Wyo. 1981).

Erroneous admission of evidence harmful. — Error in admitting the evidence was prejudicial to defendant, as the only issue in play was whether defendant possessed the drugs with an intent to distribute, the volume of improper admitted evidence was substantial, and it was clear that the prosecution intended to use the evidence of that transaction to prove that defendant had provided the drugs to a woman who had possessed the drugs behind the hotel. Overson v. State, — P.3d —, 2017 Wyo. LEXIS 4 (Wyo. 2017).

Error must be injurious or prejudicial to warrant reversal. Spilman v. State, 633 P.2d 183 (Wyo. 1981).

An error to warrant reversal must be prejudicial and affect the substantial rights of an appellant. ABC Bldrs., Inc. v. Phillips, 632 P.2d 925 (Wyo. 1981).

Although it could be argued that the district court should have ordered appellant to pay public defender fees as well as restitution, because appellant benefitted from that claimed error, he could not obtain a reversal of the judgment for an error in his favor. Chapman v. State, 300 P.3d 864 (May 10, 2013).

Appellant has burden of establishing that error is prejudicial or injurious and warrants reversal. Spilman v. State, 633 P.2d 183 (Wyo. 1981); State ex rel. Wyo. Workers' Comp. Div. v. Taffner, 821 P.2d 103 (Wyo. 1991).

Even if a district court erred by admitting testimony concerning the events surrounding an arrest in violation of Wyo. R. Evid. 402 and Wyo. R. Evid. 403, there was no reversible error since defendant did not show that the error was prejudicial or that a substantial right was adversely affected. Gabbert v. State, 141 P.3d 690 (Wyo. 2006).

Show cause hearing held on less than fifteen days notice was harmless error. — Although holding a show cause hearing five days after the condemnees were served with the condemnor's motion for immediate entry, despite the condemnees' objection, was error, the error was not reversible as the condemnees did not address on appeal the nature of any harm they may have incurred as a result of the district court's decision to hold the hearing over their objection. Conner v. Bd. of County Comm'rs, 54 P.3d 1274 (Wyo. 2002).

Rejection of expert's testimony harmless error where trial outcome not affected. — Rejection of expert's testimony as unqualified in a particular area, even if erroneous, would be harmless error where the disputed evidence was a small part of the total trial, the trial to the court was lengthy and complicated, and there was a vast amount of expert testimony adduced, including that of the expert in question on other matters, so that the exclusion complained of could hardly have affected the outcome of the trial. Herman v. Speed King Mfg. Co., 675 P.2d 1271 (Wyo. 1984).

Errors in instructions deemed not injurious or prejudicial are no cause for reversal, and the appellant has the burden of showing harmful error. Mainville v. State, 607 P.2d 339 (Wyo. 1980).

Jury instructions. — Although the district court erred by instructing the jury as to common law parental duties that were not encompassed within the charged crime of felony murder, the error was harmless because the completed verdict form showed juror unanimity as to defendant's guilt on all of the theories properly alleged. The judgment and sentence had to be amended to reflect the fact that only one charge was brought, that defendant was bound over and arraigned and pled to only one charge, and that he was therefore convicted of only one charge. Yellowbear v. State, 174 P.3d 1270 (Wyo. 2008).

Jury instruction on the larceny portion of the crime of robbery that stated "taking or carrying" rather than the proper "taking and carrying" was harmless error; it was not disputed that defendant did "take and carry away" money. Jones v. State, 278 P.3d 729 (Wyo. 2012).

Vouching testimony harmless error. — In a case in which defendant was convicted of two counts of first degree sexual abuse of a minor, defendant was not prejudiced by a prosecution witness's testimony in which the witness testified that the victim's interview was "very believable." In light of the evidence against defendant, it could not be said that the

jury could have found differently in the absence of the improper testimony. Sullivan v. State, 247 P.3d 879 (Wyo. 2011).

Reference to polygraph. — In a case in which defendant was convicted of two counts of first degree sexual abuse of a minor, a prosecution witness's reference to a polygraph did not require automatic reversal of defendant's convictions. There was no prejudicial inference from the witness's remarks, because there was no explicit statement that there was a "refusal" to take a polygraph. Sullivan v. State, 247 P.3d 879 (Wyo. 2011).

Harmless error applied to limiting instructions. — Established rules with regard to harmless error should be applied in cases which involve limiting instructions. Nava v. State, 904 P.2d 364 (Wyo. 1995).

Harmless error standard did not apply to a question of law. — When the district court supplemented the administrative record in a workers' compensation case with the federal trial testimony of witnesses who indicated that appellee was injured during the course and scope of his employment, the district court erred by the failing to remand the case to the Office of Administrative Hearings for consideration of the supplemented evidence. The harmless error standard of review set forth in this rule did not apply; because the issue involved the construction and interpretation of a court rule, it was a question of law subject to de novo review. Mullinax Concrete Serv. Co. v. Zowada, 243 P.3d 181 (Wyo. 2010).

Juror selection error must be harmful. — In defendant's sexual exploitation case, although the trial court erred by denying a challenge for cause to a juror because there was no statement from the juror that he would be able to consider the case only on the evidence presented in court under the law, as instructed, without regard to his stated bias, the error was not prejudicial to defendant. There was nothing to indicate that any of the jurors who served on the panel were not qualified to serve. All of the jurors including the two identified by defendant as likely recipients of a peremptory challenge if he had had one available were passed for cause; since there is no demonstration that the jury was not impartial and that defendant was denied a fair trial, he could not meet his burden of showing harmful error. Klahn v. State, 96 P.3d 472 (Wyo. 2004).

Defendant's convictions for possession of methamphetamine with intent to deliver were proper because the supreme court was unable to conclude that the jury selected violated the crux of the random selection requirement, although it might not have been fully faithful to the spirit of that time-honoured standard. To the extent that its use was an improper deviation from what the governing statutes required, the error, if any, was harmless because the supreme court was unable to identify an irregularity that affected defendant's substantial rights. White v. State ex rel. Wyo. DOT, 210 P.3d 1096 (Wyo. 2009).

When verdict harmful. — For an error to be harmful, there must be a reasonable possibility that, in the absence of error, the verdict might have been more favorable to a party. ABC Bldrs., Inc. v. Phillips, 632 P.2d 925 (Wyo. 1981); Miller v. State, 755 P.2d 855 (Wyo. 1988).

The jury selected did not violate the crux of the random selection requirement. — Defendant's convictions for possession of methamphetamine with intent to deliver were proper because the supreme court was unable to conclude that the jury selected violated the crux of the random selection requirement, although it might not have been fully faithful to the spirit of that time honored standard. To the extent that its use was an improper deviation from what the governing statutes required, the error, if any, was harmless because the supreme court was unable to identify an irregularity that affected defendant's substantial rights. Williams v. State. ex rel. Wyo. Workers' Safety & Comp. Div. (In re Worker's Compensation Claim), 205 P.3d 1024 (Wyo. 2009).

Vouching testimony not harmless error. — In a sexual assault on a child case, a court's error in admitting an expert's testimony regarding an interview with the victim that included "truthfulness criteria" was not harmless because the expert's "truthfulness criteria" testimony and her assessment of the victim's credibility based on the content of the victim's interview responses directly vouched for the victim's credibility. Seward v. State, 76 P.3d 805 (Wyo. 2003).

Improper inclusion of name on verdict form harmless. — The improper inclusion on a verdict form of the name of a nonactor with no possible liability is a harmless error where the jury finds zero negligence as to that person and, consequently, the outcome is the same as though his name had not been on the verdict form. ABC Bldrs., Inc. v. Phillips, 632 P.2d 925 (Wyo. 1981).

Refusal to consider intervening with execution sale harmless error where no resulting injustice. — Although the trial judge's statement that he did not think he had the authority to intervene with the execution sale of a federal judgment — which was purchased for $250 then settled for $80,000 — may have been error, since district courts have the equitable power to restrain execution upon a judgment which would result in an injustice, such error was rendered harmless by the judge's subsequent written order which found that the value of the judgment was unknown beyond the amount realized at the execution sale and that the eventual settlement amount received was the result of an increase in value after its execution sale. Wheatland Cold Storage & Meat Processing, Inc. v. Wilkins, 705 P.2d 316 (Wyo. 1985).

For error to be regarded as harmful and

reversible, there must be a reasonable possibility that, in the absence of the error, the verdict might have been more favorable to the defendant. Trujillo v. State, 750 P.2d 1334 (Wyo. 1988).

Testimony by a codefendant/coconspirator. — Although it was error for a juvenile court to allow testimony by a codefendant/coconspirator that he had been punished for the same violation of the criminal statute, the error was harmless because of the overwhelming evidence that established the appellant's participation in a conspiracy to set a fire. KAA v. State, 18 P.3d 1159 (Wyo. 2001).

Admitting evidence of defendant's prior arrest for disturbing the peace at her trial for attempted robbery was harmless error where the reference to the arrest was momentary and not the subject of extensive inquiry by the prosecutor, and the evidence establishing the circumstances surrounding the attempted robbery and the identity of the defendant as the perpetrator was relatively strong. Jones v. State, 735 P.2d 699 (Wyo. 1987).

Admission of irrelevant testimony harmless error. — Testimony from defendant's former employer that she fired him three years previous because he was in a physical altercation with another employee and from a former co-employee regarding occasional derogatory comments defendant made was not relevant to prove or disprove any of the elements of first-degree murder or its lesser-included offenses, and the trial court abused its discretion by allowing the testimony into evidence; however, the error was harmless where (1) defense counsel effectively neutralized the suggestion that defendant was violent or prone to vengeance on the cross-examination of both witnesses, (2) defendant failed to show how he was prejudiced by the alleged improper testimony, and (3) the jury heard defendant's own statement to the police wherein he admitted he shot the victim in the face after an argument concerning his giving the victim a meager tip for the delivery of a pizza. Wilks v. State, 49 P.3d 985 (Wyo. 2002).

Admission of discoverable statements harmless error. — Where no order for discovery and inspection was ever issued by the court because the state agreed to permit free inspection of its file and to provide the defense with an exhaustive list of proposed and potential witnesses, and the statements made by the defendant were not in the file and would have been discoverable only upon colloquy with the investigating officer, the admission of the statements was, at worst, harmless error. Pearson v. State, 818 P.2d 1144 (Wyo. 1991).

Admission of hearsay testimony harmless error. — Admission of hearsay testimony concerning deceased declarant's statements about how defendant was handling her funds was harmless, where testimony simply corroborated the wealth of appropriate evidence already presented. Clark v. Gale, 966 P.2d 431 (Wyo. 1998).

In ruling on a petition to modify child support, the district court did not err by admitting letters from contractors stating they had no work available for the father. While the mother made a hearsay objection, the letters did nothing more than corroborate the father's testimony; therefore, admission of the letters was harmless for purposes of this rule. Lauderman v. State, 232 P.3d 604 (Wyo. 2010).

In a case where defendant was charged with being an accessory before the fact to arson, several statements relating to defendant's involvement were properly introduced into evidence under Wyo. R. Evid. 801(d)(2)(E) since they were made during and in the furtherance a conspiracy; it did not matter that the persons testifying were not members of the conspiracy. Even though some hearsay testimony was admitted regarding defendant's motive, there was no harm since the evidence was cumulative of other testimony offered. Callen v. State, 192 P.3d 137 (Wyo. 2008).

Irrelevant testimony by physician was harmless error. — Even though a physician's testimony concerning his treatment of a witness after the fight should not have been admitted because it was not relevant under Wyo. R. Evid. 401, as defendant was not charged with assaulting the witness, and the evidence was not admissible to rehabilitate the witness's credibility, the error was harmless because the witness made it clear that defendant did not attack him or cause his injuries, and therefore testimony about the extent of his injuries could not reflect badly on defendant or unfairly turn the jury against him. Evenson v. State, 177 P.3d 819 (Wyo. 2008).

Admission of evidence of deceased's pregnancy harmless error. — Although evidence of the deceased's pregnancy was irrelevant, as not making any fact of consequence to the determination of defendant's guilt more or less probable, and should have been excluded from defendant's trial for aggravated homicide by vehicle and two counts of reckless endangerment, the error, though prejudicial, was harmless as the evidence against defendant was overwhelming and strongly supported by multiple eyewitnesses. Orona-Rangal v. State, 53 P.3d 1080 (Wyo. 2002).

Exclusion of hearsay testimony harmless error. — Because an employer was permitted to introduce exhibits documenting complaints from others concerning an employee who was fired, and the employer called five witnesses to testify concerning their experiences working with the employee, any error that occurred in the trial court's refusal to allow certain similar proposed testimony on the grounds of hearsay was harmless. Life Care Ctrs. of Am., Inc. v. Dexter, 65 P.3d 385 (Wyo. 2003).

Where prosecutorial misconduct al-

leged. — Whether prosecutorial misconduct has been reviewed on the basis of harmless error, Rule 9.04, or on the basis of plain error, Rule 9.05, the focus is on whether such error affected the accused's substantial rights. Earll v. State, 29 P.3d 787 (Wyo. 2001).

Although a prosecutor committed misconduct by asking defendant "were they lying" questions, the error was harmless because the circumstantial evidence contradicted defendant's testimony and the evidence was sufficient to sustain the convictions even taking into account the prejudicial effect of the prosecutor's cross-examination. Jensen v. State, 116 P.3d 1088 (Wyo. 2005).

Prosecutor's repeated attempts to introduce evidence of prior bad acts combined with the prosecutor's repetition of inaudible testimony from the state's prime witness constituted prosecutorial misconduct requiring reversal and remand for a new trial. Simmons v. State, 72 P.3d 803 (Wyo. 2003).

Whether prosecutorial misconduct is reviewed on the basis of harmless error under W.R.Cr.P. 52(a) and W.R.A.P. 9.04 or on the basis of plain error under W.R.Cr.P. 52(b) and W.R.A.P. 9.05, an appellate court focuses on whether such error affected the accused's substantial rights. Before an appellate court will hold that an error has affected an accused's substantial right, thus requiring reversal of a conviction, it must conclude that, based on the entire record, a reasonable possibility exists that, in the absence of the error, the verdict might have been more favorable to the accused. White v. State, 80 P.3d 642 (Wyo. 2003).

Where defendant fired two shots at police officers and was subsequently convicted of aggravated assault with a deadly weapon, even assuming, for purposes of defendant's appeal of the habitual offender charge, validity of alleged errors that he was denied due process and a fair trial, that his pretrial motion to dismiss the habitual offender charge was improperly denied, and that there was prosecutorial misconduct, defendant failed to show that he was prejudiced by those errors; his belief that his sentence would have been more lenient if he pled guilty was purely speculative, ignored the district court's duty to consider the crime and its circumstances, and disregarded the fact that the officers' testimony would have come before the district court at sentencing even if defendant had pled guilty to the aggravated assault charge. Hopson v. State, 130 P.3d 494 (Wyo. 2006).

Under the harmless error and plain error standards of review, a claim of prosecutorial misconduct regarding the questioning of witnesses, the use of victim impact testimony, and an alleged misstatement of evidence did not amount to reversible error since no prejudice was shown where defendant did not meet the burden of establishing that the outcome of the trial would have been different absent the challenged conduct. Gabbert v. State, 141 P.3d 690 (Wyo. 2006).

Prosecutor's misconduct in referring to defendant as a pedophile during rebuttal closing argument in a prosecution charging defendant with third-degree sexual assault, a violation of Wyo. Stat. Ann. § 6-2-304 (2005), was harmless error under Wyo. R. App. P. 9.04 because defendant had admitted to having sexual intercourse with the victim, and given the evidence at trial regarding whether he knew her age at the time, which was the only real issue at trial, it was doubtful that the prosecutor's use of the word "pedophile" affected the outcome of the case. Phillips v. State, 151 P.3d 1131 (Wyo. 2007).

Prohibition against counsel eliciting defendant's prior convictions. — The trial court's erroneous ruling that defense counsel could not elicit the fact of the defendant's prior convictions upon direct examination was an error of constitutional magnitude, but was nonetheless harmless error under the totality of all the evidence. Gentry v. State, 806 P.2d 1269 (Wyo. 1991).

In order to hold improper instruction reversible, there must be a reasonable possibility that, in the absence of error, the verdict might have been more favorable to a party, and the burden is on the appellant to show where the error is prejudicial. Merely showing an error occurred does not create a presumption of prejudice as injury to an appellant. Condict v. Whitehead, Zunker, Gage, Davidson & Shotwell, 743 P.2d 880 (Wyo. 1987).

Admission of victim impact evidence. — The Wyoming supreme court exercised its discretion to overlook the government's failure to argue the harmlessness of a capital sentencing error concerning the admission of some victim impact evidence and the prosecutor's comments about such evidence, where (1) the sentencing-phase record was neither lengthy nor complex, (2) the harmlessness of the error was fairly certain, considering all the evidence presented, and (3) a reversal and remand would result in a protracted, costly, and ultimately futile (for the defendant) resentencing proceeding in the trial court. Moreover, under the United States Supreme Court's Chapman harmless-error standard, which the Wyoming supreme court had adopted, and bearing in mind the particular concerns about such evidence and comments which the United States Supreme Court had identified in the Booth, Gathers, and Payne cases, the error in the case at hand was harmless beyond a reasonable doubt. Harlow v. State, 70 P.3d 179 (Wyo. 2003), cert. denied, — U.S. —, 124 S. Ct. 438, 157 L. Ed. 2d 317 (2003).

Genetic test evidence. — Even if the district court erred in applying the current version of Wyo. Stat. Ann. § 14-2-109(e)(ii) rather than the version that was in effect in 1992 in excluding the testimony of the father's expert disputed two genetic tests determining that he

was the child's father, the error was harmless because the father's proffered evidence was insufficient as a matter of law. As the laboratory made clear, the first genetic test that determined that the father was not the child's father was not simply a problem with the test itself, but rather that samples had been accidentally switched, and those test results were not those of the father, the child, and the child's mother, but rather were the results for three different people; therefore, any expert opinion based on the first test was irrelevant as to whether the father was the child's father. RK v. State ex rel. Natrona County Child Support Enforcement Dep't, 174 P.3d 166 (Wyo. 2008).

Cumulative error review limited. — With respect to cumulative error analysis, where the Wyoming supreme court had identified only one harmless error in a defendant's previous assertions, the court did not need to consider this issue. Harlow v. State, 70 P.3d 179 (Wyo. 2003), cert. denied, — U.S. —, 124 S. Ct. 438, 157 L. Ed. 2d 317 (2003).

Substitute expert medical witness. — In defendant's trial for aggravated assault and battery, the appearance of a substitute expert medical witness, to the extent that it actually was an error, was harmless because the medical testimony was mainly directed at "severe disfigurement" and was of little relevance to the battery charge against defendant. Martinez v. State, 199 P.3d 526 (Wyo. 2009).

Failure to provide notice to Cherokee Nation in guardianship proceeding was harmless. — Despite a mother's late assertions of her child's Indian heritage, a trial court erred by failing to require that notice be provided to the Cherokee Nation prior to a guardianship hearing; nonetheless, the error was harmless as the mother failed to show prejudice from the error. KC v. CC (In re LNP), 294 P.3d 904 (Wyo. 2013).

Applied in Stambaugh v. State, 613 P.2d 1237 (Wyo. 1980); MS v. Kuchera, 682 P.2d 982 (Wyo. 1984); 37 Gambling Devices (Cheyenne Elks Club & Cheyenne Music & Vending, Inc.) v. State, 694 P.2d 711 (Wyo. 1985); Lewis v. State, 709 P.2d 1278 (Wyo. 1985); McCarthy v. Whitlock Constr. & Supply, 715 P.2d 218 (Wyo. 1986); Smith v. Kennedy, 798 P.2d 832 (Wyo. 1990); Soles v. State, 809 P.2d 772 (Wyo. 1991); DLB v. DJB, 814 P.2d 1256 (Wyo. 1991); Solis v. State, 981 P.2d 34 (Wyo. 1999); Ryan v. State, 988 P.2d 46 (Wyo. 1999); Jennings v. State, 4 P.3d 915 (Wyo. 2000); Smyth v. Kaufman, 67 P.3d 1161 (Wyo. 2003); Strickland v. State, 94 P.3d 1034 (Wyo. 2004); Reay v. State, 176 P.3d 647 (Wyo. 2008).

Quoted in Johnson v. State, 930 P.2d 358 (Wyo. 1996); Kolb v. State, 930 P.2d 1238 (Wyo. 1996); Skinner v. State, 33 P.3d 758 (Wyo. 2001), cert. denied, 535 U.S. 994, 122 S. Ct. 1554, 152 L. Ed. 2d 477 (2002); Lancaster v. State, 43 P.3d 80 (Wyo. 2002).

Stated in Martin v. State, 157 P.3d 923 (Wyo. 2007).

Cited in Jackson v. State, 624 P.2d 751 (Wyo. 1981); White v. Board of Trustees, 648 P.2d 528 (Wyo. 1982); Grams v. Environmental Quality Council, 730 P.2d 784 (Wyo. 1986); TG v. Department of Pub. Assistance & Social Servs., 783 P.2d 155 (Wyo. 1989); Gale v. State, 792 P.2d 570 (Wyo. 1990); MMOE v. MJE, 841 P.2d 820 (Wyo. 1992); Natural Gas Processing Co. v. Hull, 886 P.2d 1181 (Wyo. 1994); Carlson v. Carlson, 888 P.2d 210 (Wyo. 1995); Thunder Hawk v. Union Pac. R.R., 891 P.2d 773 (Wyo. 1995); Candelaria v. State, 895 P.2d 434 (Wyo. 1995), overruled on other grounds, Allen v. State, 43 P.3d 551 (Wyo. 2002); Chapman v. Meyers, 899 P.2d 48 (Wyo. 1995); Martin v. Alley Constr., Inc., 904 P.2d 828 (Wyo. 1995); Schott v. Miller, 943 P.2d 1174 (Wyo. 1997); O'Brien v. State, 45 P.3d 225 (Wyo. 2002); Williams v. State, 54 P.3d 248 (Wyo. 2002); Odegard v. Odegard, 69 P.3d 917 (Wyo. 2003); Parkhurst v. Boykin, 94 P.3d 450 (Wyo. 2004); Holloman v. State, 106 P.3d 879 (Wyo. 2005); Davis v. State, 117 P.3d 454 (Wyo. 2005); Shelhamer v. Shelhamer, 138 P.3d 665 (Wyo. 2006); Seymore v. State, 152 P.3d 401 (Wyo. 2007); Cooper v. State, 174 P.3d 726 (Wyo. 2008); Majors v. State, 252 P.3d 435 (Wyo. 2011).

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appellate Review §§ 705 to 766.

Propriety and prejudicial effect of prosecutor's argument giving jury impression that judge believes defendant guilty, 90 ALR3d 822.

Propriety and prejudicial effect of sending written instructions with retiring jury in civil case, 91 ALR3d 336.

Propriety and prejudicial effect of sending written instructions with retiring jury in criminal case, 91 ALR3d 382.

Emotional manifestations by victim or family of victim during criminal trial as ground for reversal, new trial, or mistrial, 31 ALR4th 229.

Counsel's argument or comment stating or implying that defendant is not insured and will have to pay verdict himself as prejudicial error, 68 ALR4th 954.

Prejudicial effect of bringing to jury's attention fact that plaintiff in personal injury or death action is entitled to workers' compensation benefits, 69 ALR4th 131.

Prosecutor's appeal in criminal case to racial, national or religious prejudice as ground for mistrial, new trial, reversal or vacation of sentence — modern cases, 70 ALR4th 664.

9.05. Plain error.

Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court.

Source. — Former Rule 49(b), W.R.Cr.P.

Failure to object constitutes waiver of whatever error occurred, unless the error rises to the level of plain error. Bradley v. State, 635 P.2d 1161 (Wyo. 1981).

Inexcusable and unreasonably delayed objection may constitute waiver of any error. Shaffer v. State, 640 P.2d 88 (Wyo. 1982).

Three-part test for determining plain error. — For error to qualify as plain error, there must be: (1) a clear record of what happened at the hearing; (2) there must be a clear and unequivocable rule of law shown to exist; and (3) the facts of the case must clearly and obviously transgress the rule of law. Once this three-part test is satisfied, it still must be shown that a substantial right of the accused has been adversely affected. Mason v. State, 631 P.2d 1051 (Wyo. 1981); Bradley v. State, 635 P.2d 1161 (Wyo. 1981); Hopkinson v. State, 664 P.2d 43 (Wyo.), cert. denied, 464 U.S. 908, 104 S. Ct. 262, 78 L. Ed. 2d 246 (1983); Westmark v. State, 693 P.2d 220 (Wyo. 1984).

In order to invoke the plain-error doctrine, several elements must first be established: first, the record must clearly show what occurred at the trial without resort to speculation; second, the existence of a clear and unequivocal rule of law must have been violated in an obvious way; and third, this violation must have adversely affected some substantial right of the accused. Browder v. State, 639 P.2d 889 (Wyo. 1982); McLaughlin v. State, 780 P.2d 964 (Wyo. 1989).

Plain error not shown. — Worker could not show plain error in a district court's decision to preclude a rebuttal witness's testimony because the worker could not show that the decision transgressed any clear and unequivocal rule of law because: (1) the worker did not object to the ruling precluding him from calling the rebuttal witness to testify as a rebuttal witness; (2) the worker did not ask to make a formal offer of proof showing why the rebuttal witness's testimony was important, why he was not called to testify in the worker's case-in-chief, or why the use of his deposition testimony in cross-examining the expert witness was not sufficient; and (3) the district court had broad discretion in deciding whether to allow evidence. Case v. Outback Pipe Haulers, 171 P.3d 514 (Wyo. 2007).

Where defendant was convicted of two counts of possession of a controlled substance in violation of Wyo. Stat. Ann. § 35-7-1031(c)(ii) and two counts of possession of a controlled substance with intent to deliver in violation of Wyo. Stat. Ann. § 35-7-1031(a)(i), he failed to object to the State's evidence at trial; therefore, plain error review applied on appeal under Wyo. R. App. P. 9.05; Wyo. R. Crim. P. 52(b). The Supreme Court of Wyoming held that the trial court did not commit plain error by (1) allowing the prosecution to introduce evidence of drug sales that did not directly involve defendant but led to his investigation and arrest; (2) allowing the prosecutor's closing remarks urging the jurors to help fight the drug problem; and (3) allowing a special agent to testify that methamphetamine was a major problem. Hernandez v. State, 227 P.3d 315 (Wyo. 2010).

Whole record viewed in determining occurrence of plain error. — In determining whether plain error has occurred, the facts of a case must be viewed in light of the trial record as a whole and not as to whether any one single incident standing alone would be reversible. Browder v. State, 639 P.2d 889 (Wyo. 1982).

Not plain error not to subject otherwise legal confession to predetermination of voluntariness. — The court did not commit plain error when, in the absence of any request, it did not subject the defendant's confession to a predetermination of voluntariness. No substantial right of the defendant was adversely affected, inasmuch as the confession was not made during custodial detention and was made voluntarily after the defendant had been advised of his constitutional rights. Wunder v. State, 705 P.2d 333 (Wyo. 1985).

Trial court may ascertain whether prospective jurors can act only on evidence presented. — The defendant-appellant failed to establish that the trial court could not have reasonably concluded other than his questions on voir dire were proper and were directed only to ascertain whether or not the prospective jurors could act only on the evidence presented in court, or that the trial court acted beyond the bounds of reason in its attempt to explain to the prospective jurors that which was necessary to them to give a fair and impartial consideration to the case. He did not establish the violation of a clear or unequivocal rule of law and, hence, did not establish plain error. Gresham v. State, 708 P.2d 49 (Wyo. 1985).

Where prosecutorial misconduct alleged. — Whether prosecutorial misconduct has been reviewed on the basis of harmless error, Rule 9.04, or on the basis of plain error, Rule 9.05, the focus is on whether such error affected the accused's substantial rights. Earll v. State, 29 P.3d 787 (Wyo. 2001).

Prosecutor's repeated attempts to introduce evidence of prior bad acts combined with the prosecutor's repetition of inaudible testimony from the state's prime witness constituted prosecutorial misconduct requiring reversal and remand for a new trial. Simmons v. State, 72 P.3d 803 (Wyo. 2003).

Whether prosecutorial misconduct is reviewed on the basis of harmless error under Wyo. R. Crim. P. 52(a) and Wyo. R. App. P. 9.04 or on the basis of plain error under Wyo. R. Crim. P. 52(b) and Wyo. R. App. P. 9.05, an appellate court focuses on whether such error affected the accused's substantial rights. Before an appellate court will hold that an error has affected an accused's substantial right, thus requiring reversal of a conviction, it must conclude that, based on the entire record, a reasonable possibility exists that, in the absence of the error, the verdict might have been more favorable to the accused. White v. State, 80 P.3d 642 (Wyo. 2003).

Where defendant fired two shots at police officers and was subsequently convicted of aggravated assault with a deadly weapon, even assuming, for purposes of defendant's appeal of the habitual offender charge, validity of alleged errors that he was denied due process and a fair trial, that his pretrial motion to dismiss the habitual offender charge was improperly denied, and that there was prosecutorial misconduct, defendant failed to show that he was prejudiced by those errors; his belief that his sentence would have been more lenient if he pled guilty was purely speculative, ignored the district court's duty to consider the crime and its circumstances, and disregarded the fact that the officers' testimony would have come before the district court at sentencing even if defendant had pled guilty to the aggravated assault charge. Hopson v. State, 130 P.3d 494 (Wyo. 2006).

In a criminal trial for burglary, where defendant did not object at trial to the state's rebuttal closing argument, Wyo. R. App. P. 9.05 permitted defendant to challenge statements on appeal that allegedly diluted the state's burden of proof, argued facts not in evidence, and presented a community outrage argument, and the Supreme Court of Wyoming found no showing of error or prejudice; the essence of the prosecutor's argument was that there was sufficient evidence for the jury to convict defendant, the argument was supported by the record, and the community outrage argument did not approach the level of "join the war on crime/send a message to criminals" condemned in other cases. Harris v. State, 177 P.3d 1166 (Wyo. 2008).

Where prosecutor's conduct adversely affected defendant's substantial right to fair trial. — Where the prosecutor, in his rebuttal, in essence repeatedly told the jury that "if you don't convict these people you are calling me a liar," the continuous disregard of the rules by the prosecutor is so great as to adversely affect the defendant's substantial right to a fair trial. Browder v. State, 639 P.2d 889 (Wyo. 1982).

It was not plain error not to let jury retire for the evening after a full day of trial, and to allow it to deliberate until around midnight. Munden v. State, 698 P.2d 621 (Wyo. 1985).

Plaintiff waives error in verdict improper on its face by failing to object. — Although there was no inherent error in telling the jury what the plaintiff's burden of proof was and that it must decide whether the plaintiff's injuries were caused by the alleged assault and battery, and then instructing the jury to assess damages without regard to its findings concerning the fact of the assault and whether or not it proximately caused any injuries, it was impossible to reconcile the jury's findings that there was an assault and battery and that the assault was not a "proximate cause of the injuries" with the testimony of the treating doctors who testified without conflict that the plaintiff in fact received injuries resulting in the necessity to prescribe and purchase medication. Therefore, the verdict of the jury was inconsistent and improper on its face. However, even though the substantial rights of the plaintiff were affected, because of the opportunity to correct the verdict offered by § 1-11-213, which the plaintiff didn't take advantage of, this error was waived. Goggins v. Harwood, 704 P.2d 1282 (Wyo. 1985).

No transgression of clear rule of law. — See Wyoming Sawmills, Inc. v. Morris, 756 P.2d 774 (Wyo. 1988).

Failure to give presumption of innocence instruction. — Where defendant was convicted of aggravated robbery and aggravated assault and battery, the evidence of his guilt was substantial: one witness fingered defendant as the masked gunman and provided a detailed account of the events surrounding the robbery; another witness recounted his conversations wherein defendant admitted to committing the robbery. The Supreme Court of Wyoming held that defendant's unpreserved claim of error concerning the trial court's failure to instruct the jury on the presumption of innocence was not plain error under this rule. Bloomer v. State, 233 P.3d 971 (Wyo. 2010).

Arguing instruction to jury waives error. — A party who failed to object to an instruction and, in fact, argued that instruction to the jury in his closing argument, failed to sustain the burden of proof of error in the trial proceedings. Triton Coal Co. v. Mobil Coal Producing, Inc., 800 P.2d 505 (Wyo. 1990).

Jury instructions to be given in court. — Where after the jury made known its desire to be informed concerning a part of the law arising in the case, the requirement of the statute to "conduct them to the court where information upon the matter of law shall be given" was not followed, nor was the instruction made part of the record as required by § 1-11-205(a)(vii) and even though an objection was not made thereto (in fact, there is indication to the contrary, i.e., that it was done with the approval of counsel), there was plain error in the proceedings. Rissler & McMurry v. Snodgrass, 854 P.2d 69 (Wyo. 1993).

Applied in CP v. Laramie County Dep't of Pub. Assistance & Social Servs., 648 P.2d 512 (Wyo. 1982); B-T Ltd. v. Blakeman, 705 P.2d 307 (Wyo. 1985); Ramos v. State, 806 P.2d 822 (Wyo. 1991); Cardenas v. State, 811 P.2d 989 (Wyo. 1991); Rands v. State, 818 P.2d 44 (Wyo. 1991); Strickland v. State, 94 P.3d 1034 (Wyo. 2004); Beck v. Townsend, 116 P.3d 465 (Wyo. 2005); Cooper v. State, 174 P.3d 726 (Wyo. 2008).

Quoted in Hashimoto v. Marathon Pipe Line Co., 767 P.2d 158 (Wyo. 1989).

Cited in City of Cheyenne v. Simpson, 787 P.2d 580 (Wyo. 1990); Miller v. State, 830 P.2d 419 (Wyo. 1992); Smith v. State, 880 P.2d 573 (Wyo. 1994); Shaw v. State, 998 P.2d 965 (Wyo. 2000); O'Brien v. State, 45 P.3d 225 (Wyo. 2002); Williams v. State, 54 P.3d 248 (Wyo. 2002); Davis v. State, 117 P.3d 454 (Wyo. 2005).

Law reviews. — For case note, "Criminal Procedure — Improper Comment Upon Post-Arrest Silence: Wyoming Returns to the Prejudicial Per Se Rule. Westmark v. State, 693 P.2d 220 (Wyo. 1984)," see XXI Land & Water L. Rev. 231 (1986).

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appellate Review §§ 767 to 775.

Propriety and prejudicial effect of prosecutor's argument giving jury impression that judge believes defendant guilty, 90 ALR3d 822.

5 C.J.S. Appeal and Error § 805.

9.06. Abbreviated opinions.

(a) The supreme court by unanimous vote may, sua sponte, enter an abbreviated opinion affirming or reversing the judgment or order of the district court for the reason that it is clear that affirmance or reversal is required because:

(1) the issues are clearly controlled by settled Wyoming law or federal law binding upon the states;

(2) the issues are factual and there clearly is sufficient evidence to support the jury verdict or findings of fact below;

(3) summary judgment was erroneously granted because a genuine issue of material fact exists; or

(4) the issues are ones of judicial discretion and there clearly was or was not an abuse of discretion.

(b) An abbreviated opinion will provide the ultimate disposition without a detailed statement of facts or law. Such abbreviated opinions shall be published.

(c) A petition for rehearing of a case decided under this rule may be served and filed pursuant Rule 9.08.

9.07. Answering Certified Questions.

The written opinion of the reviewing court, stating the law governing each question certified, shall be sent by the clerk of the reviewing court under the court's seal to the certifying court or agency and to the parties. No mandate shall issue after publication of answers to certified questions.

(Adopted April 6, 2015, effective July 1, 2015.)

9.08. Petition for rehearing.

(a) A petition for rehearing of a case in the appellate court may be filed no later than 15 days after the decision is rendered. The petition shall be accompanied by a brief covering the points and authorities upon which the petitioner relies. The petition and brief may be combined and filed as one document. A copy of the petition and the brief shall, within the time above specified, be served upon all parties. There shall be no oral argument on petitions for rehearings unless argument is requested by the appellate court.

(b) Rule 1.01 applies.

(Amended July 26, 2006, effective December 1, 2006; amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 14(a), Sup. Ct. — with time period shortened.

The 2006 amendment added the third sentence.

Applicability. — In an agency appeal, the district court's judgment is not subject to challenge through a Wyo. R. Civ. P. 60 motion, an application for rehearing under this rule, or a Wyo. R. App. P. 15 petition for reinstatement. Instead, the only avenue for review is an appeal to the Wyoming Supreme Court as authorized by Wyo. R. App. P. 12.11(a). Henry v. Borushko, 281 P.3d 729 (Wyo. 2012).

District court judge had no standing to file petition for rehearing under this rule or by any other authority. Kwallek v. State, 596 P.2d 1372 (Wyo. 1979).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Stated in McMackin v. Johnson County Healthcare Ctr., 88 P.3d 491 (Wyo. 2004).

Cited in Smith v. State, 871 P.2d 186 (Wyo. 1994); Harlow v. State, — P.3d —, 2003 Wyo. LEXIS 86 (Wyo. May 29, 2003).

9.09. Suspension of proceedings.

The filing of the petition for rehearing within the time allowed shall suspend proceedings under the decision until the petition is decided, unless the appellate court shall otherwise order.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 14(b), Sup. Ct.

Cited in Harlow v. State, — P.3d —, 2003 Wyo. LEXIS 86 (Wyo. May 29, 2003).

9.10. Rehearing granted.

When a rehearing is granted, the other party, within 15 days of entry of the order granting rehearing, shall file with the appellate court an answer and supporting brief as described in Rule 9.08, which shall also be served upon petitioner. After considering the petition and response, the court may amend the written opinion or direct other proceedings if it is deemed necessary.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 14(c), Sup. Ct.

Editor's notes. *— The following annotations are taken from cases decided under former Rule 14, Sup. Ct., and its statutory and rule antecedents.*

The term "rehearing" indicates that a case is for reargument and resubmission. Wyoming Bancorporation v. Bonham, 527 P.2d 432 (Wyo. 1974).

Petitions for reargument permitted. — Although the Supreme Court has no rule and has rendered no decision pertaining to reargument, former Rule 14, W.R.C.P. permits an application for rehearing, and therefore petitions for reargument will be permitted under this rule. Wyoming Bancorporation v. Bonham, 527 P.2d 432 (Wyo. 1974).

An application for rehearing shall be by "petition" with an original and four copies. Kipp v. Agee, 458 P.2d 728 (Wyo. 1969).

And petition must be timely. — Petition for rehearing not filed within 30 days after decision was rendered is not properly before court for consideration. Dean v. Omaha-Wyoming Oil Co., 21 Wyo. 133, 128 P. 881 (1913), reh. denied, 129 P. 1023 (1913) (decided under § 1-423, C.S. 1945).

Defective application. — A paper entitled "Petition for Rehearing," which in substance was a brief, did not comply with the rule requiring the filing of petition stating points wherein it is alleged court erred, accompanied by a brief of which five copies shall be filed. Tuttle v. Rohrer, 23 Wyo. 305, 149 P. 857 (1915), reh. denied, 153 P. 27 (1915) (decided under § 1-423, C.S. 1945).

Briefs on rehearing not filed within 30 days after original decision in case was rendered are too late. Tibbals v. Graham, 51 Wyo. 350, 66 P.2d 1048 (1937) (decided under § 1-423, C.S. 1945).

And separate briefs not favored. — Counsel filing petition for rehearing should have brief accompany the petition and additional briefs, except at the court's request, ought not to be filed. Snyder v. Ryan, 39 Wyo. 266, 270 P. 1072 (1928), reh. denied, 275 P. 127 (1929) (decided under § 1-423, C.S. 1945).

Belated petitions and briefs not considered. — Application for rehearing without supporting briefs filed within time specified by this rule is not entitled to consideration. Allen v. Houn, 30 Wyo. 186, 219 P. 573 (1923) (decided under § 1-423, C.S. 1945).

Where decision in disbarment proceedings was rendered March 15, 1932, second petition

for rehearing filed August 24 was too late. State Bd. of Law Exmrs. v. Strahan, 44 Wyo. 487, 13 P.2d 1083 (1932) (decided under § 1-423, C.S. 1945).

Fact that no brief accompanies petition for rehearing in itself is sufficient ground for declining to consider the application. State v. Sorenson, 34 Wyo. 90, 241 P. 607 (1926) (decided under § 1-423, C.S. 1945).

Former Rule 14, W.R.C.P. did not specify grounds upon which a rehearing will be granted. Elmer v. State, 466 P.2d 375 (Wyo.), cert. denied, 400 U.S. 845, 91 S. Ct. 90, 27 L. Ed. 2d 82 (1970); Wyoming Bancorporation v. Bonham, 527 P.2d 432 (Wyo. 1974).

Rehearing will not be allowed merely for the purpose of reargument unless there is a reasonable probability that the court may have arrived at an erroneous conclusion or overlooked some important question or matter necessary to a correct decision. Elmer v. State, 466 P.2d 375 (Wyo.), cert. denied, 400 U.S. 845, 91 S. Ct. 90, 27 L. Ed. 2d 82 (1970).

Points raised for first time in petition for rehearing will ordinarily not be considered. Walgreen Co. v. State Bd. of Equalization, 62 Wyo. 336, 169 P.2d 76 (1946) (decided under § 1-423, C.S. 1945).

Hospitalization of justice as basis for rehearing. — The hospitalization of a justice who has heard the oral argument as a member of a three-justice panel could be basis for a rehearing where the panel is split and there is a dissenting opinion, provided that the judge who became hospitalized was thereby incapacitated from effective consideration of the written briefs, the record in the case and the oral argument which he has heard. Wyoming Bancorporation v. Bonham, 527 P.2d 432 (Wyo. 1974).

Request for oral argument denied. — Written request of counsel that oral argument be permitted because counsel's professional engagements prevented their filing brief of such length as they deemed necessary must be denied. Bankers Life Co. v. Nelson, 56 Wyo. 513, 111 P.2d 136 (1941) (decided under § 1-423, C.S. 1945).

Second proceeding. — Where proceedings in error were dismissed for failure to file briefs within time required by rules and before expiration of 30 days allowed for application for rehearing, second proceeding in error was commenced and record refiled in Supreme Court, it was unnecessary to return papers to district court clerk for recertification and return to Supreme Court. Boner v. Fall River County Bank, 25 Wyo. 260, 168 P. 726 (1917) (decided under § 1-423, C.S. 1945).

Court retains jurisdiction pending determination of petition for rehearing and has full control of the cause within limits of its appellate jurisdiction, so that it may entertain motion for leave to amend petition in error. North Laramie Land Co. v. Hoffman, 27 Wyo. 271, 195 P. 988 (1921) (decided under § 1-424, C.S. 1945).

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appellate Review §§ 878 to 908.

5 C.J.S. Appeal and Error §§ 676 to 701.

9.11. Mandate.

(a) Upon the denial of a petition for rehearing, or if within 15 days after the decision no petition for rehearing or other motion is filed, a mandate shall be issued to the trial court, as the case may require, for execution. A copy of the mandate shall be sent to all parties.

(b) In a criminal appeal when the judgment and sentence is reversed either in part or entirely, a copy of the mandate and opinion shall be sent to the warden of the facility if the party is incarcerated and to the attorney general representing the department of corrections.

(c) The mandate issued will award costs, if applicable, to the prevailing party. The appellate court is without jurisdiction to entertain a motion for costs once the mandate has issued returning jurisdiction to the trial court.

(Amended May 4, 2001, effective September 1, 2001; amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 15, Sup. Ct. — shortened to fifteen (15) days to coordinate with Rule 9.07.

Cited in Gillis v. F & A Enters., 934 P.2d 1253 (Wyo. 1997).

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appellate Review §§ 776 to 825.

5 C.J.S. Appeal and Error §§ 968 to 1010.

Rule 10. Costs and fees.

10.01. Cost of record, docket and service fees.

(a) Appellant, at the time of filing appellant's brief, must file with the clerk of the appellate court a statement of the cost of the original transcript of the evidence with certification regarding the payment.

(b) The docket fees charged for the services of the clerk in the appellate court for criminal cases, where there is no statute to the contrary, shall be the same as those prescribed in civil cases.

(c) No award of costs shall be made in a case where the party is proceeding in forma pauperis unless costs are awarded by the reviewing court in the mandate.

(d) A party not admitted to the practice of law in Wyoming and proceeding pro se on appeal shall not be entitled to an award of attorney fees.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 7, Sup. Ct. In Forma Pauperis, see Rule 10.06.

Payment of fee is prerequisite to actual filing of petition in error. Posvar v. Royce, 37 Wyo. 34, 258 P. 587 (1927) (decided under § 1-407, C.S. 1945).

The record cannot be filed by clerk of Supreme Court until docket fee is paid. In re Nat'l Bldg. & Loan Ass'n of Am., 52 Wyo. 195, 72 P.2d 1113 (1937) (decided under § 1-407, C.S. 1945).

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appellate Review §§ 909 to 960.

10.02. Fees in reserved cases, certified cases, and rule 13 cases.

In each civil case sent to an appellate court upon reserved questions, certified cases and Rule 13 cases, the usual docketing fee required by law to be paid in other cases shall be paid upon the filing of the papers in the court. Such docketing fee shall be advanced by the party or parties designated by the trial court or judge, but in the absence of any such designation, then by the plaintiff or petitioner in the action. Recovery of costs in these cases shall be the same as in appeals with petitioner and respondent substituted for appellant and appellee where applicable.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 8, Sup. Ct.

10.03. Costs on bill of exceptions, certified and reserved questions in criminal cases.

No fees shall be collected in criminal cases properly filed with the supreme court on certification, reserved questions, or by bill of exceptions of a district attorney unless otherwise provided by statute.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 8, Sup. Ct.

10.04. Costs on reversal.

When a judgment or appealable order is reversed, appellant shall recover costs. The costs are awarded in the mandate and shall be as follows: the cost of making the transcript of the evidence in the case, the docketing fees paid at the time of filing the notice of appeal, the cost of producing the original brief which shall be computed at the per page rate allowed by law for making the transcript, and the cost of copies for the briefs filed in the court and served on appellee. When the judgment of appealable order is reversed in part and affirmed in part, the court may apportion the costs between the

parties in such manner as it deems equitable. The appellate court may refuse to allow as part of such costs those portions as may clearly appear to have been unnecessary. (Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 72(j), W.R.C.P.; former Rule 9, Sup. Ct.

Prevailing party was entitled to fees and costs on appeal. — Where a dispute arose between the owner and the contractor concerning a $ 1.4 million project, the parties entered into a settlement agreement providing that the owner would pay the contractor $ 250,000 as complete compensation for the project; in the contractor's action to enforce the agreement, the district court erred by granting summary judgment for the owner because the agreement was unambiguous. When the Supreme Court of Wyoming reversed the decision and ruled for the contractor on appeal, the contractor was entitled to its fees and costs under Wyo. R. App. P. 10.04. Western Mun. Constr. of Wyo., Inc. v. Better Living, LLC, 234 P.3d 1223 (Wyo. 2010).

Quoted in Steiger v. Happy Valley Homeowners Ass'n, 245 P.3d 269 (Wyo. 2010).

Cited in Sharpe v. Sharpe, 902 P.2d 210 (Wyo. 1995).

Am. Jur. 2d, ALR and C.J.S. references. — Award of costs in appellate proceedings in federal court under Rule 39 of Federal Rules of Appellate Procedure, 68 ALR Fed 494.

10.05. [Effective until November 1, 2017.] Costs and penalties on affirmance.

(a) When the judgment or appealable order is affirmed in a civil case, appellee shall recover costs. The appellee may also recover costs when appeal is dismissed in the court opinion after full briefing. The costs are awarded in the mandate and shall be as follows: the costs of producing the original brief which shall be computed at the per page rate allowed by law for making the transcript, and the cost of copies for the briefs filed in the court and served on the appellant. If the appellant failed to order and pay for a transcript of the evidence of the case or only ordered a portion of the transcript, then if appellee ordered necessary portions of the transcript, appellee shall recover the costs expended ordering the transcript.

(b) If the court certifies, whether in the opinion or upon motion, there was no reasonable cause for the appeal, a reasonable amount for attorneys' fees and damages to the appellee shall be fixed by the appellate court and taxed as part of the costs in the case. The amount for attorneys' fees shall not be less than one hundred dollars ($100.00) nor more than ten thousand dollars ($10,000.00). The amount for damages to the appellee shall not exceed two thousand dollars ($2,000.00).

(c) If the court finds that circumstances warrant, the taxation of fees, costs and sanctions may be entered against counsel of record and not the appellant if the court finds any of the following:

(1) Counsel has filed a deficient brief or the brief contains misrepresentations and omissions;

(2) Counsel has filed a brief that failed to follow these rules;

(3) Counsel ignored or failed to perform any meaningful research of the law and to make a determination the claim on appeal is without merit;

(4) Counsel, not appellant, is responsible for bringing a frivolous appeal;

(5) Counsel is dilatory in prosecuting the appeal by missing filing deadlines, receiving sanctions for failure to provide notice of appeal and/or designation of record or failing to comply with orders entered by the court;

(6) Other misconduct determined in the discretion of the appellate court.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 72(k), W.R.C.P.; former Rule 9, Sup. Ct. — with adjustment for inflation.

Applicability. — The sanctions provided in Rule 10.05 govern certifications arising under Rule 12.09(b). Bender v. Uinta County Assessor, 14 P.3d 906 (Wyo. 2000).

When sanctions granted. — An appellate court is reluctant to grant sanctions and will do so only in those rare circumstances where an appeal lacks cogent argument, where there is an absence of pertinent authority to support

the claims of error, or when there is a failure to adequately cite to the record. Amen, Inc. v. Barnard, 938 P.2d 855 (Wyo. 1997); Gray v. Stratton Real Estate, 36 P.3d 1127 (Wyo. 2001).

Basis for appellate court sanctions.— Appellate court may sanction an appellant if it certified that there was no reasonable cause for the appeal; however, the appellate court could not say that the husband's appeal from the divorce judgment was so lacking in merit as to qualify for sanctions, especially since it challenged a discretionary decision by the trial court. Hoffman v. Hoffman, 91 P.3d 922 (Wyo. 2004).

Judgment of district court was summarily affirmed and sanctions against pro se appellants imposed, where appeal failed to present cogent argument or pertinent authority to support the claims of error, and there was a failure to adequately cite to the record. Baker v. Reed, 965 P.2d 1153 (Wyo. 1998).

Appellee was entitled to attorney's fees and costs due to appellant's failure to present pertinent authority or cogent argument in his brief. Osborn v. Estate of Manning, 968 P.2d 932 (Wyo. 1998).

Where pro se defendant's appeal lacked cogent argument, there was an absence of pertinent authority to support the claims of error, and there was a failure to adequately cite to the record, penalties were awarded against defendant pursuant to this section. Basolo v. Gose, 994 P.2d 968 (Wyo. 2000); Barnes v. Barnes, 998 P.2d 942 (Wyo. 2000).

Although inmate proceeded pro se and in forma pauperis in seeking reduction of sentence, monetary sanctions against him were appropriate due to frivolousness of his appeal; state was therefore entitled to an award of costs and attorney's fees. Hodgins v. State, 1 P.3d 1259 (Wyo. 2000).

Appellee was entitled to recover costs and attorney fees incurred in defending appeal, where appellant had no reasonable cause for appeal and presented no cogent argument or pertinent authority to support her claim. Meyer v. Rodabaugh, 982 P.2d 1242 (Wyo. 1999).

Sanctions were awarded under the rule where the pro se appellant's statement of the issues was virtually unintelligible, and the issues deciphered by the court were supported neither by the record, cogent argument, nor pertinent legal authority. Stone v. Stone, 7 P.3d 887 (Wyo. 2000).

Sanctions were imposed against a pro se litigant where his appeal was clearly barred by the doctrine of collateral estoppel and, even if review were not barred, his claim of error was unsupported by cogent argument and failed to meaningfully address the primary issue, namely the application of collateral estoppel. Bender v. Uinta County Assessor, 14 P.3d 906 (Wyo. 2000).

In child custody modification proceeding, where mother's pursuit of appeal was yet another example of her efforts to unnecessarily prolong the proceedings, as well as increase the cost of the proceedings, and the record supported a conclusion that the mother acted knowingly and with a fairly complete understanding of the delays and disruptions she could cause to the stability of child's life, to father, and to the courts, sanctions were appropriate. GGV v. JLR, 39 P.3d 1066 (Wyo. 2002).

Sanctions granted in favor of the wife on appeal in the parties' divorce action were proper where there was no reasonable cause for the husband's appeal; pro se litigants were not excused from the requirements set forth in W.R.A.P. 7.01 and the issues deciphered from the husband's brief were not supported by the record, cogent argument, or pertinent legal authority. Welch v. Welch, 81 P.3d 937 (Wyo. 2003).

Sanctions were justified against pro se appellant where substantive arguments on appeal were difficult to identify and, when identifiable, were frivolous, lacked cogence and, often, coherence, and citations to the record for factual assertions largely referenced previous filings which were not factual evidence in the record. Osborn v. Kilts, 145 P.3d 1264 (Wyo. 2006).

When sanctions denied. — Sanctions under this rule are not available when the appeal challenges a discretionary ruling made by the district court. Wood v. Wood, 964 P.2d 1259 (Wyo. 1998).

Contention by the appellee landowners that they should be awarded reasonable attorneys' fees because there was no reasonable cause for this appeal was improper since the appellant landowners' contention that the recitation of acreage in the deed was significant was not without merit. Henry v. Borushko, 281 P.3d 729 (Wyo. 2012).

Denial of sanctions proper when cogent argument presented.— Wife's motion for attorney's fees as a sanction for the husband's appeal was denied because the husband, although unsuccessful, did present a cogent argument and cited pertinent legal authority in support of his claims. Vernier v. Vernier, 92 P.3d 825 (Wyo. 2004).

Because appellants, although minimally, did generally cite to the record and to some pertinent authority, the court refused to issue sanctions against appellants pursuant to this section. George v. Allen (In re Estate of George), 77 P.3d 1219 (Wyo. 2003).

Frivolous to claim that government's printing of paper money unconstitutional. — The Governmental Claims Act did not confer jurisdiction upon a district court to declare that the United States government's printing of paper money was unconstitutional and that, therefore, a worker's compensation claimant was entitled to be paid in gold or silver. Further, such a claim was frivolous and there was no reasonable cause for the appeal from its dismissal, justifying an award of a fee of $100

as part of the costs. Skurdal v. State ex rel. Stone, 708 P.2d 1241 (Wyo. 1985).

Appeal from a modification of a divorce decree was without merit. — Accordingly, a reasonable attorney's fee and damages were added as costs. Manners v. Manners, 706 P.2d 671 (Wyo. 1985); Phifer v. Phifer, 845 P.2d 384 (Wyo. 1993).

Penalty and damages awarded to appellees, as appellant's arguments specious and frivolous. — See Osborn v. Warner, 694 P.2d 730 (Wyo. 1985).

Fees should not be awarded for appeal of discretionary rulings. — Awards of fees and damages under this rule are not appropriate where a discretionary ruling of the district court is questioned. Mulkey-Yelverton v. Blevins, 884 P.2d 41 (Wyo. 1994).

No sanctions for appealing discretionary rulings.— When a father appealed from a trial court's award of custody to the mother, sanctions for frivolous appeal were not appropriate because the appeal was from a discretionary ruling. Donnelly v. Donnelly, 92 P.3d 298 (Wyo. 2004).

Sanctions under this rule are not available where the appeal challenges a discretionary ruling of the district court. Hedrick v. Hedrick, 902 P.2d 723 (Wyo. 1995).

Because sanctions under this rule are not available when the appeal challenges a trial court's discretionary ruling, plaintiff's request for attorney fees was denied. Russell v. Russell, 948 P.2d 1351 (Wyo. 1997).

Attorney fees awarded where there was no just cause for appeal. Hamburg v. Heilbrun, 891 P.2d 85 (Wyo. 1995).

Where a statement of the issues was omitted from the ex-husband's brief in violation of W.R.A.P. 7.01(d), a sufficient record was not provided to allow meaningful review of his claim of error under W.R.A.P. 3.03, and he failed to support his claim of error with pertinent legal authority or cogent argument, there was no reasonable cause for appeal and sanctions were proper under W.R.A.P. 10.05. Montoya v. Montoya, 125 P.3d 265 (Wyo. 2005).

Fees and costs awarded. — Appellate court awarded fees and costs to a collection agency on an appeal by a law office where the manner in which the office approached the case from beginning to end resulted in unnecessary legal expense, and its failure to investigate the practice for payment of transcripts in federal grazing appeals or to adequately present argument on the issue until late in the proceedings was problematic. Budd-Falen Law Offices, P.C. v. Rocky Mt. Recovery, Inc., 114 P.3d 1284 (Wyo. 2005).

Attorney fees awarded. — Where the evidence showed that a party in a domestic case appealed a contempt judgment for no reason other than just a general complaint regarding the application of the law to the individual case, attorney's fees and costs were awarded after an affirmance was entered. GGV v. JLR, 105 P.3d 474 (Wyo. 2005).

Former spouse was entitled to an award of attorney fees and costs incurred in responding to their former partner's appeals because their partner failed to timely file two of their appeals, to attach the required appendices to their notice of appeal and their briefs were deficient as they failed to include many record cites, cogent argument, or the appropriate appendices. Golden v. Guion, — P.3d —, 2016 Wyo. LEXIS 58 (Wyo. 2016).

Request for fees and interest denied. — Appellees' request for fees and interest pursuant to this rule was denied where the appeal concerns a review of discretionary rulings. Bacon v. Carey Co., 669 P.2d 533 (Wyo. 1983).

A penalty and damages are inappropriate under this section where a discretionary ruling of the trial court is the subject of the appeal. James S. Jackson Co. v. Meyer, 677 P.2d 835 (Wyo. 1984).

Because the Supreme Court was unwilling to certify that there was no reasonable cause for a homeowner's appeal of a judgment in favor of a homeowners association, it declined to award the association attorney fees and costs in defending the appeal. Fix v. South Wilderness Ranch Homeowners Ass'n, 280 P.3d 527 (Wyo. 2012).

Request for costs denied. — Abuse of discretion questions arise in innumerable situations; thus, standards for review of discretionary exercise cannot readily be reduced to black-letter principles. Therefore appellant had reasonable cause for his appeal of district court's distribution of the parties' property and thus appellee's request for costs was denied. Bricker v. Bricker, 877 P.2d 747 (Wyo. 1994).

Defendant's request for damages and costs other than the costs associated with the reproduction of his brief was denied. Anderson v. Anderson, 948 P.2d 1365 (Wyo. 1997).

Reasonable cause to appeal summary judgment. — Where the Supreme Court reverses the summary judgment in favor of defendants on plaintiff's claim for damages for improper use of the easement, it is established that plaintiff did have a reasonable cause to appeal, at least with respect to that issue, and the Supreme Court will not impose sanctions pursuant to this rule. Curutchet v. Bordarrampe, 726 P.2d 500 (Wyo. 1986).

On appeal of a summary judgment in an action to set aside a foreclosure sale in which the property owner challenged its failure to receive written notice of the foreclosure, the request for attorneys' fees made by the assignee of the mortgage was denied; there was no basis to conclude that the property owner conceded the issues or that there was no reasonable cause for the appeal. ORO Mgmt., LLC v. R.C. Mineral & Rock, LLC, 304 P.3d 925 (June 21, 2013).

District court's decision was reviewable

under an abuse-of-discretion standard. — The appellant had reasonable cause for this appeal and, therefore, the appellee's request for damages and costs, other than the cost of reproducing and typewriting his brief, was denied. JWR v. RG, 716 P.2d 984 (Wyo. 1986).

Sanctions not justified. — Award of attorney fees and damages as appellate sanctions was not warranted where, although the appellant ultimately failed to win the appeal, his legal arguments were presented cogently and in good faith, and there was adequate legal support to warrant bringing the appeal. Smith v. Brito, 173 P.3d 351 (Wyo. 2007).

Appellant's arguments were neither specious nor frivolous, but appear to have been made in good faith. Attorney fees and damages were therefor not added as costs. Mayflower Restaurant Co. v. Griego, 741 P.2d 1106 (Wyo. 1987).

Reasonable grounds for appeal. — See Andrau v. Michigan Wis. Pipe Line Co., 712 P.2d 372 (Wyo. 1986).

Where court had not expressly rejected the torts of civil conspiracy or prima facie tort as actionable for employment terminations, it declined to certify that there was no reasonable cause for appeal of summary judgment denying plaintiff relief based on these theories of recovery. Townsend v. Living Ctrs. Rocky Mt., Inc., 947 P.2d 1297 (Wyo. 1997).

Former husband was entitled to reasonable costs and attorney's fees under this rule on appeal of a divorce decree, as there was no transcript of the district court proceedings to show the wife had reasonable cause to bring the appeal. Golden v. Guion, 299 P.3d 95 (Wyo. 2013).

Appeal of injunction, without cogent authority, frivolous. — Where the appellant appealed the issuance of a permanent injunction which permitted the appellee to build a fence along the parties' adjoining property line and which prohibited the appellant from interfering with the building of that fence, the appellant's appeal was frivolous and there was no reasonable cause for appeal; attorney's fees and costs pursuant to this rule were awarded, since the appellant provided little or no cogent authority to support his claims before the court, and he provided the court with no record for review. Osborn v. Pine Mt. Ranch, 766 P.2d 1165 (Wyo. 1989).

Failure to provide transcript to refute damages award. — Where in an appeal of a contract dispute, in the record on appeal, the contractor failed to provide a transcript from the damages phase of the trial, or some alternative substitute for the transcript, such as a statement of evidence or proceedings, there was nothing in the record to refute the district court's finding on damages, and thus the Wyoming supreme court affirmed the award of damages and held the homeowner was entitled to costs and attorney's fees on appeal. However, the homeowner was not entitled to damages on appeal because the award of costs and attorney fees fully vindicated the supreme court's interest in enforcing the rules of appellate procedure. Chancler v. Meredith, 86 P.3d 841 (Wyo. 2004).

Failure to provide proper record in appeal containing alleged abuse of discretion results in an award of costs, attorney's fees and a penalty. Stadtfeld v. Stadtfeld, 920 P.2d 662 (Wyo. 1996).

Brief not so inadequate as to warrant sanctions. — Although the state supreme court found it necessary to dismiss an appeal filed by an estate's representative because the order from which the appeal was taken was not a final order that would give the state supreme court jurisdiction, the estate representative's brief was not so lacking in cogent argument or pertinent authority that it constituted the rare circumstance where sanctions were appropriate, and, thus, the imposition of sanctions was not warranted. Estate of McLean v. Benson, 71 P.3d 750 (Wyo. 2003).

Applied in Perry v. Vaught, 624 P.2d 776 (Wyo. 1981); Reno Livestock Corp. v. Sun Oil Co., 638 P.2d 147 (Wyo. 1981); Nicholls v. Nicholls, 721 P.2d 1103 (Wyo. 1986); J & M Invs. v. Davis, 726 P.2d 96 (Wyo. 1986); Edwards v. Edwards, 732 P.2d 1068 (Wyo. 1987); Lange v. Lawyer's Title Co., 741 P.2d 109 (Wyo. 1987); Mari v. Green, 767 P.2d 600 (Wyo. 1989); Blanchard v. Blanchard, 770 P.2d 227 (Wyo. 1989); Williams v. Williams, 817 P.2d 884 (Wyo. 1991); New Oil Inc. v. Interstate Bank of Commerce, 895 P.2d 871 (Wyo. 1995); Kahrs v. Board of Trustees, 901 P.2d 404 (Wyo. 1995); Muldoon v. Schatzman, 902 P.2d 218 (Wyo. 1995); Cotton v. Brow, 903 P.2d 530 (Wyo. 1995); Semler v. Semler, 924 P.2d 422 (Wyo. 1996); Townsend v. Living Ctrs. Rocky Mt., Inc., 947 P.2d 1297 (Wyo. 1997); Williams v. Dietz, 999 P.2d 642 (Wyo. 2000); Dewey Family Trust v. Mountain W. Farm Bureau Mut. Ins. Co., 3 P.3d 833 (Wyo. 2000); Miller v. Bradley, 4 P.3d 882 (Wyo. 2000); Maher v. Maher, 90 P.3d 739 (Wyo. 2004); White v. Allen, 115 P.3d 8 (Wyo. 2005).

Quoted in Wyoming Game & Fish Comm'n v. Smith, 773 P.2d 941 (Wyo. 1989); Stalkup v. State Dep't of Envtl. Quality (DEQ), 838 P.2d 705 (Wyo. 1992).

Stated in Igo v. Igo, 759 P.2d 1253 (Wyo. 1988); Revelle v. Schultz, 759 P.2d 1255 (Wyo. 1988); Drake v. McCulloh, 43 P.3d 578 (Wyo. 2002).

Cited in Parker v. Parker, 750 P.2d 1313 (Wyo. 1988); Department of Revenue & Taxation v. Casper Legion Baseball Club, Inc., 767 P.2d 608 (Wyo. 1989); Appelt v. Appelt, 768 P.2d 596 (Wyo. 1989); Overcast v. Overcast, 780 P.2d 1371 (Wyo. 1989); Rowan v. Rowan, 786 P.2d 886 (Wyo. 1990); Uhls v. Uhls, 794 P.2d 894 (Wyo. 1990); Martin v. Martin, 798 P.2d 321 (Wyo. 1990); Bachand v. Walters, 809 P.2d 284 (Wyo. 1991); Moore v. Lubnau, 855 P.2d 1245

(Wyo. 1993); Smith, Keller & Assocs. v. Dorr & Assocs., 875 P.2d 1258 (Wyo. 1994); Lindt v. Murray, 895 P.2d 459 (Wyo. 1995); Sharpe v. Sharpe, 902 P.2d 210 (Wyo. 1995); Davis v. State, 910 P.2d 555 (Wyo. 1996); Smith v. Robinson, 912 P.2d 527 (Wyo. 1996); Cundy Asphalt Paving Constr., Inc. v. Angelo Materials Co., 915 P.2d 1181 (Wyo. 1996); Board of County Comm'rs v. State ex rel. Yeadon, 971 P.2d 129 (Wyo. 1998); Peter Kiewit Sons v. Sheridan County Bd. of Comm'rs (In re Dunning), 982 P.2d 704 (Wyo. 1999); Mead v. State, 2 P.3d 564 (Wyo. 2000); Rawlinson v. Cheyenne Bd. of Pub. Utils., 17 P.3d 13 (Wyo. 2001); Parsons v. Parsons, 27 P.3d 270 (Wyo. 2001); Dolence v. State, 107 P.3d 176 (Wyo. 2005); Aragon v. Aragon, 104 P.3d 756 (Wyo. 2005); McNeel v. McNeel (In re McNeel), 109 P.3d 510 (Wyo. 2005); In re Paternity , JWH v. DAH, Appellee, 252 P.3d 942 (Wyo. 2011).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Am. Jur. 2d, ALR and C.J.S. references. — Award of damages for dilatory tactics in prosecuting appeal in state court, 91 ALR3d 661.

Attorney's liability under state law for opposing party's counsel fees, 56 ALR4th 486.

Award of damages or costs under 28 USC § 1912 or Rule 38 of Federal Rules of Appellate Procedure, against appellant who brings frivolous appeal, 67 ALR Fed 319.

Award of costs in appellate proceedings in federal court under Rule 39 of Federal Rules of Appellate Procedure, 68 ALR Fed 494.

10.05. [Effective November 1, 2017.] Costs and penalties on affirmance.

(a) When the judgment or appealable order is affirmed in a civil case, appellee shall recover costs. The appellee may also recover costs when appeal is dismissed in the court opinion after full briefing. The costs are awarded in the mandate and shall be as follows: the costs of producing the original brief which shall be computed at the per page rate allowed by law for making the transcript, and the cost of copies for the briefs filed in the court and served on the appellant. If the appellant failed to order and pay for a transcript of the evidence of the case or only ordered a portion of the transcript, then if appellee ordered necessary portions of the transcript, appellee shall recover the costs expended ordering the transcript. An appellee may also recover the cost of a copy obtained from the court reporter at the statutory rate for copies of portions of the transcript ordered by the appellant.

(b) If the court certifies, whether in the opinion or upon motion, there was no reasonable cause for the appeal, a reasonable amount for attorneys' fees and damages to the appellee shall be fixed by the appellate court and taxed as part of the costs in the case. The amount for attorneys' fees shall not be less than one hundred dollars ($100.00) nor more than ten thousand dollars ($10,000.00). The amount for damages to the appellee shall not exceed two thousand dollars ($2,000.00).

(c) If the court finds that circumstances warrant, the taxation of fees, costs and sanctions may be entered against counsel of record and not the appellant if the court finds any of the following:

(1) Counsel has filed a deficient brief or the brief contains misrepresentations and omissions;

(2) Counsel has filed a brief that failed to follow these rules;

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(4) Counsel, not appellant, is responsible for bringing a frivolous appeal;

(5) Counsel is dilatory in prosecuting the appeal by missing filing deadlines, receiving sanctions for failure to provide notice of appeal and/or designation of record or failing to comply with orders entered by the court;

(6) Other misconduct determined in the discretion of the appellate court.

(Amended April 6, 2015, effective July 1, 2015; amended August 23, 2017, effective November 1, 2017.)

Source. — Former Rule 72(k), W.R.C.P.; former Rule 9, Sup. Ct. — with adjustment for inflation.

Applicability. — The sanctions provided in Rule 10.05 govern certifications arising under Rule 12.09(b). Bender v. Uinta County Assessor, 14 P.3d 906 (Wyo. 2000).

When sanctions granted. — An appellate

court is reluctant to grant sanctions and will do so only in those rare circumstances where an appeal lacks cogent argument, where there is an absence of pertinent authority to support the claims of error, or when there is a failure to adequately cite to the record. Amen, Inc. v. Barnard, 938 P.2d 855 (Wyo. 1997); Gray v. Stratton Real Estate, 36 P.3d 1127 (Wyo. 2001).

Basis for appellate court sanctions.— Appellate court may sanction an appellant if it certified that there was no reasonable cause for the appeal; however, the appellate court could not say that the husband's appeal from the divorce judgment was so lacking in merit as to qualify for sanctions, especially since it challenged a discretionary decision by the trial court. Hoffman v. Hoffman, 91 P.3d 922 (Wyo. 2004).

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Frivolous to claim that government's printing of paper money unconstitutional. — The Governmental Claims Act did not confer jurisdiction upon a district court to declare that the United States government's printing of paper money was unconstitutional and that, therefore, a worker's compensation claimant

was entitled to be paid in gold or silver. Further, such a claim was frivolous and there was no reasonable cause for the appeal from its dismissal, justifying an award of a fee of $100 as part of the costs. Skurdal v. State ex rel. Stone, 708 P.2d 1241 (Wyo. 1985).

Appeal from a modification of a divorce decree was without merit. — Accordingly, a reasonable attorney's fee and damages were added as costs. Manners v. Manners, 706 P.2d 671 (Wyo. 1985); Phifer v. Phifer, 845 P.2d 384 (Wyo. 1993).

Penalty and damages awarded to appellees, as appellant's arguments specious and frivolous. — See Osborn v. Warner, 694 P.2d 730 (Wyo. 1985).

Fees should not be awarded for appeal of discretionary rulings. — Awards of fees and damages under this rule are not appropriate where a discretionary ruling of the district court is questioned. Mulkey-Yelverton v. Blevins, 884 P.2d 41 (Wyo. 1994).

No sanctions for appealing discretionary rulings.— When a father appealed from a trial court's award of custody to the mother, sanctions for frivolous appeal were not appropriate because the appeal was from a discretionary ruling. Donnelly v. Donnelly, 92 P.3d 298 (Wyo. 2004).

Sanctions under this rule are not available where the appeal challenges a discretionary ruling of the district court. Hedrick v. Hedrick, 902 P.2d 723 (Wyo. 1995).

Because sanctions under this rule are not available when the appeal challenges a trial court's discretionary ruling, plaintiff's request for attorney fees was denied. Russell v. Russell, 948 P.2d 1351 (Wyo. 1997).

Attorney fees awarded where there was no just cause for appeal. Hamburg v. Heilbrun, 891 P.2d 85 (Wyo. 1995).

Where a statement of the issues was omitted from the ex-husband's brief in violation of W.R.A.P. 7.01(d), a sufficient record was not provided to allow meaningful review of his claim of error under W.R.A.P. 3.03, and he failed to support his claim of error with pertinent legal authority or cogent argument, there was no reasonable cause for appeal and sanctions were proper under W.R.A.P. 10.05. Montoya v. Montoya, 125 P.3d 265 (Wyo. 2005).

Fees and costs awarded. — Appellate court awarded fees and costs to a collection agency on an appeal by a law office where the manner in which the office approached the case from beginning to end resulted in unnecessary legal expense, and its failure to investigate the practice for payment of transcripts in federal grazing appeals or to adequately present argument on the issue until late in the proceedings was problematic. Budd-Falen Law Offices, P.C. v. Rocky Mt. Recovery, Inc., 114 P.3d 1284 (Wyo. 2005).

Attorney fees awarded. — Where the evidence showed that a party in a domestic case appealed a contempt judgment for no reason other than just a general complaint regarding the application of the law to the individual case, attorney's fees and costs were awarded after an affirmance was entered. GGV v. JLR, 105 P.3d 474 (Wyo. 2005).

Former spouse was entitled to an award of attorney fees and costs incurred in responding to their former partner's appeals because their partner failed to timely file two of their appeals, to attach the required appendices to their notice of appeal and their briefs were deficient as they failed to include many record cites, cogent argument, or the appropriate appendices. Golden v. Guion, — P.3d —, 2016 Wyo. LEXIS 58 (Wyo. 2016).

Request for fees and interest denied. — Appellees' request for fees and interest pursuant to this rule was denied where the appeal concerns a review of discretionary rulings. Bacon v. Carey Co., 669 P.2d 533 (Wyo. 1983).

A penalty and damages are inappropriate under this section where a discretionary ruling of the trial court is the subject of the appeal. James S. Jackson Co. v. Meyer, 677 P.2d 835 (Wyo. 1984).

Because the Supreme Court was unwilling to certify that there was no reasonable cause for a homeowner's appeal of a judgment in favor of a homeowners association, it declined to award the association attorney fees and costs in defending the appeal. Fix v. South Wilderness Ranch Homeowners Ass'n, 280 P.3d 527 (Wyo. 2012).

Request for costs denied. — Abuse of discretion questions arise in innumerable situations; thus, standards for review of discretionary exercise cannot readily be reduced to black-letter principles. Therefore appellant had reasonable cause for his appeal of district court's distribution of the parties' property and thus appellee's request for costs was denied. Bricker v. Bricker, 877 P.2d 747 (Wyo. 1994).

Defendant's request for damages and costs other than the costs associated with the reproduction of his brief was denied. Anderson v. Anderson, 948 P.2d 1365 (Wyo. 1997).

Reasonable cause to appeal summary judgment. — Where the Supreme Court reverses the summary judgment in favor of defendants on plaintiff's claim for damages for improper use of the easement, it is established that plaintiff did have a reasonable cause to appeal, at least with respect to that issue, and the Supreme Court will not impose sanctions pursuant to this rule. Curutchet v. Bordarrampe, 726 P.2d 500 (Wyo. 1986).

On appeal of a summary judgment in an action to set aside a foreclosure sale in which the property owner challenged its failure to receive written notice of the foreclosure, the request for attorneys' fees made by the assignee of the mortgage was denied; there was no basis to conclude that the property owner conceded the issues or that there was no reasonable

cause for the appeal. ORO Mgmt., LLC v. R.C. Mineral & Rock, LLC, 304 P.3d 925 (June 21, 2013).

District court's decision was reviewable under an abuse-of-discretion standard. — The appellant had reasonable cause for this appeal and, therefore, the appellee's request for damages and costs, other than the cost of reproducing and typewriting his brief, was denied. JWR v. RG, 716 P.2d 984 (Wyo. 1986).

Sanctions not justified. — Award of attorney fees and damages as appellate sanctions was not warranted where, although the appellant ultimately failed to win the appeal, his legal arguments were presented cogently and in good faith, and there was adequate legal support to warrant bringing the appeal. Smith v. Brito, 173 P.3d 351 (Wyo. 2007).

Appellant's arguments were neither specious nor frivolous, but appear to have been made in good faith. Attorney fees and damages were therefor not added as costs. Mayflower Restaurant Co. v. Griego, 741 P.2d 1106 (Wyo. 1987).

Reasonable grounds for appeal. — See Andrau v. Michigan Wis. Pipe Line Co., 712 P.2d 372 (Wyo. 1986).

Where court had not expressly rejected the torts of civil conspiracy or prima facie tort as actionable for employment terminations, it declined to certify that there was no reasonable cause for appeal of summary judgment denying plaintiff relief based on these theories of recovery. Townsend v. Living Ctrs. Rocky Mt., Inc., 947 P.2d 1297 (Wyo. 1997).

Former husband was entitled to reasonable costs and attorney's fees under this rule on appeal of a divorce decree, as there was no transcript of the district court proceedings to show the wife had reasonable cause to bring the appeal. Golden v. Guion, 299 P.3d 95 (Wyo. 2013).

Appeal of injunction, without cogent authority, frivolous. — Where the appellant appealed the issuance of a permanent injunction which permitted the appellee to build a fence along the parties' adjoining property line and which prohibited the appellant from interfering with the building of that fence, the appellant's appeal was frivolous and there was no reasonable cause for appeal; attorney's fees and costs pursuant to this rule were awarded, since the appellant provided little or no cogent authority to support his claims before the court, and he provided the court with no record for review. Osborn v. Pine Mt. Ranch, 766 P.2d 1165 (Wyo. 1989).

Failure to provide transcript to refute damages award. — Where in an appeal of a contract dispute, in the record on appeal, the contractor failed to provide a transcript from the damages phase of the trial, or some alternative substitute for the transcript, such as a statement of evidence or proceedings, there was nothing in the record to refute the district court's finding on damages, and thus the Wyoming supreme court affirmed the award of damages and held the homeowner was entitled to costs and attorney's fees on appeal. However, the homeowner was not entitled to damages on appeal because the award of costs and attorney fees fully vindicated the supreme court's interest in enforcing the rules of appellate procedure. Chancler v. Meredith, 86 P.3d 841 (Wyo. 2004).

Failure to provide proper record in appeal containing alleged abuse of discretion results in an award of costs, attorney's fees and a penalty. Stadtfeld v. Stadtfeld, 920 P.2d 662 (Wyo. 1996).

Brief not so inadequate as to warrant sanctions. — Although the state supreme court found it necessary to dismiss an appeal filed by an estate's representative because the order from which the appeal was taken was not a final order that would give the state supreme court jurisdiction, the estate representative's brief was not so lacking in cogent argument or pertinent authority that it constituted the rare circumstance where sanctions were appropriate, and, thus, the imposition of sanctions was not warranted. Estate of McLean v. Benson, 71 P.3d 750 (Wyo. 2003).

Applied in Perry v. Vaught, 624 P.2d 776 (Wyo. 1981); Reno Livestock Corp. v. Sun Oil Co., 638 P.2d 147 (Wyo. 1981); Nicholls v. Nicholls, 721 P.2d 1103 (Wyo. 1986); J & M Invs. v. Davis, 726 P.2d 96 (Wyo. 1986); Edwards v. Edwards, 732 P.2d 1068 (Wyo. 1987); Lange v. Lawyer's Title Co., 741 P.2d 109 (Wyo. 1987); Mari v. Green, 767 P.2d 600 (Wyo. 1989); Blanchard v. Blanchard, 770 P.2d 227 (Wyo. 1989); Williams v. Williams, 817 P.2d 884 (Wyo. 1991); New Oil Inc. v. Interstate Bank of Commerce, 895 P.2d 871 (Wyo. 1995); Kahrs v. Board of Trustees, 901 P.2d 404 (Wyo. 1995); Muldoon v. Schatzman, 902 P.2d 218 (Wyo. 1995); Cotton v. Brow, 903 P.2d 530 (Wyo. 1995); Semler v. Semler, 924 P.2d 422 (Wyo. 1996); Townsend v. Living Ctrs. Rocky Mt., Inc., 947 P.2d 1297 (Wyo. 1997); Williams v. Dietz, 999 P.2d 642 (Wyo. 2000); Dewey Family Trust v. Mountain W. Farm Bureau Mut. Ins. Co., 3 P.3d 833 (Wyo. 2000); Miller v. Bradley, 4 P.3d 882 (Wyo. 2000); Maher v. Maher, 90 P.3d 739 (Wyo. 2004); White v. Allen, 115 P.3d 8 (Wyo. 2005).

Quoted in Wyoming Game & Fish Comm'n v. Smith, 773 P.2d 941 (Wyo. 1989); Stalkup v. State Dep't of Envtl. Quality (DEQ), 838 P.2d 705 (Wyo. 1992).

Stated in Igo v. Igo, 759 P.2d 1253 (Wyo. 1988); Revelle v. Schultz, 759 P.2d 1255 (Wyo. 1988); Drake v. McCulloh, 43 P.3d 578 (Wyo. 2002).

Cited in Parker v. Parker, 750 P.2d 1313 (Wyo. 1988); Department of Revenue & Taxation v. Casper Legion Baseball Club, Inc., 767 P.2d 608 (Wyo. 1989); Appelt v. Appelt, 768 P.2d 596 (Wyo. 1989); Overcast v. Overcast, 780 P.2d 1371 (Wyo. 1989); Rowan v. Rowan, 786 P.2d

886 (Wyo. 1990); Uhls v. Uhls, 794 P.2d 894 (Wyo. 1990); Martin v. Martin, 798 P.2d 321 (Wyo. 1990); Bachand v. Walters, 809 P.2d 284 (Wyo. 1991); Moore v. Lubnau, 855 P.2d 1245 (Wyo. 1993); Smith, Keller & Assocs. v. Dorr & Assocs., 875 P.2d 1258 (Wyo. 1994); Lindt v. Murray, 895 P.2d 459 (Wyo. 1995); Sharpe v. Sharpe, 902 P.2d 210 (Wyo. 1995); Davis v. State, 910 P.2d 555 (Wyo. 1996); Smith v. Robinson, 912 P.2d 527 (Wyo. 1996); Cundy Asphalt Paving Constr., Inc. v. Angelo Materials Co., 915 P.2d 1181 (Wyo. 1996); Board of County Comm'rs v. State ex rel. Yeadon, 971 P.2d 129 (Wyo. 1998); Peter Kiewit Sons v. Sheridan County Bd. of Comm'rs (In re Dunning), 982 P.2d 704 (Wyo. 1999); Mead v. State, 2 P.3d 564 (Wyo. 2000); Rawlinson v. Cheyenne Bd. of Pub. Utils., 17 P.3d 13 (Wyo. 2001); Parsons v. Parsons, 27 P.3d 270 (Wyo. 2001); Dolence v. State, 107 P.3d 176 (Wyo. 2005); Aragon v. Aragon, 104 P.3d 756 (Wyo. 2005); McNeel v. McNeel (In re McNeel), 109 P.3d 510 (Wyo. 2005); In re Paternity , JWH v. DAH, Appellee, 252 P.3d 942 (Wyo. 2011).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Am. Jur. 2d, ALR and C.J.S. references. — Award of damages for dilatory tactics in prosecuting appeal in state court, 91 ALR3d 661.

Attorney's liability under state law for opposing party's counsel fees, 56 ALR4th 486.

Award of damages or costs under 28 USC § 1912 or Rule 38 of Federal Rules of Appellate Procedure, against appellant who brings frivolous appeal, 67 ALR Fed 319.

Award of costs in appellate proceedings in federal court under Rule 39 of Federal Rules of Appellate Procedure, 68 ALR Fed 494.

10.06. Time for filing costs and fees.

Any motions for costs or fees shall be filed with the court within 15 days after the final written opinion or order is filed.

Comment. — The addition of Rule 10.06 is to eliminate the jurisdictional problem raised when costs and fees are sought after the case has been closed.

Quoted in Steiger v. Happy Valley Homeowners Ass'n, 245 P.3d 269 (Wyo. 2010).

Cited in GGV v. JLR, 105 P.3d 474 (Wyo. 2005).

10.07. In forma pauperis [Repealed].

Repealed April 6, 2015, effective July 1, 2015.

Rule 11. Certification of questions of law.

Applied in BP Am. Prod. Co. v. Madsen, 53 P.3d 1088 (Wyo. 2002).

Cited in W.A.R.M. v. Bonds, 866 P.2d 1291 (Wyo. 1994); Allhusen v. State ex rel. Wyo. Mental Health Professions Licensing Bd., 898 P.2d 878 (Wyo. 1995), (decided under prior law); River Springs Ltd. Liab. Co. v. Board of County Comm'rs, 899 P.2d 1329 (Wyo. 1995); Smith v. State ex rel. Wyoming Workers' Safety & Comp. Div., 965 P.2d 687 (Wyo. 1998), overruled on other grounds, Slater v. State ex rel. Wyo. Workers' Safety & Comp. Div., 18 P.3d 1195 (Wyo. 2001); Geringer v. Bebout, 10 P.3d 514 (Wyo. 2000); Oler v. United States, 17 P.3d 27 (Wyo. 2001); Larsen v. Banner Health Sys., 81 P.3d 196 (Wyo. 2003); Cabot Oil & Gas Corp. v. Followill, 93 P.3d 238 (Wyo. 2004); Prokop v. Hockhalter, 137 P.3d 131 (Wyo. 2006); Muller v. Jackson Hole Mt. Resort, 139 P.3d 1162 (Wyo. 2006); Jackson Hole Mt. Resort Corp. v. Rohrman, 150 P.3d 167 (Wyo. 2006); Elliott v. State, 247 P.3d 501 (Wyo. 2011).

11.01. Generally.

The supreme court may answer questions of law certified to it by a federal court or a state district court, and a district court may answer questions of law certified to it by a circuit court, municipal court or an administrative agency, if there is involved in any proceeding before the certifying court or agency a question of law which may be determinative of the cause then pending in the certifying court or agency and concerning which it appears there is no controlling precedent in the decisions of the supreme court. Any decision rendered by a district court under this section may be reviewed by the supreme court only through the provisions for writ of review, Rule 13.

(Amended May 4, 2001, effective September 1, 2001; amended December 2, 2002, effective January 6, 2003.)

Source. — New; Colorado Appellate Rule 21.1(a) (as amended).

The 2002 amendment deleted "justice of the peace court."

In matter of certified question from United States District Court, District of Wyoming, see Hanchey v. Steighner, 549 P.2d 1310 (Wyo. 1976).

Miscellaneous. — Where a patient asserted an informed consent claim based on allegations that a doctor lied to the patient before laparoscopic surgery, and the parties disputed whether Wyoming would extend the informed consent doctrine to the circumstances of the case, the court did not sua sponte ask the Wyoming Supreme Court to resolve this "unsettled and dispositive" issue of state law, because neither party requested certification. Willis v. Bender, 596 F.3d 1244 (10th Cir. 2010).

Applied in B & W Glass, Inc. v. Weather Shield Mfg., Inc., 829 P.2d 809 (Wyo. 1992); Larsen v. Banner Health Sys., 81 P.3d 196 (Wyo. 2003).

Quoted in Schneider Nat'l, Inc. v. Holland Hitch Co., 843 P.2d 561 (Wyo. 1992); Cathcart v. Meyer, 88 P.3d 1050 (Wyo. 2004).

Cited in State ex rel. Dep't of Health v. Campbell, 950 P.2d 557 (Wyo. 1997); Briefing.com v. Jones, 126 P.3d 928 (Wyo. 2006).

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appellate Review §§ 967 to 979; 20 Am. Jur. 2d Courts § 14.

11.02. Method of invoking.

Rule 11 may be invoked upon the motion of the court or of any party to the cause.

Source. — New; Colorado Appellate Rule 21.1(b).

11.03. Contents of certification order.

A certification order shall set forth:

(a) The questions of law to be answered;

(b) A statement of all facts relevant to the questions certified;

(c) The nature of the controversy in which the questions arose; and

(d) A designation of the party or parties who will be the appellant(s), i.e. the party holding the affirmative, in the appellate court.

Source. — Colorado Appellate Rule 21.1(c).

Applied in Sinclair Oil Corp. v. Republic Ins. Co., 929 P.2d 535 (Wyo. 1996).

Quoted in Sterner v. United States, 774 P.2d 639 (Wyo. 1989); Shoshone First Bank v. Pacific Employers Ins. Co., 2 P.3d 510 (Wyo. 2000).

Cited in Oler v. United States, 17 P.3d 27 (Wyo. 2001); Briefing.com v. Jones, 126 P.3d 928 (Wyo. 2006).

11.04. Preparation of certification order.

(a) The certification order shall be prepared by the certifying court or agency, signed by the judge presiding at the hearing or a designated individual for the agency, and forwarded to the reviewing court by the clerk of the certifying court or the designated individual for the agency under the official seal of the court or agency along with the appropriate docket fee. The reviewing court may require the original or copies of all, or of any portion of the record before the certifying court, to be filed under the certification order, if, in the opinion of the reviewing court, the record or any portion may be necessary in answering the questions.

(b) The reviewing court shall accept or reject a certified question within 30 days of docketing the certification order. A request for certification is deemed denied if not granted within 30 days of filing in the reviewing court. If the reviewing court rejects the question, the case will be closed and no request for reconsideration will be allowed.
(Amended April 6, 2015, effective July 1, 2015.)

Source. — Colorado Appellate Rule 21.1(d).
Applied in Sinclair Oil Corp. v. Republic Ins. Co., 929 P.2d 535 (Wyo. 1996).

11.05. Costs.

(a) Fees and costs shall be the same as in civil appeals docketed before the reviewing court. Payment of the docketing fee shall be borne by the party seeking certification. If both parties seek certification, then the parties shall each pay one-half of the docketing fee. In any other circumstances, fees and costs shall be paid as directed by the certifying court in its order of certification.

(b) No fees shall be collected in questions certified in criminal cases properly filed with the appellate court.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Colorado Appellate Rule 21.1(e).

11.06. Briefs and argument.

Upon the agreement of the reviewing court to answer the certified questions, notice shall be given to all parties. The question(s) to be answered may be altered by the reviewing court. The appellant shall file a brief within 45 days from service of the order agreeing to answer questions and the appellee shall file a brief within 45 days from service of appellant's brief. Briefs must be in the manner and form of briefs as provided in Rules 1.01 and 7, and oral arguments shall be as provided in Rule 8.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Colorado Appellate Rule 21.1(f).

11.07. Opinion [Repealed].

Repealed April 6, 2015, effective July 1, 2015.

Rule 12. Judicial review of administrative action.

Rule governs procedural aspect of review. — With limited exceptions, this rule governs the procedural aspect of review of administrative actions, and such review is to be accomplished in accordance with the Wyoming Administrative Procedure Act. Board of County Comm'rs v. Teton County Youth Servs., Inc., 652 P.2d 400 (Wyo. 1982).

Rule is exclusive means of seeking judicial review of final administrative action. Department of Revenue & Taxation v. Casper Legion Baseball Club, Inc., 767 P.2d 608 (Wyo. 1989).

Substantial evidence must support administrative decision. — Courts will not substitute their judgment for that of a particular board or commission, but its decision must be supported by substantial evidence or there is an error of law. Sage Club, Inc. v. Employment Sec. Comm'n, 601 P.2d 1306 (Wyo. 1979).

Authority of administrative agencies. — Administrative agencies have no authority to determine the constitutionality of a statute and on appeal of agency action, neither the district court nor the Wyoming Supreme Court has jurisdiction to consider such an issue; however, the right to pursue the constitutionality of the statute under which the agency acted is preserved in W.R.A.P. 12.12, via a declaratory judgment action. Thus, declaratory judgment was the proper course of action for the employee, an illegal alien who was denied benefits, and who challenged the constitutionality of Wyo. Stat. Ann. § 27-14-102(a)(vii). Torres v. State ex rel. Wyo. Workers' Safety & Comp. Div., 95 P.3d 794 (Wyo. 2004).

"Substantial evidence" means such relevant evidence as reasonable mind might accept as adequate to support conclusion. Sage Club, Inc. v. Employment Sec. Comm'n, 601 P.2d 1306 (Wyo. 1979).

Failure to exhaust administrative remedies. — Under Wyo. Stat. Ann. § 16-3-114(a) and W.R.A.P. 12, where appellant's social work license renewal was denied because it was a day late, and he later applied for re-licensure, appellant was not entitled to judicial review of the original denial because the application for

re-licensure was a separate application, and appellant had not exhausted administrative remedies in response to the original denial. In re Licensure of Jerry Penny v. State ex rel. Wyo. Mental Health Professions Licensing Bd., 120 P.3d 152 (Wyo. 2005).

Agency proper forum for challenging tax assessment. — A taxpayer was required to exhaust administrative remedies before bringing a declaratory judgment action; a constitutionally-established and statutorily-directed agency was the proper forum for an initial review of a challenge to a tax assessment. Union Pac. Resources Co. v. State, 839 P.2d 356 (Wyo. 1992).

Court without jurisdiction to decide compensatory taking action. — The legislature has charged the Environmental Quality Council with the responsibility for approving or denying applications for mining permits and until its determination has been rendered, the courts do not have jurisdiction under § 35-11-1001(b) to make a decision on a compensatory taking action or entertain an appeal from the denial of an application for a permit under § 16-3-114 and this rule. Rissler & McMurry Co. v. State, 917 P.2d 1157 (Wyo. 1996), cert. denied, 519 U.S. 1091, 117 S. Ct. 765, 136 L. Ed.2d 712 (1997).

Standing of county assessor. — County assessor lacked standing to appeal decision of State Board of Equalization under the Wyoming Administrative Procedure Act, as definition of "person" under § 16-3-101 excludes agencies, and county assessor is county officer under § 18-3-102. Rule 12 of the Wyoming Rules of Appellate Procedure provides the same rights as the Wyoming Administrative Procedure Act, and therefore cannot be the basis for the county assessor's standing to appeal a decision of the State Board of Equalization. Brandt v. TCI Cablevison, 873 P.2d 595 (Wyo. 1994).

Commission's final decision to be reviewed by district court. — The employment security commission's final decision is the decision to be reviewed by the district court under this rule, not those decisions which were made at intermediate stages in the process. Wyoming Dep't of Emp. v. Rissler & McMurry Co., 837 P.2d 686 (Wyo. 1992).

Unemployment Insurance Commission is final authority. — The Unemployment Insurance Commission is the final agency adjudicating authority; the Commission's final decision is the decision to be reviewed by the district court under this rule, not those decisions which were made at intermediate stages in the process. City of Casper v. Wyoming Dep't of Emp., 851 P.2d 1 (Wyo. 1993).

Failure to join necessary party not jurisdictional defect. — The appellant's failure to name, join or serve the appellee in an initial petition for review of a decision by the Department of Employment, Employment Services Division denying unemployment benefits was not a jurisdictional defect requiring dismissal of the petition for review and any procedural defect in the petition for review was remedied when the appellant, without unnecessary delay, served the appellee with a copy of the petition for review. Bridge v. State, Dep't of Employment, 896 P.2d 759 (Wyo. 1995).

Appeal challenging jurisdiction of industrial siting council. — By rule, the industrial siting council (ISC) has created a procedure apart from the permit process by which its jurisdiction over the construction of an industrial facility may be challenged. Under it, the ISC jurisdiction may be challenged by filing an application for a certificate of insufficient jurisdiction. The district court has jurisdiction to entertain an appeal from the denial by the ISC of a certificate of insufficient jurisdiction. Industrial Siting Council v. Chicago & N.W. Transp. Co., 660 P.2d 776 (Wyo. 1983).

School teacher unlawfully discharged after administrative action may seek damages for his discharge in a state court proceeding. Spiegel v. School Dist. No. 1, 600 F.2d 264 (10th Cir. 1979).

Review of certified case. — Wyoming Public Service Commission's order granting oil company's request to abandon its oil-gathering facilities was affirmed where the order was appropriately based upon the consideration of the public good, convenience, and necessity and was supported by substantial evidence. Sinclair Oil Corp. v. Wyo. PSC, 63 P.3d 887 (Wyo. 2003).

Applied in Sinclair Oil Corp. v. Wyo. PSC, 63 P.3d 887 (Wyo. 2003).

Cited in McGuire v. McGuire, 608 P.2d 1278 (Wyo. 1980); State Bd. of Equalization v. Cheyenne Newspapers, Inc., 611 P.2d 805 (Wyo. 1980); Holding's Little Am. v. Board of County Comm'rs, 670 P.2d 699 (Wyo. 1983); Bridge v. State, Dep't of Employment, 896 P.2d 759 (Wyo. 1995); Hamill v. Ferguson, 937 F. Supp. 1517 (D. Wyo. 1996); Anschutz Corp. v. Wyoming Oil & Gas Conservation Comm'n, 923 P.2d 751 (Wyo. 1996); Mondt v. Cheyenne Police Pension Bd., 986 P.2d 858 (Wyo. 1999); Sweets v. State ex rel. Wyo. Workers' Safety & Comp. Div., 42 P.3d 461 (Wyo. 2002); Wyodak Res. Dev. Corp. v. Wyo. Dep't of Revenue, 60 P.3d 129 (Wyo. 2002); Bd. of Trs. of Mem. Hosp. v. Martin, 60 P.3d 1273 (Wyo. 2003); State ex rel. DOT v. Legarda, 77 P.3d 708 (Wyo. 2003).

Law reviews. — For article, "Industrial Siting Legislation: The Wyoming Industrial Development Information and Siting Act — Advance or Retreat?" see XI Land & Water L. Rev. 27 (1976).

For article, "Administrative Law, Wyoming Style," see XVIII Land & Water L. Rev. 223 (1983).

For comment, "Education for Handicapped Children in Wyoming: What Constitutes a Free Appropriate Public Education and Other Ad-

ministrative Hurdles," see XIX Land & Water L. Rev. 225 (1984).

Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

For article, "Administrative Law: Rulemaking and Contested Case Practice in Wyoming," see XXXI Land & Water L. Rev. 685 (1996).

Am. Jur. 2d, ALR and C.J.S. references. — Judicial review of administrative ruling affecting conduct or outcome of publicly regulated horse, dog, or motor vehicle race, 36 ALR4th 1169.

12.01. Generally.

To the extent judicial review of administrative action by a district court is available, any person aggrieved or adversely affected in fact by a final decision of an agency in a contested case, or who is aggrieved or adversely affected in fact by any other agency action or inaction, or who is adversely affected in fact by a rule adopted by that agency, may obtain such review as provided in this rule. All appeals from administrative agencies shall be governed by these rules.

Source. — Former Rule 72.1(a), W.R.C.P. (See notes following Rule 12.12.)

Letter from state agency not final agency action. — Letter from state agency advising an employee that it was denying his petition for a grievance committee to consider his request for a salary increase did not constitute a final agency action within the meaning of Wyo. R. App. P. 12.01 and 12.04 because the state personnel rules did not indicate that such a letter could constitute a final decision on a request for a salary increase. Douglass v. Wyo. DOT, 187 P.3d 850 (Wyo. 2008).

Email from supervisor not final agency action. — E-mail from supervisor addressing employee's grievance indicating that the state agency had determined that the employee was not entitled to a salary increase but also indicating that the supervisor would continue to look into the matter did not constitute a final agency action within the meaning of Wyo. R. App. P. 12.01 and 12.04. Douglass v. Wyo. DOT, 187 P.3d 850 (Wyo. 2008).

Seizure of cigarettes is agency action which is subject to judicial review. Stagner v. Wyoming State Tax Comm'n, 642 P.2d 1296 (Wyo. 1982).

As is administrative adjudication of water right. — An appeal from a part of an order of the board of control which adjudicated a water right was an appeal of an "administrative action." Wolfley v. Crook, 695 P.2d 159 (Wyo. 1985).

As is tax commission's refusal to reinstate driving license. — Following the suspension of a driving license, the driver did not appeal the suspension order, but later made a reinstatement request to the motor vehicle division, which was referred to the attorney general's office, which denied the request. The driver then attempted to appeal to the tax commission, which refused to act. This constituted the "other agency action or inaction" specified in § 16-3-114(a) and in this rule, and the district court had jurisdiction over a petition to review filed within 30 days of the tax commission's letter of refusal. State v. Kraus, 706 P.2d 1130 (Wyo. 1985).

Aggrieved or adversely affected. — Court dismissed one of the taxpayer's consolidated appeals of the ad valorem personal property tax assessments on its coal mines for lack of jurisdiction because that the State Board of Equalization had remanded the case to the County Board of Equalization; therefore the taxpayer was the prevailing party and was not adversely affected or "aggrieved" as provided under this rule. Even if the taxpayer's appeal from the State Board of Equalization to the district court was authorized, the district court's order remanding the matter to the County Board was not appealable under Wyo. R. App. P. 1.05 because it did not finally conclude the matter. Thunder Basin Coal Co. v. Campbell County, 132 P.3d 801 (Wyo. 2006).

Petition for mandamus improper. — Where attorney filed his petition for mandamus almost 90 days after client requested a hearing and no response from the division was received, the amount of time was "reasonable"; however, the appropriate remedy was to file a petition for review of agency inaction, and where there was an adequate remedy at law, an action for mandamus was improper. Harris v. Schuetz, 948 P.2d 907 (Wyo. 1997).

Public service commission's order retaining matter of refunds for further action was not a final decision for purposes of judicial review, where the language of the order indicated that the commission was unsure whether a refund would be necessary. MGTC, Inc. v. Public Serv. Comm'n, 735 P.2d 103 (Wyo. 1987).

Applicability of other rules. — District court's dismissal of an appeal from an administrative ruling denying unemployment benefits could not be challenged through a motion for relief under Wyo. R. Civ. P. 60, even if considered as an application for rehearing under Wyo. R. App. P. 9.07 or a petition for reinstatement under Wyo. R. App. P. 15. The above rules did not apply, in light of the absence

of anything in this rule and the scope of the civil rules as defined in Wyo. R. Civ. P. 1 to indicate that other civil or appellate rules might extend to agency appeals. Libretti v. State (In re United States Currency Totaling $7,209.00), 278 P.3d 234 (Wyo. 2012).

Attorney fees denied. — Attorney fees were denied where attorney did not provide argument or authority as to why he should be entitled to attorney's fees, he did not comply with the workers' compensation statutes, and his appeal violated numerous rules of appellate procedure. Harris v. Schuetz, 948 P.2d 907 (Wyo. 1997).

Trial court engaged in proper review. — In an unemployment compensation matter, the employee's argument that the trial court erroneously reviewed the Wyoming Department of Employment, Unemployment Insurance Commission's decision on appeal instead of a hearing examiner's decision was contrary to the rule; the trial court was not at liberty to review the decision made by the hearing examiner. Koch v. Dep't of Empl., 294 P.3d 888 (Wyo. 2013).

Applied in Walker v. Board of County Comm'rs, 644 P.2d 772 (Wyo. 1982); Joelson v. City of Casper, 676 P.2d 570 (Wyo. 1984); Scanlon v. Schrinar, 759 P.2d 1243 (Wyo. 1988).

Quoted in Sellers v. Employment Sec. Comm'n, 760 P.2d 394 (Wyo. 1988); Thunderbasin Land, Livestock & Inv. Co. v. County of Laramie, 5 P.3d 774 (Wyo. 2000); Cook v. Card (In re Cook), 170 P.3d 122 (Wyo. 2007).

Stated in L Slash X Cattle Co. v. Texaco, Inc., 623 P.2d 764 (Wyo. 1981); AT & T Communications of Mt. States, Inc. v. State Bd. of Equalization, 768 P.2d 580 (Wyo. 1989).

Cited in Mountain States Tel. & Tel. Co. v. Public Serv. Comm'n, 745 P.2d 563 (Wyo. 1987); Miller v. Bradley, 4 P.3d 882 (Wyo. 2000); State ex rel. Wyoming Workers' Safety & Comp. Div. v. Conner, 12 P.3d 707 (Wyo. 2000).

12.02. Definitions.

As used in Rule 12, the words "agency", "contested case", "party", "person" and "rule" (when referring to an agency or administrative rule), shall have the meanings set forth in Wyo. Stat. 16-3-101, provided, that "agency" shall not mean a sheriff, clerk of court, district court commissioner, master, referee, receiver, appraiser, executor, administrator, guardian, commissioner appointed by a court, or any other officer of a court or officer appointed by a court, the governing body of a city or town, or the state legislature.

Source. — Former Rule 72.1(b), W.R.C.P. (See notes following Rule 12.12.)

Purpose of this rule is to restrict review of judicial functions. — This rule did not deprive supreme court of subject matter jurisdiction to review discharge of deputy sheriff, because actions undertaken in an administrative role or accomplishing an executive function, such as personnel decisions and equipment purchases, remain subject to review process designed for administrative agencies. Fisch v. Allsop, 4 P.3d 204 (Wyo. 2000).

Board of control is an "administrative agency" and appeals therefrom are governed by Rule 12. This is true regardless of whether the board's decision is characterized as administrative or "quasi-judicial." Wolfley v. Crook, 695 P.2d 159 (Wyo. 1985).

12.03. Institution of proceedings.

(a) The proceedings for judicial review under Rule 12 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. No summons shall be necessary. The petition shall conform to the requirements set forth in Rule 12.06.

(b) Copies of the petition shall be served upon the agency and all parties in accordance with Rule 5, Wyo. R. Civ. P.

(Amended May 4, 1999, effective October 1, 1999; amended May 4, 2001, effective September 1, 2001; amended April 6, 2015, effective July 1, 2015.)

Comment. — The change is to remind petitioners that all parties should be served with the petition.

Source. — Former Rule 72.1(c), W.R.C.P. (See notes following Rule 12.12.)

Purpose of Wyoming Administrative Procedure Act is to provide uniform procedures to be followed in the adoption of agency rules and in conducting contested hearings and to set out the means by which a final agency determination may be appealed to the courts for review. Sage Club, Inc. v. Employment Sec. Comm'n, 601 P.2d 1306 (Wyo. 1979).

Review of employment security commission determinations. — The proceedings for judicial review of final determinations made by

the employment security commission are governed by the Wyoming Administrative Procedure Act and this rule. Sage Club, Inc. v. Employment Sec. Comm'n, 601 P.2d 1306 (Wyo. 1979).

Review of police officer's disciplinary suspension. — The district court has jurisdiction to review the disciplinary suspension of a police officer where the police department civil service commission's rules and regulations provide that an officer may petition the commission for a hearing upon discharge, or reduction of classification or compensation, the commission grants a hearing to the officer as though he has been reduced in compensation, and the rules then provide that the contested-case proceedings of the Wyoming Administrative Procedure Act must be following. Keslar v. Police Civil Serv. Comm'n, 665 P.2d 937 (Wyo. 1983).

Applied in Knight v. Environmental Quality Council, 805 P.2d 268 (Wyo. 1991).

Quoted in State ex rel. Wyo. Workers' Comp. Div. v. Taffner, 821 P.2d 103 (Wyo. 1991); Cook v. Card (In re Cook), 170 P.3d 122 (Wyo. 2007).

Cited in Sheneman v. Division of Workers' Safety & Comp. Internal Hearing Unit, 956 P.2d 344 (Wyo. 1998); Mullinax Concrete Serv. Co. v. Zowada, 243 P.3d 181 (Wyo. 2010).

Law reviews. — For article, "Administrative Law, Wyoming Style," see XVIII Land & Water L. Rev. 223 (1983).

For comment, "Education for Handicapped Children in Wyoming: What Constitutes a Free Appropriate Public Education and Other Administrative Hurdles," see XIX Land & Water L. Rev. 225 (1984).

For article, "A Critical Look at Wyoming Water Law," see XXIV Land & Water L. Rev. 307 (1989).

12.04. Time for filing petition; cross-petitions for review; ordering transcript.

(a) In a contested case, or in an uncontested case, even where a statute allows a different time limit on appeal, the petition for review shall be filed within 30 days after service upon all parties of the final decision of the agency or denial of the petition for a rehearing, or, if a rehearing is held, within 30 days after service upon all parties of the decision.

(b) Upon a showing of excusable neglect the district court may extend the time for filing the petition for review for no more than 30 days from the expiration of the original time prescribed in paragraph (a).

(c) If a timely petition for review is filed by any party, any other party may file a cross-petition for review within 15 days of the date on which the first petition for review was filed. A cross-petition for review shall conform to the requirements set forth in Rule 12.06.

(d) Concurrently with the filing of a petition for review, or a cross-petition for review, the party so filing shall order and arrange for the payment for a transcript of the testimony necessary for the appeal. Written evidence disclosing the portions of the transcript ordered and compliance with this paragraph shall be served upon the agency and all parties as provided in Rule 5, Wyo.R.Civ.P.

(Amended May 4, 1999, effective October 1, 1999; amended May 4, 2001, effective September 1, 2001; amended April 6, 2015, effective July 1, 2015.)

Comment. — The change is to give parties time to file a cross-petition, rather than being forced to file a petition on the deadline whether or not other parties have filed a petition for review.

Source. — Former Rule 72.1(d), W.R.C.P. (See notes following Rule 12.12.)

Timely filing of petition for review is mandatory and jurisdictional. Department of Revenue & Taxation v. Irvine, 589 P.2d 1295 (Wyo. 1979).

Time period for filing appeal is measured from date of mailing rather than the date of receipt. Sellers v. Employment Sec. Comm'n, 760 P.2d 394 (Wyo. 1988).

After appellees were granted a private road across appellant's property, appellant's petition for review was timely under Wyo. R. App. P. 12.04(a) because the petition was filed 30 days after the date copies of the order were mailed to the parties. Goodman v. Voss, 248 P.3d 1120 (Wyo. 2011).

Review of agency actions. — Where the lawsuit was actually a request for review of an agency action and, as such, was not timely filed within 30 days after notice of the final agency decision, the district court properly dismissed the action for lack of subject matter jurisdiction. Sheridan Retirement Partners v. City of Sheridan, 950 P.2d 554 (Wyo. 1997).

When the decision of a board of county commissioners to approve a developer's plan to develop combined real estate parcels was reviewed, a prior minor boundary adjustment

and zoning map amendment were not reviewed because review was not timely sought under this rule. Wilson Advisory Comm. v. Bd. of County Comm'r, 292 P.3d 855 (Wyo. 2012).

Rule has superseded all statutory time provisions relating to appeals from administrative action. Wolfley v. Crook, 695 P.2d 159 (Wyo. 1985).

Thirty-day limit not tolled by rehearing denial. — An application for rehearing to the zoning board of adjustment must be taken in time to allow for a petition for review within 30 days after final action by the board denying a variance. Failure to grant a rehearing does not toll the 30-day limit. Jackson Paint & Glass, Inc. v. Town of Jackson, 811 P.2d 293 (Wyo. 1991).

When agency renders second decision full appeal period runs from second decision, and an appealing party need not go back and calculate the days expended between the first decision and the date on which rehearing was granted to determine how many days he has left to appeal after the second decision. Big Horn County Comm'rs v. Hinckley, 593 P.2d 573 (Wyo. 1979).

Challenge to decision of state board of control regarding water rights untimely. — Petition to intervene brought by irrigators to adjudicate water rights was properly dismissed by the district court, pursuant to Rule 12(b)(6), W.R.C.P., as the matter was barred by res judicata and the petition was untimely. The disputed reservoir certificates were originally adjudicated in 1963. In re General Adjudication of All Rights to use Water in the Big Horn River System, 85 P.3d 981 (Wyo. 2004).

Employment Security Commission lacks authority to reconsider its own ruling in contested case when that ruling was made by the full commission at the final stage of intra-agency review, unless the grounds for reconsideration listed in § 27-3-402(c) are present. Decisions of the full commission sitting as an appellate tribunal are final unless a judicial appeal is taken to the district court by an unsuccessful party. Hupp v. Employment Sec. Comm'n, 715 P.2d 223 (Wyo. 1986).

Letter from state agency not final action. — Letter from state agency advising an employee that it was denying his petition for a grievance committee to consider his request for a salary increase did not constitute a final agency action within the meaning of Wyo. R. App. P. 12.01 and 12.04 because the state personnel rules did not indicating that such a letter could constitute a final decision on a request for a salary increase. Douglass v. Wyo. DOT, 187 P.3d 850 (Wyo. 2008).

Email from supervisor not final action. — E-mail from supervisor addressing employee's grievance indicating that the state agency had determined that the employee was not entitled to a salary increase but also indicating that the supervisor would continue to look into the matter did not constitute a final agency action within the meaning of Wyo. R. App. P. 12.01 and 12.04. Douglass v. Wyo. DOT, 187 P.3d 850 (Wyo. 2008).

When driver's license suspension becomes final. — Although the petitioner was present at the administrative hearing and was verbally notified that his driver's license was suspended, his license was not suspended and the agency decision was not final until the order of denial was signed and made a matter of record two days later. Department of Revenue & Taxation v. Irvine, 589 P.2d 1295 (Wyo. 1979).

Notice that state lease terminated considered final decision. — A notice informing a lessee of the termination of her state oil and gas lease was considered a final decision of an agency which was ripe for judicial review. Subsequent correspondence between the attorney general's office and the lessee's attorney, which sought to clarify the finality of the agency's action, had no bearing on the finality and did not serve to toll the 30-day period of time in which to file a petition for review. Scanlon v. Schrinar, 759 P.2d 1243 (Wyo. 1988), cert. denied, 489 U.S. 1016, 109 S. Ct. 1131, 103 L. Ed. 2d 193 (1989).

Zoning board order denying challenger's petition for rehearing was not appealable final order since the board lacked authority to rehear its original decision, which granted a use permit. Further, the filing of the petition for rehearing did not toll the running of the time period for filing a notice of appeal of final agency action under this rule. Rosenberger v. City of Casper Bd. of Adjustment, 765 P.2d 367 (Wyo. 1988).

Verbal and written notice constitute proper notification. — Where there was a verbal notice which was followed up with a written notice, the petitioner received due and proper notification of the suspension of his driver's license. Department of Revenue & Taxation v. Irvine, 589 P.2d 1295 (Wyo. 1979).

Late appeal excused by mistaken belief. — Where appellee justifiably, but wrongly, believed that a challenge to the necessity of a road was a condition precedent to a hearing on the elements of adverse possession, he should not be penalized for a late appeal, and the case should be remanded to the district court for entry of an order directing the county board to provide a hearing in accordance with § 24-1-101. Big Horn County Comm'rs v. Hinckley, 593 P.2d 573 (Wyo. 1979).

Under an exception to the Feres doctrine, Wyoming's Air National Guard and its adjutant general faced possible liability for terminating an officer without following all prescribed statutory procedures; state courts lacked subject matter jurisdiction, however, because of the officer's failure to timely seek review of the decision of the National Guard, since the Guard was, to at least some extent, a state agency.

Nyberg v. State Military Dep't, 65 P.3d 1241 (Wyo. 2003).

Failure to provide adequate record. — When the mother filed a second motion to modify child custody just nine days after the first motion to modify custody was decided, the district court dismissed the second motion on the basis of res judicata; because the record on appeal submitted under this rule did not include a transcript or statement of the evidence presented at the hearing, the Supreme Court of Wyoming accepted the district court's conclusion that the issues the mother presented in her second motion were identical to those decided by the first order. Goodman v. Voss, 248 P.3d 1120 (Wyo. 2011).

Applied in Stagner v. Wyoming State Tax Comm'n, 642 P.2d 1296 (Wyo. 1982); City of Evanston v. Whirl Inn, Inc., 647 P.2d 1378 (Wyo. 1982); State v. Kraus, 706 P.2d 1130 (Wyo. 1985).

Quoted in Joelson v. City of Casper, 676 P.2d 570 (Wyo. 1984); AT & T Communications of Mt. States, Inc. v. State Bd. of Equalization, 768 P.2d 580 (Wyo. 1989); Cook v. Card (In re Cook), 170 P.3d 122 (Wyo. 2007).

Stated in City of Evanston v. Griffith, 715 P.2d 1381 (Wyo. 1986).

Law reviews. — For comment, "Education for Handicapped Children in Wyoming: What Constitutes a Free Appropriate Public Education and Other Administrative Hurdles," see XIX Land & Water L. Rev. 225 (1984).

12.05. Stay of enforcement.

Filing of the petition does not itself stay enforcement of the agency decision. The reviewing court may order a stay upon appropriate terms. If the stay involves an order preventing an agency or another party from committing or continuing an act or course of action, the provisions of Rule 65, Wyo. R. Civ. P., relating to injunctions shall apply.

Source. — Former Rule 72.1(e), W.R.C.P. (See notes following Rule 12.12.)

Quoted in Northern Utils., Inc. v. Public Serv. Comm'n, 617 P.2d 1079 (Wyo. 1980).

12.06. Requirements of petition.

The petition for review shall not exceed five pages in length, excluding appendix, and shall be in the format described in Rule 7.05(b). The petition for review shall include:

(a) A concise statement showing jurisdiction and venue;

(b) The specific issues of law addressed to the district court for review;

(c) For petitions in contested cases, a list of all persons or agencies formally identified as parties, as defined in W.S. 16-3-101(b)(vi); in all other cases, a person seeking judicial review of agency action must affirmatively file as a petitioner under W.S. 16-3-114 to be considered as a party;

(d) For petitions of contested cases, a brief statement of the facts relevant to the legal issues raised before the agency, showing the nature of the controversy in which the legal issues arose;

(e) A copy of the agency decision attached as an appendix; and

(f) The name, file number and court in which any related petition for judicial review is pending.

(Amended May 4, 1999, effective October 1, 1999.)

Comment. — New subsection (c) has been added to address the issue of identifying parties in accordance with the statutory definition. The change to (d) recognizes that this requirement would not apply to other than contested cases. The addition of subsection (f) is to give the court notice of related cases.

Source. — Former Rule 72.1(f), W.R.C.P. (See notes following Rule 12.12.)

Dismissal improper. — Trial court erred in dismissing pursuant to Wyo. R. App. P. 12.06 a police officer's appeal of an order from a civil service commission dismissing the officer from service where the trial court's conclusions that it had no authority to allow the officer to amend the notice of appeal, that it had very limited discretion in resolving the issue before it, and that it had no other choice but to dismiss the case were contrary to Wyo. R. App. P. 1.03. Cook v. Card (In re Cook), 170 P.3d 122 (Wyo. 2007).

Dismissal for failure to comply with rule. — District court did not abuse its discretion in dismissing pro se litigant's petition for review, where petition failed to meet even the most basic requirements of the rules of appellate procedure, and district court carefully considered petition before determining that it was simply too confusing to invoke the court's juris-

diction. Pinther v. Webb, 983 P.2d 1221 (Wyo. 1999).

Failure to include required material in notice of appeal. — Because plaintiff filed a notice of appeal which did not encompass the information required by this rule, rather than a petition for review, the district court did not abuse its discretion by invoking the dismissal sanction found in Rule 1.03, W.R.A.P. McElreath v. State ex rel. Wyo. Workers' Comp. Div., 901 P.2d 1103 (Wyo. 1995).

Stated in Town of Evansville Police Dep't v. Porter, 256 P.3d 476 (Wyo. 2011).

Quoted in LeFaivre v. Environmental Quality Council, 735 P.2d 428 (Wyo. 1987).

Cited in Laramie County Sch. Dist. #2 v. Albin Cats Charter Sch., Inc., 109 P.3d 552 (Wyo. 2005).

12.07. Record.

(a) Within 60 days after the service of petition, or within the time allowed by the reviewing court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review and a separate letter of transmittal marked for the personal attention of the judge or judges of the reviewing court.

(1) The record papers shall be securely fastened, in an orderly manner, in one or more volumes consisting of no more than 250 pages per volume, with pages sequentially numbered with a "redback" or other sturdy cover bearing the title of the case and containing the designation "Transmitted Record," followed by a complete index of all papers.

(2) Transcripts shall be in separate folder, with the designation "Transcripts";

(3) Exhibits considered by the agency shall be compiled with the designation, "Exhibits."

The agency shall provide copies of the index to the reviewing court and to the parties. Concurrently with transmitting the record, the agency shall serve notice of the transmittal on all parties.

(b) The record in a contested case shall consist of the matter required by Wyo.Stat.Ann. § 16-3-107(o), Wyoming Administrative Procedures Act. To the extent any matter required was not preserved by the agency and there is no record, the court may take evidence on that matter. The record in all other cases shall consist of the appropriate agency documents reflecting the agency action and its basis. By stipulation of all parties to the review proceedings, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be disciplined in accordance with Rule 1.03. The reviewing court may require or permit subsequent additions or corrections to the record. A record remanded by a court to an agency for any reason or purpose may be recalled by the remanding court, as necessary, upon its own motion.

(c) Any record which fails to comply with Rule 12.07(a) may be returned to the agency by the district court or supreme court for compliance.

(Amended May 4, 1999, effective October 1, 1999; amended April 6, 2015, effective July 1, 2015.)

Comment. — The addition is to require agencies to provide the record in a more manageable form, that permits the parties and the reviewing courts to make citations to the record.

Source. — Former Rule 72.1(g), W.R.C.P. — with last sentence added.

Meaningful review requires adequate record. — Meaningful review of administrative actions requires that an adequate record of the proceedings be made before the administrative agency. Board of County Comm'rs v. Teton County Youth Servs., Inc., 652 P.2d 400 (Wyo. 1982).

Record of variance proceeding was sufficient. — Pursuant to Wyo. R. App. P. 12.07(b), an appellate court had a sufficient record consisting of the appropriate documents relating to a board of county commissioners' action in denying a property owner's variance request; in the owner's briefing, there were several instances in which the owner's counsel inserted counsel's recollection of the discussions of some board members. Gilbert v. Bd. of County Comm'rs, 232 P.3d 17 (Wyo. 2010).

Applied in Ward v. Board of Trustees, 865 P.2d 618 (Wyo. 1993); State Elec. Bd. v. Hansen, 928 P.2d 482 (Wyo. 1996).

Quoted in Northern Utils., Inc. v. Public Serv. Comm'n, 617 P.2d 1079 (Wyo. 1980); Hold-

ing's Little Am. v. Board of County Comm'rs, 712 P.2d 331 (Wyo. 1985).

Cited in Cody Gas Co. v. Public Serv. Comm'n, 748 P.2d 1144 (Wyo. 1988).

Law reviews. — For article, "Administrative Law, Wyoming Style," see XVIII Land & Water L. Rev. 223 (1983).

For comment, "Education for Handicapped Children in Wyoming: What Constitutes a Free Appropriate Public Education and Other Administrative Hurdles," see XIX Land & Water L. Rev. 225 (1984).

12.08. Presentation of evidence.

If, before the date set for hearing, application is made to the reviewing court for leave to present additional evidence, and it is shown to the satisfaction of the court the additional evidence is material, and good cause for failure to present it in the proceeding before the agency existed, the reviewing court, in contested cases, shall order the additional evidence to be taken before the agency upon those conditions determined by the reviewing court. The agency may adhere to, or modify, its findings and decision after receiving such additional evidence, and shall supplement the record to reflect the proceedings had and the decision made. Supplemental evidence may be taken by the reviewing court in cases involving fraud, or involving misconduct of some person engaged in the administration of the law affecting the decision. In all cases other than contested cases, additional material evidence may be presented to the reviewing court.

Source. — Former Rule 72.1(h), W.R.C.P. (See notes following Rule 12.12.)

Construction. — This rule does not permit remand for purpose of presenting alternative legal theories to the hearing examiner; the plain language of the rule limits relief to the presentation of additional evidence, not arguments. Bila v. Accurate Telecom, 964 P.2d 1270 (Wyo. 1998).

Lack of proof of "good reason" for failure to present evidence before agency. — See Wyoming Bank & Trust Co. v. Bonham, 606 P.2d 296 (Wyo. 1980).

"Material" construed. — Material evidence is such evidence as is offered to help prove a proposition which is a matter in issue; in this context, "material" has a more precise meaning than merely relevant or pertinent. Harris v. Sinclair Trucking, 900 P.2d 1163 (Wyo. 1995).

"Misconduct" defined. — "Misconduct" means mismanagement, especially of governmental or military responsibilities; intentional wrongdoing; deliberate violation of a rule of law or standard of behavior, especially by a government official; malfeasance; bad conduct; the term implies a wrong intention and not a mere error of judgment. Wyoming Bank & Trust Co. v. Bonham, 606 P.2d 296 (Wyo. 1980).

Actions of public officer not amounting to "misconduct". — See Wyoming Bank & Trust Co. v. Bonham, 606 P.2d 296 (Wyo. 1980).

Application to present additional evidence. — The application to present additional evidence was not timely filed when it was not presented until after the district court filed its decision letter and judgment, and not before the date set for hearing, as required by this section. RM v. Department of Family Servs., 953 P.2d 477 (Wyo. 1998).

Where dentist failed to show good cause for his failure to present evidence in initial proceeding before the board of dental examiners, the district court did not abuse its discretion in refusing supplementation of record. Frank v. State, Wyoming Bd. of Dental Exmrs., 965 P.2d 674 (Wyo. 1998).

No error in refusal to allow additional evidence. — In reviewing hearing examiner's denial of worker's compensation benefits, district court did not err in refusing to allow employee to present evidence of his original injury or evidence of examiner's alleged bias, since employee failed to show court good cause why he did not present evidence in hearing, and materiality of additional evidence was not demonstrated. Shryack v. Carr Constr. Co., 3 P.3d 850 (Wyo. 2000).

Supplementation of record with material evidence. — After the Office of Administrative Hearings (OAH) upheld the denial of worker's compensation benefits, a jury sitting in federal court found that appellee injured worker was acting within the scope of his employment at the time of the car accident; the district court did not abuse its discretion in supplementing the administrative record pursuant to this rule with the federal trial testimony of witnesses who indicated that appellee was traveling to meet with a property owner about refinancing her home on the date of the accident. The supplemented evidence was material to the question of whether appellee experienced an injury in the scope of his employment with the mortgage company; because this rule required additional evidence to be taken before the agency, the trial court erred by the failing to remand the case to the OAH for consideration of the supplemented evidence. Mullinax Concrete Serv. Co. v. Zowada, 243 P.3d 181 (Wyo. 2010).

Presenting evidence on hearing date deemed untimely. — When a party moved for leave to present additional evidence on the date of the hearing, it did not move "before the date set for hearing." The untimely motion precluded the party from relying on this rule on appeal. ANR Prod. Co. v. Wyoming Oil & Gas Conservation Comm'n, 800 P.2d 492 (Wyo. 1990).

Enough time for appropriate response required. — Remand to the Wyoming oil and gas conservation commission was required to permit a drilling company to present evidence contradicting or contesting a computer simulation, where the company had not been furnished the computer simulation documentation and analysis at a time in advance of a scheduled hearing so that appropriate technical consideration for response could be prepared and given. Louisiana Land & Exploration Co. v. Wyoming Oil & Gas Conservation Comm'n, 809 P.2d 775 (Wyo. 1991).

Applied in In re Rule Radiophone Serv., Inc., 621 P.2d 241 (Wyo. 1980); Majority of Working Interest Owners v. Wyoming Oil & Gas Conservation Comm'n, 721 P.2d 1070 (Wyo. 1986); Hemme v. State ex rel. Wyo. Workers' Comp. Div., 914 P.2d 824 (Wyo. 1996).

Quoted in L Slash X Cattle Co. v. Texaco, Inc., 623 P.2d 764 (Wyo. 1981); Holding's Little Am. v. Board of County Comm'rs, 712 P.2d 331 (Wyo. 1985).

Cited in Public Serv. Comm'n v. Formal Complaint of WWZ Co., 641 P.2d 183 (Wyo. 1982); Hwang v. State, 247 P.3d 861 (Wyo. 2011).

Law reviews. — For article, "Administrative Law, Wyoming Style," see XVIII Land & Water L. Rev. 223 (1983).

For comment, "Education for Handicapped Children in Wyoming: What Constitutes a Free Appropriate Public Education and Other Administrative Hurdles," see XIX Land & Water L. Rev. 225 (1984).

12.09. Extent of review.

(a) Review shall be conducted by the reviewing court and shall be confined to the record as supplemented pursuant to Rule 12.08 and to the issues set forth in the petition and raised before the agency. Review shall be limited to a determination of the matters specified in Wyo.Stat.Ann. § 16-3-114(c).

(b) Upon such review, or in response to a motion for certification or interlocutory appeal by any party within 30 days of the filing of the petition for review and after allowing fifteen (15) days from service for response, the district court may, as a matter of judicial discretion, certify the case to the supreme court. In determining whether a case is appropriate for certification, the district court shall consider whether the case involves:

(1) a novel question;

(2) a constitutional question;

(3) a question of state-wide impact;

(4) an important local question which should receive consideration from the district court in the first instance;

(5) a question of imperative public importance; or

(6) whether an appeal from any district court determination is highly likely such that certification in the first instance would serve the interests of judicial economy and reduce the litigation expenses to the parties.

(c) Not later than 15 days after its receipt of the completed record, the district court shall notify the parties of its decision concerning certification by order, which shall include a concise statement of the issues raised in the petition and findings which support the determination concerning certification. Upon entry of an order of certification, the petitioner shall pay the required docketing fee. After receipt of the docket fee from the petitioner, the clerk of the district court shall:

(1) forward a copy of the order of certification, the petition for review, and agency decision to the reviewing court; and

(2) send the docket fee to the clerk of the supreme court.

(d) The supreme court, in its discretion, may accept or reject a certified case, and it shall accept or reject the case within 30 days of receiving the certification order. If a case is rejected by the supreme court the review shall be conducted by the district court in accordance with paragraphs (a), (e) and (f) of this rule. The filing of the record, briefs,

and oral argument in the supreme court shall be as in civil cases pursuant to Rules 2.08, 4, 7, and 8.

(e) For all cases not certified to the supreme court, the district court may receive written briefs and hear oral argument in its discretion. The briefing schedule shall be fixed by the district court.

(f) The district court's judgment shall be in the form of an order affirming, reversing, vacating, remanding or modifying the order for errors appearing on the record. The district court may also dismiss the appeal for procedural defects including want of prosecution and such dismissal shall be subject to reinstatement pursuant to Rule 15. No mandate shall issue from the district court in Rule 12 cases.

(g) The district court's judgment may be challenged by a petition for rehearing pursuant to W.R.A.P. 9.08. Except where there has been a timely petition for rehearing filed, the time for appeal is measured from the entry of the judgment.

(Amended May 4, 1999, effective October 1, 1999; amended May 4, 2001, effective September 1, 2001; amended April 6, 2015, effective July 1, 2015.)

Comment. — The change is to ensure the district court has adequate time to review the record before being required to make its decision on certification.

Source. — Former Rule 72.1(i), W.R.C.P. (See notes following Rule 12.12.)

Standard of review. — The Supreme Court's standard of review for any conclusion of law is straightforward. If the conclusion of law is in accordance with law, it is affirmed; if it is not, it is to be corrected. Employment Sec. Comm'n v. Western Gas Processors, Ltd., 786 P.2d 866 (Wyo. 1990); Heiss v. City of Casper Planning & Zoning Comm'n, 941 P.2d 27 (Wyo. 1997).

The Wyoming supreme court does not defer to an agency's conclusions of law; instead, if the correct rule of law has not been invoked and correctly applied, the agency's errors are to be corrected. JM v. Department of Family Servs., 922 P.2d 219 (Wyo. 1996).

An appellate court will examine only the evidence that favors the prevailing party, allowing every favorable inference, while omitting consideration of any conflicting evidence. State ex rel. Wyo. Worker's Comp. Div. v. Roggenbuck, 938 P.2d 851 (Wyo. 1997).

Where a retired teacher sought judicial review in a district court of a decision of the state retirement board and the district court certified the case to the Supreme Court of Wyoming pursuant to this rule, the Court invoked the same standard of review applicable to the district court. Tollefson v. Wyo. State Ret. Bd. (In re Tollefson), 79 P.3d 518 (Wyo. 2003).

Pursuant to review under Wyo. R. App. P. 12.09(a) and Wyo. Stat. Ann. § 16-3-114(c), there was substantial evidence supported a claimant's award of unemployment insurance benefits because irrelevant evidence of an alleged conspiracy was properly excluded under Wyo. Stat. Ann. § 16-3-108(a) and claimant's conduct was determined to be ordinary negligence in an isolated instance and not misconduct under Wyo. Stat. Ann. § 27-3-311(f). Aspen Ridge Law Offices, P.C. v. Wyo. Dep't of Empl., 143 P.3d 911 (Wyo. 2006).

Wyoming Medical Commission's determination that the employee did not meet his burden of proving he was entitled to further TTD benefits, Wyo. Stat. Ann. § 27-14-404, was supported by substantial evidence, Wyo. Stat. Ann. § 16-3-114(c), Wyo. R. App. P. 12.09. Worker's Comp. Claim v. State ex rel. Wyo. Med. Comm'n & Wyo. Workers' Safety & Comp. Div., 250 P.3d 1082 (Wyo. 2011).

Statutory standard of review. — Paragraph (a) of this rule directs that judicial review of administrative agency decisions is guided by § 16-3-114(c)(ii), which provides that the reviewing court shall set aside agency action found to be arbitrary, capricious, an abuse of discretion, or unsupported by substantial evidence. Corman v. State ex rel. Wyoming Workers' Comp. Div., 909 P.2d 966 (Wyo. 1996).

When reviewing cases certified under subsection (b), the court applies the appellate standards which are applicable to a reviewing court of the first instance, and limits judicial review of administrative decisions to a determination of the matters specified in Wyo. Stat. § 16-2-114(c). Weaver v. Cost Cutters, 953 P.2d 851 (Wyo. 1998).

Limitations on judicial review. — Subsection (a) of this section limits judicial review of an administrative decision to a determination of the matters which are specified in § 16-3-114(c). Juroszek v. City of Sheridan Bd. of Adjustment, 948 P.2d 1370 (Wyo. 1997).

Constitutionality of statute. — Neither statute nor appellate rule afforded district court or supreme court authority, on review of an agency decision, to hold a statute unconstitutional vel non. Riedel v. Anderson, 972 P.2d 586 (Wyo. 1999).

Amount of evidence required. — Substantial evidence is relevant evidence that a reasonable person might accept as supporting the agency finding. State ex rel. Wyo. Worker's Comp. Div. v. Roggenbuck, 938 P.2d 851 (Wyo. 1997).

No deference accorded district court de-

cision. — The Wyoming supreme court reviews agency decisions without according any deference to the decision of the district court. Griess v. Office of Att'y Gen., 932 P.2d 734 (Wyo. 1997).

When a case initiated in an administrative agency comes before the supreme court on appeal, the court does not give any special deference to the decision of the district court, but rather reviews the case as if it came to the court directly from the agency. Nellis v. Wyoming DOT, 932 P.2d 741 (Wyo. 1997).

Issues not previously raised not considered on appeal. — Issues not raised before an administrative agency or even the district court on review will not be considered for the first time by the Supreme Court on appeal. McCulloch Gas Transmission Co. v. Public Serv. Comm'n, 627 P.2d 173 (Wyo. 1981).

Certification of declaratory judgment action improper. — Certification of an outfitter's declaratory judgment action, pursuant to this rule, was improper in case where outfitter, who had his license revoked, filed a combined petition for review and declaratory judgment action, challenging the constitutionality of certain rules and regulations of the Wyoming board of outfitters and professional guides; there was no authority for district courts to certify declaratory judgment actions. Billings v. Wyoming Bd. of Outfitters & Guides, 30 P.3d 557 (Wyo. 2001).

Certification left entirely to trial court's discretion. — This rule does not require that any particular criteria be considered before certification is proper: a case need not present a novel or complex legal issue, a question of constitutionality, nor invoke construction of a statute; rather, the rule leaves the question of certification to the trial court's discretion. Safety Medical Servs., Inc. v. Employment Sec. Comm'n, 724 P.2d 468 (Wyo. 1986).

Certification based on judicial efficiency proper. — Because appellate expediency and judicial efficiency are factors for the decision by a district court to certify, and because the district court based the rationale for certification on judicial efficiency, the district court could reasonably conclude the certification of a petition for review was proper. ANR Prod. Co. v. Wyoming Oil & Gas Conservation Comm'n, 800 P.2d 492 (Wyo. 1990).

Standards applicable to review of certified case. — When an administrative agency case is certified to the Supreme Court under this rule, the court must review the decision under the appellate standards applicable to a reviewing court of the first instance. Amax Coal Co. v. Wyoming State Bd. of Equalization, 819 P.2d 825 (Wyo. 1991); Schulthess v. Carollo, 832 P.2d 552 (Wyo. 1992); Armstrong v. State ex rel. Wyoming Workers' Safety & Comp. Div., 991 P.2d 140 (Wyo. 1999); State v. Bannon Energy Corp., 999 P.2d 1306 (Wyo. 2000); FRJ Corp. v. Mason, 4 P.3d 896 (Wyo. 2000).

When the Wyoming supreme court reviews cases that have been certified to it pursuant to subdivision (b) of this rule, it applies the appellate standards that are applicable to a reviewing court of the first instance; its task is to examine the entire record to determine whether substantial evidence supports the hearing examiner's findings, and, if so, it will not substitute its judgment for that of the hearing examiner. JM v. Department of Family Servs., 922 P.2d 219 (Wyo. 1996); Tate v. Wyoming Livestock Bd., 932 P.2d 746 (Wyo. 1997); Wyoming Dep't of Revenue v. Calhoun, 981 P.2d 480 (Wyo. 1999); U S West Communications, Inc. v. Wyoming Pub. Serv. Comm'n, 989 P.2d 616 (Wyo. 1999).

When a case is certified to the Wyoming supreme court, the court examines the decision as if it were the reviewing court of first instance, and will affirm the decision on any legal ground appearing in the record. Sheridan Planning Ass'n v. Board of Sheridan County Comm'rs, 924 P.2d 988 (Wyo. 1996); Van Gundy v. Wyoming Workers' Safety & Comp. Div., 964 P.2d 1268 (Wyo. 1998).

Same standards applicable to supreme court. — When the administrative agency's decision is certified to the Wyoming supreme court, pursuant to this rule, the decision is reviewed under the same appellate standards applicable to the reviewing court of the first instance. Rissler & McMurry v. Environmental Quality Council, 856 P.2d 450 (Wyo. 1993).

When the Wyoming supreme court reviewed an administrative-decision case certified pursuant to Wyo. R. App. P. 12.09(b), the supreme court applied the appellate standards which were applicable to the court of the first instance. State ex rel. State Department of Revenue v. Union Pac. R.R. Co., 67 P.3d 1176 (Wyo. 2003).

Supreme Court determines questions of law. — In considering an appeal from a district court's review of agency action, the Supreme Court is not bound by, nor must it accord any special deference to, the district court's decisions on questions of law. Union Pac. R.R. v. Wyoming State Bd. of Equalization, 802 P.2d 856 (Wyo. 1990).

Including questions of "ultimate fact". — Deference will be extended only to agency findings of "basic fact." When reviewing a finding of "ultimate fact," the Supreme Court will divide the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. If the correct rule of law has not been properly applied, the court will not defer to the agency's finding but correct the agency's error in either stating or applying the law. Union Pac. R.R. v. Wyoming State Bd. of Equalization, 802 P.2d 856 (Wyo. 1990).

Where Supreme Court held that trial court correctly affirmed agency's denial of hearing, in light of the correctness of the decision of the district court no matter how it

was reached, the Supreme Court cannot say that there occurred an abuse of discretion in the denial of a request for the presentation of written briefs or oral argument. Walker v. Karpan, 726 P.2d 82 (Wyo. 1986).

Sanctions. — The sanctions provided in Rule 10.05 govern certifications arising under Rule 12.09(b). Bender v. Uinta County Assessor, 14 P.3d 906 (Wyo. 2000).

Party cannot complain of error based upon own conduct. — When a party induces action by a court or agency he will not be heard to complain on appeal of any error based upon the party's own conduct. Western Radio Communications, Inc. v. Two-Way Radio Serv., Inc., 718 P.2d 15 (Wyo. 1986).

No abuse of discretion. — The record failed to show that the district court abused its discretion, and the petitioners did not present cogent argument or authority demonstrating such abuse. See Wyoming State Eng'r v. Willadsen, 792 P.2d 1376 (Wyo. 1990).

Effect of failure to object. — While the Wyoming Medical Commission erred in limiting an employee's testimony to matters not discussed in a discovery deposition taken by the Wyoming Workers' Safety and Compensation Division, the employee did not specifically object to the limitation placed on the testimony; hence, the employee waived the right to appeal the issue under Wyo. R. App. P. 12.09(a). Morris v. State ex rel. Wyo. Workers' Safety & Comp. Div., 276 P.3d 399 (Wyo. 2012).

Applied in Telstar Communications, Inc. v. Rule Radiophone Serv., Inc., 621 P.2d 241 (Wyo. 1980); Board of County Comm'rs v. Teton County Youth Servs., Inc., 652 P.2d 400 (Wyo. 1982); Lander Valley Regional Medical Ctr. v. Wyoming Certificate of Need Rev. Bd., 689 P.2d 108 (Wyo. 1984); City of Evanston v. Griffith, 715 P.2d 1381 (Wyo. 1986); Harris v. Wyoming State Tax Comm'n, 718 P.2d 49 (Wyo. 1986); Foster's Inc. v. City of Laramie, 718 P.2d 868 (Wyo. 1986); Simons v. Laramie County Sch. Dist. 1, 741 P.2d 1116 (Wyo. 1987); Roberts v. Employment Sec. Comm'n, 745 P.2d 1355 (Wyo. 1987); Rocky Mt. Oil & Gas Ass'n v. State Bd. of Equalization, 749 P.2d 221 (Wyo. 1987); Ballard v. Wyoming Pari-Mutuel Comm'n, 750 P.2d 286 (Wyo. 1988); Oukrop v. Wyoming Bd. of Dental Exmrs., 767 P.2d 1390 (Wyo. 1989); Doidge v. State, Bd. of Charties & Reform, 789 P.2d 880 (Wyo. 1990); State ex rel. Wyo. Worker's Comp. Div. v. Mahoney, 798 P.2d 836 (Wyo. 1990); McGuire v. State, Dep't of Revenue & Taxation, 809 P.2d 271 (Wyo. 1991); Mekss v. Wyoming Girls' School, 813 P.2d 185 (Wyo. 1991); General Chem. Corp. v. Wyoming State Bd. of Equalization, 819 P.2d 418 (Wyo. 1991); Toltec Watershed Imp. Dist. v. Associated Enters., Inc. ex rel. Johnston, 829 P.2d 819 (Wyo. 1992); Thunder Basin Coal Co. v. Study, 866 P.2d 1288 (Wyo. 1994); Pinther v. State, Dep't of Admin. & Info., 866 P.2d 1300 (Wyo. 1994); Cook v. Wyoming Oil & Gas Conservation Comm'n, 880 P.2d 583 (Wyo. 1994); Amax Coal W., Inc. v. Wyoming State Bd. of Equalization, 896 P.2d 1329 (Wyo. 1995); Union Tel. Co. v. Wyoming Pub. Serv. Comm'n, 907 P.2d 340 (Wyo. 1995); US W. Communications, Inc. v. Wyoming Pub. Serv. Comm'n, 907 P.2d 343 (Wyo. 1995); Taylor v. Wyoming Bd. of Medicine, 930 P.2d 973 (Wyo. 1996); Duran v. Aabalon Moving Serv., 930 P.2d 1250 (Wyo. 1996); Tenorio v. State ex rel. Wyo. Workers' Comp. Div., 931 P.2d 234 (Wyo. 1997); Walsh v. Holly Sugar Corp., 931 P.2d 241 (Wyo. 1997); State ex rel. Wyo. Workers' Comp. Div. v. Harris, 931 P.2d 255 (Wyo. 1997); Rodgers v. State ex rel. Wyo. Workers' Comp. Div., 939 P.2d 246 (Wyo. 1997); Pinkerton v. State ex rel. Wyo. Workers' Safety & Comp. Div., 939 P.2d 250 (Wyo. 1997); Nelson v. Sheridan Manor, 939 P.2d 252 (Wyo. 1997); Erhart v. Flint Eng'g & Constr., 939 P.2d 718 (Wyo. 1997); Haagensen v. State ex rel. Wyo. Workers' Comp. Div., 949 P.2d 865 (Wyo. 1997); Bard Ranch Co. v. Frederick, 950 P.2d 564 (Wyo. 1997); Felix v. State ex rel. Wyoming Workers' Safety & Comp. Div., 986 P.2d 161 (Wyo. 1999); State ex rel. Wyoming Workers' Safety & Comp. Div. v. Summers, 987 P.2d 153 (Wyo. 1999); U S West Communications, Inc. v. Wyoming Pub. Serv. Comm'n, 988 P.2d 1061 (Wyo. 1999), rev'd on other grounds, 15 P.3d 722 (Wyo. 2000); State ex rel. Wyoming Workers' Safety & Comp. Div. v. Jackson, 994 P.2d 320 (Wyo. 1999); Amoco Prod. Co. v. Wyoming State Bd. of Equalization, 7 P.3d 900 (Wyo. 2000); Wyodak Resources Dev. Corp. v. State Bd. of Equalization, 9 P.3d 987 (Wyo. 2000); Moller v. State ex rel. Wyoming Workers' Safety & Comp. Div., 12 P.3d 702 (Wyo. 2000); Powder River Coal Co. v. Wyo. State Bd. of Equalization, 38 P.3d 423 (Wyo. 2002); Hoff v. State ex rel. Wyo. Workers Safety & Comp. Div., 53 P.3d 107 (Wyo. 2002); RT Communs., Inc. v. PSC, 79 P.3d 36 (Wyo. 2003); Loomer v. State ex rel. Wyo. Workers' Safety & Comp. Div., 88 P.3d 1036 (Wyo. 2004); Lance Oil & Gas Co. v. Wyo. Dep't of Revenue, 101 P.3d 899 (Wyo. 2004); Buehner Block Co. v. Wyo. Dep't of Revenue, 139 P.3d 1150 (Wyo. 2006); Kennedy Oil v. Dep't of Revenue, 205 P.3d 999 (Wyo. 2008); Powder River Basin Res. Council v. Wyo. Dep't of Envtl. Quality, 226 P.3d 809 (Wyo. 2010).

Quoted in Lewis v. State Bd. of Control, 699 P.2d 822 (Wyo. 1985); Holding's Little Am. v. Board of County Comm'rs, 712 P.2d 331 (Wyo. 1985); Natrona County Sch. Dist. No. 1 v. McKnight, 764 P.2d 1039 (Wyo. 1988); AT & T Communications of Mt. States, Inc. v. State Bd. of Equalization, 768 P.2d 580 (Wyo. 1989); Barker v. Employment Sec. Comm'n, 791 P.2d 583 (Wyo. 1990); Bd. of Trs. of Mem. Hosp. v. Martin, 60 P.3d 1273 (Wyo. 2003).

Stated in L Slash X Cattle Co. v. Texaco, Inc., 623 P.2d 764 (Wyo. 1981); Mortgage Guar. Ins. Corp. v. Langdon, 634 P.2d 509 (Wyo. 1981); Utah Power & Light Co. v. Public Serv. Comm'n, 713 P.2d 240 (Wyo. 1986); Hupp v. Employment Sec. Comm'n, 715 P.2d 223 (Wyo.

1986); Big Piney Oil & Gas Co. v. Wyoming Oil & Gas Conservation Comm'n, 715 P.2d 557 (Wyo. 1986); Worker's Comp. Claim v. State ex rel. Wyo. Worker's Comp. Div., 890 P.2d 559 (Wyo. 1995); Johnson v. State ex rel. Workers' Comp. Div., 911 P.2d 1054 (Wyo. 1996); Smith v. State ex rel. Wyoming DOT, 11 P.3d 931 (Wyo. 2000).

Cited in Gulf Oil Corp. v. Wyoming Oil & Gas Conservation Comm'n, 693 P.2d 227 (Wyo. 1985); Beddow v. Employment Sec. Comm'n, 718 P.2d 12 (Wyo. 1986); Graham v. Wyoming Peace Officer Stds. & Training Comm'n, 737 P.2d 1060 (Wyo. 1987); Mountain States Tel. & Tel. Co. v. Public Serv. Comm'n, 745 P.2d 563 (Wyo. 1987); Drake v. State ex rel. Dep't of Revenue & Taxation, 751 P.2d 1319 (Wyo. 1988); Hooten v. State, Dep't of Revenue & Taxation, 751 P.2d 1323 (Wyo. 1988); Union Tel. Co. v. Wyoming Pub. Serv. Comm'n, 821 P.2d 550 (Wyo. 1991); Meridian Aggregates Co. v. Wyoming State Bd. of Equalization, 827 P.2d 375 (Wyo. 1992); Union Tel. Co. v. Wyoming Pub. Serv. Comm'n, 833 P.2d 473 (Wyo. 1992); Billings v. Wyoming State Bd. of Outfitters & Professional Guides, 837 P.2d 84 (Wyo. 1992); Parker Land & Cattle Co. v. Wyoming Game & Fish Comm'n, 845 P.2d 1040 (Wyo. 1993); Montana Dakota Utils. Co. v. Public Serv. Comm'n, 847 P.2d 978 (Wyo. 1993); World Mart, Inc. v. Ditsch, 855 P.2d 1228 (Wyo. 1993); Moncrief v. Wyoming State Bd. of Equalization, 856 P.2d 440 (Wyo. 1993); Sheridan Race Car Ass'n v. Rice Ranch, 864 P.2d 30 (Wyo. 1993); Powder River Basin Resource Council v. Wyoming Envtl. Quality Council, 869 P.2d 435 (Wyo. 1994); Brandt v. TCI Cablevison, 873 P.2d 595 (Wyo. 1994); Gilstrap v. State ex rel. Wyo. Workers' Comp. Div., 875 P.2d 1272 (Wyo. 1994); Hepp v. State ex rel. Wyo. Workers' Comp. Div., 881 P.2d 1076 (Wyo. 1994); State v. Wyoming State Bd. of Equalization, 891 P.2d 68 (Wyo. 1995); Weidner v. Life Care Ctrs. of Am., 893 P.2d 706 (Wyo. 1995); Thunder Basin Coal Co. v. State Bd. of Equalization, 896 P.2d 1336 (Wyo. 1995); Gray v. Wyoming State Bd. of Equalization, 896 P.2d 1347 (Wyo. 1995); Salt Creek Welding, Inc. v. State ex rel. Wyo. Workers' Comp. Div., 897 P.2d 1306 (Wyo. 1995); Amoco Prod. Co. v. Wyoming State Bd. of Equalization, 899 P.2d 855 (Wyo. 1995); Bowen v. State, Wyo. Real Estate Comm'n, 900 P.2d 1140 (Wyo. 1995); General Chem. Corp. v. Unemployment Ins. Comm'n, 906 P.2d 380 (Wyo. 1995); Pfeil v. Amax Coal W., Inc., 908 P.2d 956 (Wyo. 1995); Thornberg v. State ex rel. Wyo. Workers' Comp. Div., 913 P.2d 863 (Wyo. 1996); Fansler v. Unicover Corp., 914 P.2d 156 (Wyo. 1996); Goddard v. Colonel Bozeman's Restaurant, 914 P.2d 1233 (Wyo. 1996); Chevron U.S.A., Inc. v. State, 918 P.2d 980; Anschutz Corp. v. Wyoming Oil & Gas Conservation Comm'n, 923 P.2d 751 (Wyo. 1996); Mondt v. Cheyenne Police Dep't, 924 P.2d 70 (Wyo. 1996); Shassetz v. State ex rel. Wyo. Workers' Safety & Comp. Div., 920 P.2d 1246 (Wyo. 1996); Fritz v. State ex rel. Wyo. Workers' Safety & Comp. Div., 937 P.2d 1345 (Wyo. 1997); Wyoming Workers' Comp. Div. v. Waggener, 946 P.2d 808 (Wyo. 1997); Saiz v. State, 30 P.3d 21 (Wyo. 2001); 84 ALR5th 169; 85 ALR5th 187; Carden v. Kelly, 175 F. Supp. 2d 1318 (D. Wyo. 2001); Bird v. State, 39 P.3d 430 (Wyo. 2002); Wyo. Bd. of Outfitters & Prof'l Guides v. Clark, 39 P.3d 1106 (Wyo. 2002); King v. State, 40 P.3d 700 (Wyo. 2002); Kuntz-Dexter v. State ex rel. Wyo. Workers' Safety & Comp. Div., 49 P.3d 190 (Wyo. 2002); 95 ALR5th 329; Wylie v. Wyoming DOT, 970 P.2d 395 (Wyo. 1998); Keck v. State ex rel. Wyoming Workers' Safety & Comp. Div., 985 P.2d 430 (Wyo. 1999); Mondt v. Cheyenne Police Pension Bd., 986 P.2d 858 (Wyo. 1999); Whiteman v. Workers' Safety & Comp. Div., 987 P.2d 670 (Wyo. 1999); Williston Basin Interstate Pipeline Co. v. Wyoming PSC, 996 P.2d 663 (Wyo. 2000); Ahlenius v. Wyoming Bd. of Professional Geologists, 2 P.3d 1058 (Wyo. 2000); Fisch v. Allsop, 4 P.3d 204 (Wyo. 2000); Petra Energy, Inc. v. Department of Revenue, 6 P.3d 1267 (Wyo. 2000); Hat Six Homes, Inc. v. State, 6 P.3d 1287 (Wyo. 2000); General Chem. Co. v. Prasad, 11 P.3d 344 (Wyo. 2000); Sheth v. State ex rel. Wyoming Workers' Comp. Div., 11 P.3d 375 (Wyo. 2000); Tri County Tel. Ass'n v. Wyoming Pub. Serv. Comm'n, 11 P.3d 938 (Wyo. 2000); Pacificorp, Inc. v. Department of Revenue, 13 P.3d 256 (Wyo. 2000); Estate of Heckert v. State Board of Equalization, 15 P.3d 216 (Wyo. 2000); U S W. Communications, Inc. v. Public Serv. Comm'n, 15 P.3d 722 (Wyo. 2000); Amoco Prod. Co. v. State Bd. of Equalization, 15 P.3d 728 (Wyo. 2001); Hanks v. City of Casper, 16 P.3d 710 (Wyo. 2001); State ex rel. Workers' Safety & Compensation Div. v. Gerrard, 17 P.3d 20 (Wyo. 2001); Wesaw v. Quality Maintenance, 19 P.3d 500 (Wyo. 2001); Rice v. State ex rel. Workers' Safety & Compensation Div., 19 P.3d 508 (Wyo. 2001); State v. Buggy Bath Unlimited, Inc., 18 P.3d 1182 (Wyo. 2001); LePage v. State, 18 P.3d 1177 (Wyo. 2001); Jones v. State Dep't of Health, 18 P.3d 1189 (Wyo. 2001); Collicott v. State ex rel. Wyo. Workers' Safety & Comp. Div., 20 P.3d 1077 (Wyo. 2001); Dorr v. State Bd. of CPAs, 21 P.3d 735 (Wyo. 2001); Frontier Ref., Inc. v. Payne, 23 P.3d 38 (Wyo. 2001); State ex rel. Wyo. Workers' Safety & Comp. Div. v. Garl, 26 P.3d 1029 (Wyo. 2001); Appleby v. State ex rel. Wyo. Workers' Safety & Comp. Div., 47 P.3d 613 (Wyo. 2002); Yenne-Tully v. State ex rel. Wyo. Workers' Safety & Comp. Div., 48 P.3d 1057 (Wyo. 2002); Judge v. Dep't of Emp., 50 P.3d 686 (Wyo. 2002); Billings v. Wyo. Bd. of Outfitters & Prof'l Guides, 88 P.3d 455 (Wyo. 2004); Williams Prod. RMT Co. v. State Dep't of Revenue, 107 P.3d 179 (Wyo. 2005); Wyo. Dep't of Revenue v. Guthrie, 115 P.3d 1086 (Wyo. 2005); Stutzman v. Office of the State Eng'r, 130 P.3d 470 (Wyo. 2006); Qwest Corp. v. State, 130 P.3d 507 (Wyo. 2006); Stutzman v. Office of the State Eng'r, 130 P.3d 470 (Wyo. 2006); Qwest

Corp. v. State, 130 P.3d 507 (Wyo. 2006); Williams v. State. ex rel. Wyo. Workers' Safety & Comp. Div. (In re Worker's Compensation Claim), 205 P.3d 1024 (Wyo. 2009); Goodman v. Voss, 248 P.3d 1120 (Wyo. 2011); McCall-Presse v. State (In re Worker's Comp. Claim of McCall-Presse), 247 P.3d 505 (Wyo. 2011).

Law reviews. — For article, "Administrative Law, Wyoming Style," see XVIII Land & Water L. Rev. 223 (1983).

For comment, "Education for Handicapped Children in Wyoming: What Constitutes a Free Appropriate Public Education and Other Administrative Hurdles," see XIX Land & Water L. Rev. 225 (1984).

For comment, "The Doctrine of Sovereign Immunity in Wyoming: Current Status of the Doctrine and Arguments for Abrogation," see XX Land & Water L. Rev. 221 (1985).

For case note, "EDUCATIONAL LAW — Wyoming Refuses to Recognize Compensatory Education as a Remedy Under the Education for All Handicapped Children Act of 1975. Natrona County Sch. Dist. No. 1 v. McKnight, 764 P.2d 1039 (Wyo. 1988)," see XXIV Land & Water L. Rev. 529 (1989).

For article, "Practitioner's Guide to Valuation and Assessment Appeals of State and Local Assessed Property," see XXXII Land & Water L. Rev. 173 (1997).

12.10. Joint or several appeals; agreed statement.

The provisions of Rules 1.06 and 3.08 apply to appeals from administrative agencies to the district court.

Source. — Former Rule 72.1(j), W.R.C.P.
(See notes following Rule 12.12.)

12.11. [Effective until November 1, 2017.] Review by supreme court.

(a) An aggrieved party may obtain review of any final judgment of the district court by appeal to the supreme court.

(b) If the final judgment of the district court is appealed to the supreme court, filing the record, including transcripts of relevant electronically recorded proceedings, briefs, and oral argument in the supreme court shall be as in civil cases pursuant to Rules 1.01, 3, 7, and 8.

(Amended July 26, 2006, effective December 1, 2006; amended April 6, 2015, effective July 1, 2015.)

Source. — Section 16-3-115.

The 2006 amendment, in (b) deleted "Rule 4" and inserted references to Rule 3.

Board of county commissioners an aggrieved party. — Board of county commissioners could properly appeal district court order to supreme court since, as a regulatory body, it was a proper party in action before district court. Miller v. Bradley, 4 P.3d 882 (Wyo. 2000).

No review until agency and district court have addressed issues. — Review of an agency decision appealed to the district court will not occur without first providing the agency and the district court an opportunity to address the issues. Wyoming Pub. Serv. Comm'n v. Hopkins, 602 P.2d 374 (Wyo. 1979).

And courts may not consider issues not presented to hearing body. — The Supreme Court, on appeal of an administrative case, may not consider, nor may the district court consider, issues that were not presented to the hearing body. State Bd. of Control v. Johnson Ranches, Inc., 605 P.2d 367 (Wyo. 1980).

When court to defer to state engineer and board of control. — The determination of the state engineer and the board of control of what use will best utilize water and insure its beneficial use must be respected by the Supreme Court, because the board and state engineer are better equipped to dispose of such matters. John Meier & Son v. Horse Creek Conservation Dist., 603 P.2d 1283 (Wyo. 1979).

No deference owed to district court's review of administrative action. — When the district court sits as an appellate court to hear an appeal from an administrative agency, the decision of the district court is not entitled to any great deference by the Supreme Court on review, as the deference owed the fact finder's determination of fact belongs to the administrative agency, not the district court. Wyoming Pub. Serv. Comm'n v. Hopkins, 602 P.2d 374 (Wyo. 1979).

Nor to decision on question of law. — As a matter of appellate practice, an appellate court accords no special deference to, and is not bound by, a district court's decision on a question of law where if heard an appeal from an administrative body. State Bd. of Control v. Johnson Ranches, Inc., 605 P.2d 367 (Wyo. 1980).

Standards of review of district court and agency decisions. — On appeal, the Supreme Court must review the decision of the

district court and the employment security commission in the exact same light. Sage Club, Inc. v. Employment Sec. Comm'n, 601 P.2d 1306 (Wyo. 1979).

Record of variance proceeding was sufficient. — Pursuant to Wyo. R. App. P. 12.11(b), an appellate court had a sufficient record consisting of the appropriate documents relating to a board of county commissioners' action in denying a property owner's variance request; in the owner's briefing, there were several instances in which the owner's counsel inserted counsel's recollection of the discussions of some board members. Gilbert v. Bd. of County Comm'rs, 232 P.3d 17 (Wyo. 2010).

Sole avenue for review in agency appeal. — In an agency appeal, the district court's judgment is not subject to challenge through a Wyo. R. Civ. P. 60 motion, a Wyo. R. App. P. 9.07 application for rehearing, or a Wyo. R. App. P. 15 petition for reinstatement. Instead, the only avenue for review is an appeal to the Wyoming Supreme Court as authorized by this rule. Nicholson v. Dep't of Empl., 278 P.3d 252 (Wyo. 2012).

Cited in Safety Medical Servs., Inc. v. Employment Sec. Comm'n, 724 P.2d 468 (Wyo. 1986); Sellers v. Wyoming Board of Psychologist Exmrs., 739 P.2d 125 (Wyo. 1987); Hoke v. Moyer, 865 P.2d 624 (Wyo. 1993); Nathan v. Am. Global Univ., 113 P.3d 32 (Wyo. 2005).

Applied in Wyo. Outdoor Council v. Wyo. Dep't of Envtl. Quality, 225 P.3d 1054 (Wyo. 2010).

Law reviews. — For comment, "Education for Handicapped Children in Wyoming: What Constitutes a Free Appropriate Public Education and Other Administrative Hurdles," see XIX Land & Water L. Rev. 225 (1984).

For article, "A Critical Look at Wyoming Water Law," see XXIV Land & Water L. Rev. 307 (1989).

12.11. [Effective November 1, 2017.] Review by supreme court.

(a) An aggrieved party may obtain review of any final judgment of the district court by appeal to the supreme court.

(b) If the final judgment of the district court is appealed to the supreme court, filing the record, including transcripts of relevant electronically recorded proceedings, briefs, and oral argument in the supreme court shall be as in civil cases pursuant to Rules 1.01, 3, 7, and 8. Unless stipulated by both parties pursuant to W.R.A.P. 12.07(b), the complete agency record shall be transmitted to the supreme court.

(Amended July 26, 2006, effective December 1, 2006; amended April 6, 2015, effective July 1, 2015; amended August 23, 2017, effective November 1, 2017.)

Source. — Section 16-3-115.

The 2006 amendment, in (b) deleted "Rule 4" and inserted references to Rule 3.

Board of county commissioners an aggrieved party. — Board of county commissioners could properly appeal district court order to supreme court since, as a regulatory body, it was a proper party in action before district court. Miller v. Bradley, 4 P.3d 882 (Wyo. 2000).

No review until agency and district court have addressed issues. — Review of an agency decision appealed to the district court will not occur without first providing the agency and the district court an opportunity to address the issues. Wyoming Pub. Serv. Comm'n v. Hopkins, 602 P.2d 374 (Wyo. 1979).

And courts may not consider issues not presented to hearing body. — The Supreme Court, on appeal of an administrative case, may not consider, nor may the district court consider, issues that were not presented to the hearing body. State Bd. of Control v. Johnson Ranches, Inc., 605 P.2d 367 (Wyo. 1980).

When court to defer to state engineer and board of control. — The determination of the state engineer and the board of control of what use will best utilize water and insure its beneficial use must be respected by the Supreme Court, because the board and state engineer are better equipped to dispose of such matters. John Meier & Son v. Horse Creek Conservation Dist., 603 P.2d 1283 (Wyo. 1979).

No deference owed to district court's review of administrative action. — When the district court sits as an appellate court to hear an appeal from an administrative agency, the decision of the district court is not entitled to any great deference by the Supreme Court on review, as the deference owed the fact finder's determination of fact belongs to the administrative agency, not the district court. Wyoming Pub. Serv. Comm'n v. Hopkins, 602 P.2d 374 (Wyo. 1979).

Nor to decision on question of law. — As a matter of appellate practice, an appellate court accords no special deference to, and is not bound by, a district court's decision on a question of law where if heard an appeal from an administrative body. State Bd. of Control v. Johnson Ranches, Inc., 605 P.2d 367 (Wyo. 1980).

Standards of review of district court and agency decisions. — On appeal, the Supreme Court must review the decision of the district court and the employment security commission in the exact same light. Sage Club, Inc. v. Employment Sec. Comm'n, 601 P.2d 1306 (Wyo. 1979).

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Sole avenue for review in agency appeal. — In an agency appeal, the district court's judgment is not subject to challenge through a Wyo. R. Civ. P. 60 motion, a Wyo. R. App. P. 9.07 application for rehearing, or a Wyo. R. App. P. 15 petition for reinstatement. Instead, the only avenue for review is an appeal to the Wyoming Supreme Court as authorized by this rule. Nicholson v. Dep't of Empl., 278 P.3d 252 (Wyo. 2012).

Cited in Safety Medical Servs., Inc. v. Employment Sec. Comm'n, 724 P.2d 468 (Wyo. 1986); Sellers v. Wyoming Board of Psychologist Exmrs., 739 P.2d 125 (Wyo. 1987); Hoke v. Moyer, 865 P.2d 624 (Wyo. 1993); Nathan v. Am. Global Univ., 113 P.3d 32 (Wyo. 2005).

Applied in Wyo. Outdoor Council v. Wyo. Dep't of Envtl. Quality, 225 P.3d 1054 (Wyo. 2010).

Law reviews. — For comment, "Education for Handicapped Children in Wyoming: What Constitutes a Free Appropriate Public Education and Other Administrative Hurdles," see XIX Land & Water L. Rev. 225 (1984).

For article, "A Critical Look at Wyoming Water Law," see XXIV Land & Water L. Rev. 307 (1989).

12.12. Relief available by independent action.

The relief, review, or redress available in suits for injunction against agency action or enforcement, in actions for recovery of money, in actions for a declaratory judgment based on agency action or inaction, in actions seeking any common law writ to compel, review or restrain agency action shall be available by independent action notwithstanding any petition for review.

Source. — Former Rule 72.1(c), W.R.C.P. — part thereof.

Cross References. — For Administrative Procedure Act, see §§ 16-3-101 through 16-3-115.

Editor's notes. — *Any annotations which are taken from cases decided prior to 1978 are taken from cases decided under former Rule 72.1, W.R.C.P., and its statutory and rule antecedents.*

I. GENERAL CONSIDERATION.

Former Rule 72.1, W.R.C.P. could not and did not seek to dispense with orderly procedures. Tri-County Elec. Ass'n v. City of Gillette, 525 P.2d 3 (Wyo. 1974).

Scope of Supreme Court's review. — The Supreme Court can have no greater jurisdiction of the subject matter than the trial court and where the trial court had no jurisdiction in an administrative appeal from an agency, the Supreme Court must dismiss the appeal. Snell v. Ruppert, 541 P.2d 1042 (Wyo. 1975).

The Administrative Procedure Act and the Rules of Civil Procedure both contemplate administrative proceedings where there is a hearing and administrative proceedings where there is no hearing. If the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing, the proceeding is called a "contested case." If such hearing is not required, the proceeding is a noncontested case. Thornley v. Wyoming Hwy. Dep't, 478 P.2d 600 (Wyo. 1971).

Authority of administrative agencies. — Administrative agencies have no authority to determine the constitutionality of a statute and on appeal of agency action, neither the district court nor the Wyoming Supreme Court has jurisdiction to consider such an issue; however, the right to pursue the constitutionality of the statute under which the agency acted is preserved in W.R.A.P. 12.12, via a declaratory judgment action,. Thus, declaratory judgment was the proper course of action for the employee, an illegal alien who was denied benefits, and who challenged the constitutionality of Wyo. Stat. Ann. § 27-14-102(a)(vii). Torres v. State ex rel. Wyo. Workers' Safety & Comp. Div., 95 P.3d 794 (Wyo. 2004).

Former Rule 72.1 W.R.C.P., implemented § 16-3-114, by adopting procedures for judicial review of administrative actions. Bruegman v. Johnson Ranches, Inc., 520 P.2d 489 (Wyo. 1974).

And it was not to be construed as in any manner repealing or modifying § 16-3-114, which defines the areas of the court's review. Johnson v. Schrader, 507 P.2d 814 (Wyo. 1973).

Burden of proving arbitrary, illegal or fraudulent administrative action is on the complainant, which burden includes not only a clear presentation of the question but placing evidence in the record to sustain complainant's position. Wyoming Bancorporation v. Bonham, 527 P.2d 432 (Wyo. 1974).

Rule does not provide means of collateral attack. — This rule does not provide for a collateral attack against an agency action when

the agency action has already been reviewed in district court by a petition for review; in addition, this rule is not an exception to the doctrine of collateral estoppel. Slavens v. Board of County Comm'rs, 854 P.2d 683 (Wyo. 1993); Kahrs v. Board of Trustees, 901 P.2d 404 (Wyo. 1995).

Applied in Rocky Mt. Oil & Gas Ass'n v. State, 645 P.2d 1163 (Wyo. 1982); City of Evanston v. Griffith, 715 P.2d 1381 (Wyo. 1986); Simons v. Laramie County Sch. Dist. 1, 741 P.2d 1116 (Wyo. 1987); Davis v. State, 910 P.2d 555 (Wyo. 1996); Wyoming Community College Comm'n v. Casper Community College Dist., 31 P.3d 1242 (Wyo. 2001).

Quoted in Campbell County Sch. Dist. v. Catchpole, 6 P.3d 1275 (Wyo. 2000).

Cited in McGarvin-Moberly Constr. Co. v. Welden, 897 P.2d 1310 (Wyo. 1995); Roush v. Pari-Mutuel Comm'n, 917 P.2d 1133 (Wyo. 1996); Dorr v. State Bd. of CPAs, 21 P.3d 735 (Wyo. 2001); Williams v. State. ex rel. Wyo. Workers' Safety & Comp. Div. (In re Worker's Compensation Claim), 205 P.3d 1024 (Wyo. 2009).

Law reviews. — For note on Kearney Lake, Land & Reservoir Co. v. Lake DeSmet Reservoir Co., 487 P.2d 324 (Wyo. 1971), see VII Land & Water L. Rev. 599 (1972).

For article, "Practice Before the Wyoming Oil and Gas Conservation Commission," see X Land & Water L. Rev. 353 (1975).

For comment, "Education for Handicapped Children in Wyoming: What Constitutes a Free Appropriate Public Education and Other Administrative Hurdles," see XIX Land & Water L. Rev. 225 (1984).

Am. Jur. 2d, ALR and C.J.S. references. — 2 Am. Jur. 2d Administrative Law §§ 415 to 647.

73 C.J.S. Public Administrative Law and Procedure §§ 172 to 271.

II. APPLICABILITY.

Constitutional questions. — Question as to constitutionality of worker's compensation statute could only be appropriately considered through declaratory judgment action, pursuant to this rule. Shryack v. Carr Constr. Co., 3 P.3d 850 (Wyo. 2000).

Referendum disputes. — When a voter contested a city clerk's rejection of signatures on a municipal referendum petition, a district court had jurisdiction to hear the voter's declaratory judgment suit under Wyo. R. App. P. 12.12 and the Uniform Declaratory Judgments Act (Act), Wyo. Stat. Ann. § 1-37-101 et seq., because the "right" to be declared was within the Act's scope, and the voter was an "interested person." City of Casper v. Holloway, — P.3d —, 2015 Wyo. LEXIS 109 (Wyo. 2015).

Declaratory judgment. — Certification of an outfitter's declaratory judgment action, pursuant to Rule 12.09, was improper in case where outfitter, who had his license revoked, filed a combined petition for review and declaratory judgment action, challenging the constitutionality of certain rules and regulations of the Wyoming board of outfitters and professional guides; there was no authority for district courts to certify declaratory judgment actions, and an independent declaratory judgment action was the proper remedy under this rule. Billings v. Wyoming Bd. of Outfitters & Guides, 30 P.3d 557 (Wyo. 2001).

Provisions in pari materia. — The provisions of subdivision (a) of former Rule 72.1, W.R.C.P., § 16-3-114, and the rest of the Administrative Procedure Act are in pari materia, and if § 31-9-103(b), is in any respect in conflict with the Administrative Procedure Act or Rule 72.1, W.R.C.P., it is superseded insofar as such conflict is concerned. Thornley v. Wyoming Hwy. Dep't, 478 P.2d 600 (Wyo. 1971).

Division of vocational rehabilitation not "person". — The division of vocational rehabilitation, being an agency, is not a "person" aggrieved or adversely affected in fact by a final decision of an agency under subdivision (a) of former Rule 72.1, W.R.C.P., and the Wyoming Administrative Procedure Act. Pritchard v. State, Div. of Vocational Rehabilitation, 540 P.2d 523 (Wyo. 1975).

Agency was proper party to appeal. — Where an appeal from an agency action was properly pursued under the Wyoming Administrative Procedure Act, the agency whose decision was being reviewed was a proper party to the appeal. Diefenderfer v. Budd, 563 P.2d 1355 (Wyo. 1977).

Statute deemed unconstitutional. — Appropriate course for an aggrieved party to pursue, when a statute affording authority to an agency is deemed to be unconstitutional, is found in and preserved in this rule. Riedel v. Anderson, 972 P.2d 586 (Wyo. 1999).

Collateral estoppel. — This rule does not provide an exception to the doctrine of collateral estoppel, and professor was therefore precluded from maintaining state district court action where issue of lawfulness of his termination had been finally determined first by university hearing committee, and later by board of trustees. University of Wyo. v. Gressley, 978 P.2d 1146 (Wyo. 1999).

III. PETITION AND SERVICE.

Petition necessary to frame issues. — The necessity for filing a petition for review by each affected party is grounded on the need to have such petitions clearly frame the issues before the court for review and to set forth the grounds relied upon for the disposition of those issues. Only in this manner can the trial court be assisted in carrying out its task of conducting orderly proceedings. Basin Elec. Power Coop v. State Bd. of Control, 578 P.2d 557 (Wyo. 1978).

Contents of petition. — The rules do not set forth what a petition for review should

contain, but certainly minimal would be a statement from which the court could be reasonably informed as to the nature of the error charged, i.e., the request and the reasons therefor. Rolfes v. State ex rel. Burt, 464 P.2d 531 (Wyo. 1970).

There is no valid reason why service cannot be made concurrently with filing. — There may be some exception but it should not exist except in rare instances. First Nat'l Bank v. Bonham, 559 P.2d 42 (Wyo. 1977).

All prevailing parties must be served with copies of petition. — All parties prevailing, interested in having the ruling appealed from sustained, and whose interest will be necessarily affected by a reversal, must be served with copies of the petition and the appellate court does not acquire jurisdiction until that is done; all parties in interest must be given an opportunity to be heard before the court will or can proceed to a decision upon the merits of the case. First Nat'l Bank v. Bonham, 559 P.2d 42 (Wyo. 1977).

Neither former Rule 72.1, W.R.C.P., nor Rule 5, W.R.C.P., provides an exact time for service of copies of the petition after filing a petition for review. The only provision in that regard is that copies be served "without unnecessary delay." First Nat'l Bank v. Bonham, 559 P.2d 42 (Wyo. 1977).

IV. TIME.

Failure to timely appeal is jurisdictional. Snell v. Ruppert, 541 P.2d 1042 (Wyo. 1975).

The matter of initiating an appeal within the time allowed therefor is jurisdictional. Curtis v. Center Realty Co., 502 P.2d 365 (Wyo. 1972).

Even if a decision is latently defective or deficient, if it is a final decision of which appellant had due and adequate notice, he cannot seek review unless he makes a timely application. Regan v. City of Casper, 494 P.2d 933 (Wyo. 1972).

Subdivision (d) of former Rule 72.1, W.R.C.P., superseded § 15-5-113, the allowable time for filing a "petition for review" being 30 days. Rolfes v. State ex rel. Burt, 464 P.2d 531 (Wyo. 1970).

And § 37-2-219. — As to time limitations, subdivision (d) of former Rule 72.1, W.R.C.P., supersedes § 37-2-219. Town of Afton v. Public Serv. Comm'n, 471 P.2d 331 (Wyo. 1970).

V. STAYS.

Guidelines for establishing boundaries of supersedeas bond. — Rules 62(e), 65, former 72.1(e), and 73(d)(1) and (e), W.R.C.P., provide the Supreme Court with the necessary guidelines for establishing the boundaries of a supersedeas bond. Wyoming Bancorporation v. Bonham, 563 P.2d 1382, reh'g denied, 566 P.2d 219 (Wyo. 1977).

District court had jurisdiction to consider damages when liability on supersedeas bond is sought to be enforced after remand from the appellate courts. Wyoming Bancorporation v. Bonham, 563 P.2d 1382, reh'g denied, 566 P.2d 219 (Wyo. 1977).

Face amount of supersedeas bond limit of liability. — Where the action was upon supersedeas bond without surety, nothing in excess of the face of the bond was recoverable by way of damages, since neither the Supreme Court's stay order nor the rules indicates an intent to extend liability on the bond beyond the maximum stated therein. Wyoming Bancorporation v. Bonham, 563 P.2d 1382, reh'g denied, 566 P.2d 219 (Wyo. 1977).

VI. EVIDENCE.

Failure to perform duty as arbitrary action. — Where an administrative official's action in failing to perform his duty was arbitrary and an abuse of his discretion, constituting errors susceptible of review by the district court, that court was justified in receiving additional material evidence under subdivision (h) of former Rule 72.1, W.R.C.P., since it was a noncontested case. The fact that evidence additional to that which was requisite was adduced does not alter the result. Shepard v. Tucker, 478 P.2d 605 (Wyo. 1971).

Only limiting factor for presenting additional evidence in uncontested cases seems to be materiality. Johnson v. Schrader, 502 P.2d 371 (Wyo. 1972), modified on other grounds, 507 P.2d 814 (Wyo. 1973).

VII. EXTENT OF REVIEW.

Issue on review must have been raised in prior administrative action. — For a reviewing court to reach an asserted proposition of an appellant, the issue must have been raised for decision before the administrative body or administrator responsible for the decision. Wyoming Bancorporation v. Bonham, 527 P.2d 432 (Wyo. 1974).

Since the worker failed to challenge the constitutionality of the Worker's Compensation Act's coverage exclusion for injuries caused by day-to-day living before the Worker's Compensation Medical Commission, the supreme court would not rule on the issue. Keck v. State ex rel. Wyoming Workers' Safety & Comp. Div., 985 P.2d 430 (Wyo. 1999).

Review of administrative agency actions. — Review of board of county commissioners' parliamentary procedural decision that a tie vote constituted no action and that it could vote again, involved the board's procedures and its authority to engage in the actions at issue, which presented questions of law subject to a declaratory judgment action. Hirschfield v. Board of County Comm'rs, 944 P.2d 1139 (Wyo. 1997).

Review of arbitrary finding. — If the oil and gas conservation commission was arbitrary in its finding that the lessee had the right

under prior orders of the commission to designate a drilling unit, that was a matter which could be raised only by petition for review under the provisions of this rule, and not by a collateral attack. Mitchell v. Simpson, 493 P.2d 399 (Wyo. 1972).

Any appeal from determination of amount of security to be deposited pursuant to § 31-9-202 is governed by the Wyoming Administrative Procedure Act, § 16-3-114 providing that the procedure to be followed shall be in accordance with the Rules of the Supreme Court. Under subdivision (i) of former Rule 72.1, W.R.C.P., the judicial review of administrative action is confined to the record as the same may be supplemented under the provisions of the preceding subdivision, which allows additional material evidence in other than contested cases. Thornley v. Wyoming Hwy. Dep't, 478 P.2d 600 (Wyo. 1971).

Procedure upon certification of factual issue by court to board. — The board should adopt a rule whereby, upon certification to the board by the district court of a factual issue for initial determination, the board would accept jurisdiction and proceed in its regular manner or in a legal manner acceptable to it to make that determination. Upon completion of the board's proceeding, the findings, conclusions, and order determining the matter, including the record made if a party or the parties desire it, could then be certified by the board to the district court. This would enable the district court first to review the board's proceedings in keeping with the provisions of this rule and § 16-3-114, if a party so desires. Upon completion of that task the district court would then be enabled to consider and dispose of whatever matters remained for disposal of the litigation. Kearney Lake, Land & Reservoir Co. v. Lake DeSmet Reservoir Co., 487 P.2d 324 (Wyo. 1971).

Narrow view of remedy selected is not to be taken because another remedy is available. School Dists. Nos. 2, 3, 6, 9, & 10 v. Cook, 424 P.2d 751 (Wyo. 1967).

When courts may set aside administrative action. — Courts may set aside action of an administrative agency only where the agency's action is arbitrary or fraudulent, or where there is an illegal exercise of discretion. Wyoming Bancorporation v. Bonham, 527 P.2d 432 (Wyo. 1974).

When case to be remanded. — If, after an appropriate hearing on a motion showing the necessity for consideration of further matter or facts, the court finds that all pertinent material matter or facts have not received the attention of the administrative agency, then the case should be remanded to the proper committee authorized to carry on the organization function, to receive and consider the evidence, and revise or confirm its decision, within the authority delegated to it, within its judgment. Geraud v. Schrader, 531 P.2d 872 (Wyo.), cert. denied, 423 U.S. 904, 96 S. Ct. 205, 46 L. Ed. 2d 134 (1975).

VIII. JOINT APPEALS.

Former Rule 72.1, W.R.C.P., allowed a joinder of independent claims under the petition for review so that disposal might be made in one hearing of the claimed independent remedies. Tri-County Elec. Ass'n v. City of Gillette, 525 P.2d 3 (Wyo. 1974).

IX. INDEPENDENT ACTION.

Appellants not prejudiced by trial court's refusal to permit issue to be raised on review. — Because appellants may pursue the remedies set forth in subdivision (c) of former Rule 72.1, W.R.C.P., by independent action as well as by petition for review, they are not prejudiced by the trial court's refusal to permit an issue to be raised upon review, as under such circumstances the trial court, which is charged with the task of conducting orderly proceedings, has wide discretion in determining what additional remedies may be pursued upon review. Bruegman v. Johnson Ranches, Inc., 520 P.2d 489 (Wyo. 1974).

Sufficiency of petition. — Although a petition contains no claim or allegation that an administrative official, in performance of his statutory duties, acted unlawfully or arbitrarily or that he abused his discretion, this would not prevent relief being granted under subdivision (c) of former Rule 72.1, W.R.C.P., to a petitioner if indeed such was the case. Shepard v. Tucker, 478 P.2d 605 (Wyo. 1971).

Subdivision (c) of former Rule 72.1, W.R.C.P., enabled court to hear matters beyond administrative record. — It is only by virtue of subdivision (c) of former Rule 72.1, W.R.C.P., that a court was enabled to hear other matters beyond the administrative record. Tri-County Elec. Ass'n v. City of Gillette, 525 P.2d 3 (Wyo. 1974).

If such issues are germane. — Issues beyond those raised before an agency must be germane to the proceedings before the administrative agency to be considered on a petition for review. Bruegman v. Johnson Ranches, Inc., 520 P.2d 489 (Wyo. 1974).

Mandamus. — Although this rule provides for the availability of mandamus action under the petition for review or by independent action, it furnishes no basis for application of such a remedy unless it be germane to the proceedings in the administrative agency. Rolfes v. State ex rel. Burt, 464 P.2d 531 (Wyo. 1970).

Declaratory judgment and mandamus actions challenging driver license revocations properly considered. — Declaratory judgment and mandamus actions filed by drivers whose licenses had been revoked, challenging the interpretation by the department of motor vehicles of the statute upon which the department relied in refusing to restore the drivers' driving privileges, even though filed

beyond 30 days from the rulings by independent hearing officers revoking the licenses, were properly considered by the district court. State v. Kraus, 706 P.2d 1130 (Wyo. 1985).

Rule 13. The petition for a writ of review.

Cross References. — For appeals from courts of limited jurisdiction, see § 5-2-119.

Conversion not appropriate. — Because two partial summary judgment orders in favor of a former wife relating to a child support arrearage were not final under Wyo. R. Civ. P. 54(b), an appeal was dismissed. Moreover, the appeal did not fall under Wyo. R. App. P. 1.05 nor was it the type that warranted conversion to a petition for a writ of review under Wyo. R. App. P. 13. Witowski v. Roosevelt, 156 P.3d 1001 (Wyo. 2007).

Remedy for violation of constitutional rights. — Final judgments or orders of a district court entered upon petitions filed pursuant to chapter 14 of title 7, which provides a remedy for the violation of constitutional rights, will be considered in the Supreme Court only if in the form required by this rule. Such petitions may be accompanied by a request that counsel be appointed. Smizer v. State, 763 P.2d 1254 (Wyo. 1988).

Decisions of Parole Board. — Given the Wyoming legislature's clear intent to prohibit such review, as expressed in § 7-13-402, it is quite likely the Wyoming supreme court would hold that judicial review of a decision of the Wyoming Board of Parole by writ of review is not permissible. Hamill v. Ferguson, 937 F. Supp. 1517 (D. Wyo. 1996), appeal dismissed, Hamill v. Wyoming Dep't of Cors., 125 F.3d 862 (10th Cir. 1997).

Applied in Sowerwine v. State, 767 P.2d 181 (Wyo. 1989); City of Laramie v. Hysong, 808 P.2d 199 (Wyo. 1991); Sorensen v. State Farm Auto. Ins. Co., 234 P.3d 1233 (Wyo. 2010).

Cited in Stogner v. State, 792 P.2d 1358 (Wyo. 1990); Tusshani v. Allsop, 1 P.3d 1263 (Wyo. 2000); Bd. of Trs. of Mem. Hosp. v. Martin, 60 P.3d 1273 (Wyo. 2003); Fox v. Tanner, 101 P.3d 939 (Wyo. 2004).

13.01. [Effective until November 1, 2017.] Generally.

(a) All applications to the supreme court for interlocutory or extraordinary relief from orders of the district courts, including such applications as are established by statute (e.g., Wyo.Stat.Ann. § 5-2-119 and 7-14-107), may be made as petitions for a writ of review. Granting of a petition is within the discretion of the supreme court.

(b) All applications to a district court for interlocutory or extraordinary relief from orders of administrative agencies and the municipal and circuit courts, including such applications as are established by statute, may be made as petitions for a writ of review. Granting of a petition is within the discretion of the district court.

(c) The petitioner for a writ of review shall specifically state the nature of review desired and the relief sought.

(d) Writs of habeas corpus, mandamus, prohibition, quo warranto or any prerogative writ shall be treated as a writ of review under this rules. In any petition made to the supreme court for a writ to be issued in the exercise of its original jurisdiction and for which an application might have been lawfully made to some other court in the first instance, the petition shall, in addition to the necessary matter required by the rules of law to support the application, also set forth the circumstances which, in the opinion of the petitioner, render it necessary or proper that the writ should issue originally from the supreme court, and not from such other court, and the sufficiency or insufficiency of such circumstances will be determined by the court in awarding or refusing the application. In case any court, justice or other officer, or any board or other tribunal, in the discharge of duties of a public character, be named in the petition as defendant or respondent, the petition shall also disclose the name or names of the real party or parties, if any, in interest, or whose interest would be directly affected by the proceedings.

(Amended May 4, 2001, effective September 1, 2001; amended December 2, 2002, effective January 6, 2003; amended April 6, 2015, effective July 1, 2015.)

Application for writ of review proper. — In defendant's aggravated assault case, where the district court concluded that the prosecution's conduct provided grounds for a mistrial, granted the defense motion, and dismissed the case with prejudice on the basis of speedy trial concerns, the State's writ of review was appropriate. The State had no other adequate remedy, the issues presented were of constitutional magnitude and public importance, and it was not established that allowing the writ would place defendant in jeopardy for a second time. State v. Newman, 88 P.3d 445 (Wyo. 2004).

Appeal notice treated as petition for writ of review. — Petitioner's notice of appeal was treated as a petition for writ of review and was therefore not untimely, since grant of such a petition was discretionary with supreme court; failure to file petition within eleven day time limit was not jurisdictional, but merely a factor for court to consider in its disposition of petition. Kittles v. Rocky Mt. Recovery, Inc., 1 P.3d 1220 (Wyo. 2000).

State prisoner's Fed. R. Civ. P. 60(b)(1) motion was properly denied because the record made clear that his § 2254 petition was not timely filed under 28 U.S.C.S. § 2244(d) in that the district court properly included the entire time from the filing of the state postconviction motion to the eventual denial of certiorari of his conviction for bribery under Wyo. Stat. Ann. § 6-5-102(a). An additional 45-days of statutory tolling was not required because the prisoner's appeal of the denial of postconviction relief was not the procedurally proper manner to seek review pursuant to Wyo. Stat. Ann. § 7-14-107 and Wyo. R. App. P. 13.01(a). Stanton v. Wyoming AG, — F.3d —, 2010 U.S. App. LEXIS 21199 (10th Cir. Oct. 14, 2010).

Appeal notice treatable as writ of certiorari. — There is no inhibition in the court rules, the state constitution or any legislative mandate that precludes the Supreme Court from, on its own motion, considering a notice of appeal as a petition for writ of certiorari and proceeding with review on that basis. Whenever the court determines that review by certiorari is in the best interest of the state, or its citizens, it may be invoked. Alexander v. United States, 803 P.2d 61 (Wyo. 1990).

Certiorari not granted if alternative remedy available. — Review pursuant to certiorari is never granted lightly, especially if an adequate alternative remedy is available. Alexander v. United States, 803 P.2d 61 (Wyo. 1990).

Quoted in Hamill v. Ferguson, 937 F. Supp. 1517 (D. Wyo. 1996).

Stated in Paull v. Conoco, Inc., 752 P.2d 415 (Wyo. 1988).

Cited in V-1 Oil Co. v. Ranck, 767 P.2d 612 (Wyo. 1989); J Bar H, Inc. v. Johnson, 822 P.2d 849 (Wyo. 1991); Bd. of County Comm'rs v. Exxon Mobil Corp., 55 P.3d 714 (Wyo. 2002).

13.01. [Effective November 1, 2017.] Generally.

(a) All applications to the supreme court for interlocutory or extraordinary relief from orders of the district courts, including such applications as are established by statute (e.g., Wyo.Stat.Ann. § 5-2-119 and 7-14-107), may be made as petitions for a writ of review. Granting of a petition is within the discretion of the supreme court.

(b) All applications to a district court for interlocutory or extraordinary relief from orders of administrative agencies and the municipal and circuit courts, including such applications as are established by statute, may be made as petitions for a writ of review. Granting of a petition is within the discretion of the district court.

(c) The petitioner for a writ of review shall specifically state the nature of review desired and the relief sought.

(d) Writs of habeas corpus, mandamus, prohibition, quo warranto or any prerogative writ shall be treated as a writ of review under these rules. In any petition made to the supreme court for a writ to be issued in the exercise of its original jurisdiction and for which an application might have been lawfully made to some other court, the petition shall set forth the circumstances why, in the opinion of the petitioner, the writ should issue originally from the supreme court and not from such other court. The petition shall also name the real party or parties in interest, or whose interest would be directly affected by the proceedings.

(Amended May 4, 2001, effective September 1, 2001; amended December 2, 2002, effective January 6, 2003; amended April 6, 2015, effective July 1, 2015; amended August 23, 2017, effective November 1, 2017.)

Application for writ of review proper. — In defendant's aggravated assault case, where the district court concluded that the prosecution's conduct provided grounds for a mistrial, granted the defense motion, and dismissed the case with prejudice on the basis of speedy trial

concerns, the State's writ of review was appropriate. The State had no other adequate remedy, the issues presented were of constitutional magnitude and public importance, and it was not established that allowing the writ would place defendant in jeopardy for a second time. State v. Newman, 88 P.3d 445 (Wyo. 2004).

Appeal notice treated as petition for writ of review. — Petitioner's notice of appeal was treated as a petition for writ of review and was therefore not untimely, since grant of such a petition was discretionary with supreme court; failure to file petition within eleven day time limit was not jurisdictional, but merely a factor for court to consider in its disposition of petition. Kittles v. Rocky Mt. Recovery, Inc., 1 P.3d 1220 (Wyo. 2000).

State prisoner's Fed. R. Civ. P. 60(b)(1) motion was properly denied because the record made clear that his § 2254 petition was not timely filed under 28 U.S.C.S. § 2244(d) in that the district court properly included the entire time from the filing of the state postconviction motion to the eventual denial of certiorari of his conviction for bribery under Wyo. Stat. Ann. § 6-5-102(a). An additional 45-days of statutory tolling was not required because the prisoner's appeal of the denial of postconviction relief was not the procedurally proper manner to seek review pursuant to Wyo. Stat. Ann. § 7-14-107 and Wyo. R. App. P. 13.01(a). Stanton v. Wyoming AG, — F.3d —, 2010 U.S. App. LEXIS 21199 (10th Cir. Oct. 14, 2010).

Appeal notice treatable as writ of certiorari. — There is no inhibition in the court rules, the state constitution or any legislative mandate that precludes the Supreme Court from, on its own motion, considering a notice of appeal as a petition for writ of certiorari and proceeding with review on that basis. Whenever the court determines that review by certiorari is in the best interest of the state, or its citizens, it may be invoked. Alexander v. United States, 803 P.2d 61 (Wyo. 1990).

Certiorari not granted if alternative remedy available. — Review pursuant to certiorari is never granted lightly, especially if an adequate alternative remedy is available. Alexander v. United States, 803 P.2d 61 (Wyo. 1990).

Quoted in Hamill v. Ferguson, 937 F. Supp. 1517 (D. Wyo. 1996).

Stated in Paull v. Conoco, Inc., 752 P.2d 415 (Wyo. 1988).

Cited in V-1 Oil Co. v. Ranck, 767 P.2d 612 (Wyo. 1989); J Bar H, Inc. v. Johnson, 822 P.2d 849 (Wyo. 1991); Bd. of County Comm'rs v. Exxon Mobil Corp., 55 P.3d 714 (Wyo. 2002).

13.02. When interlocutory review may be granted.

A writ of review may be granted by the reviewing court to review an interlocutory order of a trial court in a civil or criminal action, or from an interlocutory order of an administrative agency, which is not otherwise appealable under these rules, but which involves a controlling question of law as to which there are substantial bases for difference of opinion and in which an immediate appeal from the order may materially advance resolution of the litigation.

Suppression of evidence. — Review of district court's decision to suppress admissions of accused was appropriate where it presented issues of constitutional magnitude, the evidence was important to the prosecution because of the limited amount of evidence, and whether the court erred concerning the state's burden of proof presented a significant question. State v. Evans, 944 P.2d 1120 (Wyo. 1997).

Joinder. — Where a joinder issue had not been addressed by the Wyoming Supreme Court previously, it was not error to allow review by writ; the fact that a district court's decision on the matter was discretionary did not bar review either. Grove v. Pfister, 110 P.3d 275 (Wyo. 2005).

Review granted upon conversion of notice of appeal. — Even though an order granting partial summary judgment did not have the required certification under W. R.C.P. 54(b), an appellate court still could review the case by converting the notice of appeal into a writ of review under W.R.A.P. 13.02. Stewart Title Guar. Co. v. Tilden, 110 P.3d 865 (Wyo. 2005).

13.03. Petition and response to petition.

(a) A petition for a writ of review must be filed with the reviewing court within 15 days after entry of the order from which relief is sought. Each petition shall be accompanied by:

(1) a docket fee; or

(2) a petitioner in a criminal case eligible to proceed in forma pauperis shall file a motion for leave to proceed, together with an affidavit documenting the petitioner's inability to pay fees and costs or to give security. The affidavit shall have

attached a statement from the institution in which petitioner is incarcerated detailing income and expenses for the prior six months.

(b) Any party may file a response within 15 days after filing of the petition.

(c) The reviewing court may grant the petition anytime after the 30th day after entry of the order from which relief is sought or as soon as both the petition and the response have been filed with the reviewing court. The petition shall be deemed denied if the reviewing court does not accept review within 40 days from the date of filing of the petition.

(d) Rule 1.01 applies.

(Amended May 4, 2001, effective September 1, 2001; amended July 26, 2006, effective December 1, 2006; amended April 6, 2015, effective July 1, 2015.)

The 2006 amendment, in (c), changed "22nd" to "30th" day, and "30 days from date of the petition" to "40 days from the date of the petition".

Quoted in Hamill v. Ferguson, 937 F. Supp. 1517 (D. Wyo. 1996).

Cited in Duran v. State, 949 P.2d 885 (Wyo. 1997); Bd. of County Comm'rs v. Exxon Mobil Corp., 55 P.3d 714 (Wyo. 2002).

13.04. Contents of petition for writ of review.

The petition shall be captioned in the reviewing court. It shall contain concise statements of the following:

(a) The nature of the review desired and the relief sought;

(b) The facts necessary to an understanding of the controlling questions of law determined by the lower court or administrative agency;

(c) The question itself;

(d) The principles of law upon which petitioner relies, with citation of authorities in support but without argument;

(e) A statement explaining why the ends of justice require review;

(f) A certification that the petition is not interposed for purpose of delay; and

(g) A certification that no notice of entry of the order sought to be reviewed was provided, if such is the case.

(h) In addition to service on respondent, a copy of the petition, without attachments, shall also be served on the trial court and/or administrative agency whose decision is subject to review.

(Amended April 6, 2015, effective July 1, 2015.)

Court may grant writ on own motion. — This rule should be followed by litigants who seek a writ of certiorari, but it is not binding on the Supreme Court when it elects to grant the writ of our own motion. Alexander v. United States, 803 P.2d 61 (Wyo. 1990).

13.05. Exhibits and attachments to the petition for a writ of review.

Unless otherwise ordered by the reviewing court, copies of the following shall be attached as exhibits to all petitions for a writ of review:

(a) All relevant pleadings;

(b) The order sought to be reviewed;

(c) All pertinent findings of fact and conclusions of law and memorandum opinions; and

(d) Any other documents or exhibits petitioner may deem essential.

(Amended May 4, 1999, effective October 1, 1999.)

13.06. Stay of lower court or administrative agency proceedings.

A petition for a writ of review shall not stay proceedings in the trial court or administrative agency unless the trial court or agency, or reviewing court, so orders.

13.07. [Effective until November 1, 2017.] Writ of review.

(a) The order granting the writ of review may set forth the particular issue or point of law which will be considered and may be on such terms as the reviewing court conditions. If the petition is granted, all proceedings including briefing, designation and transmission of the record shall be within the time and in the manner required for appeals unless otherwise ordered by the reviewing court. Pursuant to Rule 3.02(c), any audio recording relevant to the review shall be transcribed and filed as part of the record. Oral argument will not be held except at the direction of the reviewing court.

(b) If the petition for writ of review is denied, then the case shall be closed upon entry of the order denying review and no petition for reconsideration or rehearing will be allowed.

(Amended April 6, 2015, effective July 1, 2015.)

Applied in Bd. of County Comm'rs v. Exxon Mobil Corp., 55 P.3d 714 (Wyo. 2002).

13.07. [Effective November 1, 2017.] Writ of review.

(a) The order granting the writ of review may set forth the particular issue or point of law which will be considered and may be on such terms as the reviewing court conditions. If the petition is granted, all proceedings including briefing, designation and transmission of the record shall be within the time and in the manner required for appeals unless otherwise ordered by the reviewing court. In cases where preparation of the trial court record is necessary, petitioner(s) shall pay to the clerk of the trial court the docketing fee applicable to appeals from that court. Failure to pay the docketing fee within 30 days of entry of the order granting the petition may result in dismissal of the case. Pursuant to Rule 3.02(c), any audio recording relevant to the review shall be transcribed and filed as part of the record. Oral argument will not be held except at the direction of the reviewing court.

(b) If the petition for writ of review is denied, then the case shall be closed upon entry of the order denying review and no petition for reconsideration or rehearing will be allowed.

(Amended April 6, 2015, effective July 1, 2015; amended August 23, 2017, effective November 1, 2017.)

Applied in Bd. of County Comm'rs v. Exxon Mobil Corp., 55 P.3d 714 (Wyo. 2002).

13.08. Disposition of the writ when granted.

If the writ of review is granted, the reviewing court may reverse, vacate, remand or modify the decision for errors appearing on the record.

Supreme Court may correct district court abuse. — In the exercise of its discretionary review of a matter on a writ of certiorari, the Supreme Court may order relief to correct an abuse of district court discretion. V-1 Oil Co. v. Ranck, 767 P.2d 612 (Wyo. 1989).

Applied in Bd. of County Comm'rs v. Exxon Mobil Corp., 55 P.3d 714 (Wyo. 2002).

13.09. Duties of clerks.

When a petition for a writ of review is decided, the clerk of the reviewing court shall enter that order and shall serve the order on the trial court or administrative agency and counsel of record either by CTEF or mail.

Rule 14. Service of papers and computation of time.

14.01. Service; how made.

(a) 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 personal service upon the party is ordered by the court. Service upon the attorney or upon the party shall be made by delivering a copy to that party or by mailing it to the last known address.

(b) Delivery of a copy within this rule means handing it to the attorney or to the party, or leaving it at the party's office with the clerk or other person in charge, or leaving it in a conspicuous place, or, if the office is closed or the person to be served has no office, leaving it at the party's dwelling house or usual place of abode with some member of the family over the age of 14 years who resides there or otherwise, as provided in Wyo. R. Civ. P. 5. Service by mail is complete upon mailing.

(c) For all cases filed through CTEF, the notice of electronic filing that is automatically generated constitutes service of the document on CTEF users and the additional service of a hardcopy is not necessary. Each registered user of the CTEF system is responsible for assuring that their email account is current, is monitored regularly, and that email notices are opened in a timely manner. The notice of electronic filing generated by CTEF does not replace the certificate of service on the document being filed.

(d) The registered user's name and password required to submit documents to the CTEF serve as the user's signature on all electronic documents filed with the Court. An electronically filed document shall contain a signature line in the following manner: s/Attorney's Name.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Rule 6, W.R.C.P.; former Rule 20, Sup. Ct.

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appellate Review §§ 511 to 532.
4 C.J.S. Appeal and Error §§ 381 to 389.

14.02. Computation of time.

In computing any period of time prescribed or allowed by these rules, or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have closed the office of the clerk of the court, in which event the period runs until the end of the next day which is not one of the above described days. As used in this rule "legal holiday" includes any day officially recognized as a legal holiday in this state by designation of the legislature, appointment as a holiday by the chief justice of the Wyoming Supreme Court, or any day designated as such by local officials.

(Amended April 6, 2015, effective July 1, 2015.)

Applied in Sellers v. Employment Sec. Comm'n, 760 P.2d 394 (Wyo. 1988).

Cited in Elliott v. State, 626 P.2d 1044 (Wyo.

1981); Barron v. Barron, 834 P.2d 685 (Wyo. 1992).

14.03. [Effective until November 1, 2017.] Additional time after service by mail.

(a) Whenever a party has the right, or is required to do some act or take some proceedings within a prescribed period from or after the service of a brief, notice or other paper upon that party, and the brief, notice or other paper, is served upon the party by mail or by delivery to the clerk, three days shall be added to the prescribed period.

(b) When a party is required to take action within a prescribed period after filing or date certain, no additional time shall be added for service by mail to the prescribed period or date certain.

(Amended April 6, 2015, effective July 1, 2015.)

Comment. — The three additional days for mailing shall be computed as part of the original period and not as a separate period (overruling *Sellers v. Employment Sec. Comm'n*, 760 P.2d 394 (Wyo. 1988)).

Three-day mailing extension should be computed separately from original time period, and should not be merely added to the original time period. Sellers v. Employment Sec. Comm'n, 760 P.2d 394 (Wyo. 1988).

Revision of this rule did not apply retroactively to render petition for review untimely. Wright v. State ex rel. Workers' Safety & Comp. Div., 978 P.2d 1162 (Wyo. 1999).

Stated in Goodman v. Voss, 248 P.3d 1120 (Wyo. 2011).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

14.03. [Effective November 1, 2017.] Additional time after service by mail.

(a) Whenever a party has the right, or is required to do some act or take some proceedings within a prescribed period from or after the service of a brief, notice or other paper upon that party, and the brief, notice or other paper, is served upon the party by mail, three days shall be added to the prescribed period. No additional time shall be added if the party is served electronically through the court's electronic filing system.

(b) When a party is required to take action within a prescribed period after filing or date certain, no additional time shall be added for service by mail to the prescribed period or date certain.

(Amended April 6, 2015, effective July 1, 2015; amended August 23, 2017, effective November 1, 2017.)

Comment. — The three additional days for mailing shall be computed as part of the original period and not as a separate period (overruling *Sellers v. Employment Sec. Comm'n*, 760 P.2d 394 (Wyo. 1988)).

Three-day mailing extension should be computed separately from original time period, and should not be merely added to the original time period. Sellers v. Employment Sec. Comm'n, 760 P.2d 394 (Wyo. 1988).

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Stated in Goodman v. Voss, 248 P.3d 1120 (Wyo. 2011).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

14.04. Pro se filings by inmates.

Any document under these rules which is filed pro se by an inmate who is confined in a penal institution and who is a party in either a civil or criminal case is timely filed if that document is deposited in the institution's internal mail system on or before the last

day allowed for filing by these rules or by court order. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing shall be shown by a written certification appended to the document that the document was so filed or the appearance on the inmate mailing of a stamp indicating the date of its receipt by the institution's mail system.
(Added July 26, 2006, effective December 1, 2006.)

14.05. Pro se filings by criminal appellant represented by counsel.

In any appeal where a criminal appellant is represented by counsel, the appellant may not file any pro se brief, motion, or other pleading, with the following two exceptions: the appellant may file a pro se motion to terminate counsel's representation in the appeal and/or the appellant may also file a motion for leave to consider a pro se supplemental brief, i.e., a brief in addition to the one filed by counsel. The motion for leave to file shall be accompanied by the proposed pro se supplemental brief and shall be contemporaneously served on appellant's counsel of record and the State of Wyoming. If a pro se brief is presented for filing without a motion for leave to file the same, the clerk of court shall acknowledge receipt, retain the brief, and notify appellant, appellant's counsel of record, and the State of Wyoming that the brief will not be filed or considered unless (1) appellant files the required motion for leave to file and (2) the Court grants the motion for leave to file.
(Added April 6, 2015, effective July 1, 2015.)

Rule 15. Petition for reinstatement.

(a) A petition for reinstatement of a case in the appellate court, after dismissal, shall be by petition to the appellate court, signed by counsel, stating the reasons, and supported by a showing, in writing, as may be essential. The petition shall be filed within 15 days after the order of dismissal has been entered and shall contain the points and authorities upon which petitioner relies. Rule 1.01 applies. A copy of such petition shall also be served on the counsel for opposing party.

(b) Counsel for opposing party shall have 15 days after such service within which to file with the court any objections to the petition, covering the points and authorities upon which the opposing party relies. The opposing party shall also serve upon counsel for the petitioner a copy of the objections.

(c) There shall be no oral argument on the petition and the objections, unless requested by the court. If the appeal is reinstated, the court will establish a new briefing schedule. If reinstatement of the appeal is denied, the case shall be closed.
(Amended July 26, 2006, effective December 1, 2006; amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 19, Sup. Ct. (applied in Brown v. Riner, 496 P.2d 907 (Wyo. 1972)).

The 2006 amendment added the third sentence.

Applicability. — District court's dismissal of an appeal from an administrative ruling denying unemployment benefits could not be challenged through a motion for relief under Wyo. R. Civ. P. 60, even if considered as an application for rehearing under Wyo. R. App. P. 9.07 or a petition for reinstatement under this rule. The above rules did not apply, in light of the absence of anything in Wyo. R. App. P. 12.01 and the scope of the civil rules as defined in Wyo. R. Civ. P. 1 to indicate that other civil or appellate rules might extend to Wyo. R. App. P. 12 agency appeals. KMO v. State, 280 P.3d 1216 (Wyo. 2012).

Cited in Fallis v. Louisiana Pac. Corp., 763 P.2d 1267 (Wyo. 1988).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Am. Jur. 2d, ALR and C.J.S. references. — 24 Am. Jur. 2d Dismissal, Discontinuance and Nonsuit § 1 et seq.

5 C.J.S. Appeal and Error §§ 660, 661.

Rule 16. Motions.

(a) Motions submitted to an appellate court shall be filed with the clerk and served in accordance with Rule 14.

(b) A motion directed to a subject matter which may substantially affect the disposition of a case shall, at the time of filing, be supported by a memorandum of points and authorities. The motion and memorandum may be combined and filed as one document. Rule 1.01 applies. Upon filing, such motion and memorandum shall be served upon the adverse party or the attorney of record who, within 15 days after service, may file and serve a similar memorandum. The court may resolve a motion without oral argument, or may order a hearing. All motions not previously determined shall be heard or submitted at the time regularly assigned for the hearing of the case. All motions shall be in the same form as described in Rule 7.05(b).

(Amended May 4, 2001, effective September 1, 2001; amended July 26, 2006, effective December 1, 2006; amended April 6, 2015, effective July 1, 2015.)

Source. — Former Rule 6, Sup. Ct.

The 2006 amendment, added the second sentence.

Appeal dismissed where noncompliance with Rule 54(b), W.R.C.P. — Where there has been noncompliance with Rule 54(b), W.R.C.P., in that the liabilities of fewer than all of the parties have been determined, and there has been no express determination that there is no just reason for delay, the appeal will be dismissed upon motion. Hoback Ranches, Inc. v. Urroz, 622 P.2d 948 (Wyo. 1981).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Am. Jur. 2d, ALR and C.J.S. references. — 4 C.J.S. Appeal and Error §§ 641 to 650.

Rule 17. Substitution of parties.

17.01. Death of a party.

(a) If a party dies after a notice of appeal is filed, or while a proceeding is otherwise pending in the appellate court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the appellate court. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 14. If the deceased party has no representative, any party may notify the appellate court of the death on the record and proceedings shall then be had as the appellate court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the trial court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred.

(b) After the notice of appeal is filed substitution shall be effected in the appellate court in accordance with this rule. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by a personal representative, or, if the party has no personal representative, by the attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the appellate court in accordance with this rule.

(c) In appeals of criminal convictions, an appeal shall be dismissed if the convicted person dies.

(Amended April 6, 2015, effective July 1, 2015.)

Note. — This rule specifically provides for substitution on appeal as now provided for in Rule 25(e), W.R.C.P. It is basically an adaptation of the federal rule to conform to our reviewing system. The federal rule appears to be the one most copied by other states, i.e., Colorado, Massachusetts, Montana.

Source. — Rule 43(a), F.R.A.P.

Cited in Yalowizer v. Husky Oil Co., 629 P.2d 465 (Wyo. 1981).

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appellate Review §§ 278 to 284.

Effect of death of party to divorce proceeding

pending appeal or time allowed for appeal, 33 ALR4th 47.

Abatement effects of accused's death before appellate review of federal criminal conviction, 80 ALR Fed 446.

4 C.J.S. Appeal and Error §§ 245 to 250.

17.02. Substitution for other causes; incompetency.

If substitution of a party in the appellate court is necessary because of incompetency or for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in Rule 17.01.

Source. — Rule 43(b), F.R.A.P.

17.03. Public officers; death or separation from office.

(a) When a public officer is a party to an appeal or other proceeding in the appellate court in an official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and the successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(b) When a public officer is a party to an appeal or other proceeding in an official capacity the public officer may be described as a party by the official title rather than by name; but the court may require the name to be added.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Rule 43(c), F.R.A.P.

Rule 18. Voluntary dismissal.

If the parties to an appeal or other proceeding file with the clerk of the appellate court an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, the clerk shall enter an order dismissing the case. An appeal may be dismissed on motion of appellant upon such terms as may be agreed upon by the parties or fixed by the appellate court. In a criminal case, a voluntary dismissal shall also be accompanied by a waiver of appeal signed by the appellant. No mandate shall issue.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Rule 42(b), F.R.A.P.

Am. Jur. 2d, ALR and C.J.S. references. — 5 Am. Jur. 2d Appellate Review §§ 872 to 877; 24 Am. Jur. 2d Dismissal, Discontinuance and Nonsuit § 1 et seq.

5 C.J.S. Appeal and Error §§ 631 to 661.

Rule 19. Appearance, withdrawal or substitution of counsel.

Applied in Jones v. State, 902 P.2d 686 (Wyo. 1995).

19.01. Appearance; admission pro hac vice.

(a) Definitions.

(1) "Applicant" means a member of the bar of any state, district or territory of the United States applying for admission pro hac vice.

(2) "Local counsel" means an active member of the Wyoming State Bar.

(3) "Rule 8" refers to Rule 8 of the Rules Governing the Wyoming State Bar and the Authorized Practice of Law.

(b) Counsel or firms shown as participating in the filing of any motion, other pleading, or brief in the appellate court shall, unless otherwise indicated, be deemed to have appeared in the cause. Counsel shall not include the name of, nor allow the signature of, any attorney not admitted pro hac vice by the appellate court on any motion, pleading or brief.

(c) Any attorney who is not an active member of the Wyoming State Bar must seek admission pro hac vice upon a motion made by local counsel in order to appear in any matter in a Wyoming appellate court. The applicant must also be a member in good standing of the bar of another jurisdiction. Admission pro hac vice in a trial court does not confer admission before an appellate court.

(d) Unless otherwise ordered, a motion to appear pro hac vice may be granted only if the applicant complies with Rule 8 and associates with local counsel. Unless excused by the court, local counsel must sign all papers filed, be present in court during all proceedings in connection with the case, and have full authority to act for and on behalf of the client(s) in all matters in connection with the case.

(e) Applicants consent to the exercise of disciplinary jurisdiction by the court over any alleged misconduct which occurs during the progress of the case in which the attorney so admitted participates.

(Amended May 4, 2001, effective September 1, 2001; amended October 28, 2004, effective March 1, 2005; amended April 6, 2015, effective July 1, 2015.)

The 2004 amendment inserted (a) and redesignated the remaining subsections accordingly, and otherwise modified the rule to require that admission pro hac vice be granted upon compliance with Rule 11 of the Rules Providing for the Organization and Government of the Bar Association and Attorneys at Law of the State of Wyoming.

Source. — Rule 12-302B, N.M.R. App. P.

Am. Jur. 2d, ALR and C.J.S. references. — Existence and extent of right of litigant in civil case, or of criminal defendant, to represent himself before state appellate courts, 24 ALR4th 430.

4 C.J.S. Appeal and Error §§ 393, 394.

19.02. Withdrawal.

No attorney or firm who has appeared in a cause on appeal may withdraw from it without written consent of the appellate court filed with the clerk. Such consent may be conditioned upon substitution of other counsel by written appearance or upon written statement submitted by the client acknowledging withdrawal of counsel and stating a desire to proceed pro se.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Rule 12-302C, N.M.R. App. P.

Quoted in Byrd v. Mahaffey, 78 P.3d 671 (Wyo. 2003).

Cited in Elliott v. State, 626 P.2d 1044 (Wyo. 1981).

Am. Jur. 2d, ALR and C.J.S. references. — Legal malpractice in connection with attorney's withdrawal as counsel, 6 ALR4th 342.

19.03. Notice of withdrawal or substitution.

Notice of withdrawal or substitution of counsel shall be given to all parties either by withdrawing counsel or by substituted counsel and proof of service filed with the clerk. If an attorney ceases to act in a cause for a reason other than withdrawal with consent, upon motion of any party, the court may require the taking of such steps as it may deem advisable to insure that the cause will proceed.

(Amended April 6, 2015, effective July 1, 2015.)

Source. — Rule 12-302D, N.M.R. App. P.

Cited in Elliott v. State, 626 P.2d 1044 (Wyo. 1981).

Rule 20. Hearings of supreme court causes before a district court.

Whenever a cause over which the supreme court has original jurisdiction is pending, the court may direct any district judge of the state to conduct a hearing at any county seat in the state. The judge conducting hearing shall make findings of fact and conclusions of law and shall forward the entire proceedings and record properly certified, to the supreme court for final determination of the cause.

Source. — Former Rule 24, Sup. Ct. (cited in Reilly v. Karn, 520 P.2d 838 (Wyo. 1974)).

Rule 21. Motion based on ineffective assistance of trial counsel.

(a) Following the docketing of a direct criminal appeal, the appellant may file, in the trial court, a motion claiming ineffective assistance of trial counsel. The motion may be used to seek a new trial or to seek plea withdrawal. The motion shall be filed prior to the filing of the appellant's initial appellate brief. Upon a showing of extraordinary circumstances, the appellate court may grant leave to file a motion after appellant has filed his brief, but in no event shall a motion be filed after the case has been taken under advisement by the appellate court. A copy of the motion shall be served upon all trial counsel and the appellate court. The motion shall contain nonspeculative allegations of facts which, if true, could support a determination that counsel's representation was deficient and prejudiced the appellant. Any claims of ineffectiveness not made in the motion shall not be considered by the trial court unless the trial court determines that the interests of justice or judicial efficiency require the consideration of issues not specifically indicated in the motion. A response may be filed within 15 days after the motion is served.

(b) Upon the filing of the motion, briefing in the appeal shall be stayed until further notice from the appellate court.

(c) The trial court may grant or deny the motion without a remand from the appellate court. The trial court shall determine the motion within 90 days after the motion is filed, unless the determination is continued by written order of the trial court, which continuation may not exceed 90 days from the expiration of the initial 90 day period, unless the appellate court orders a further extension. If the trial court enters such a continuation order, the trial court shall provide a copy of the order to the appellate court. In no event shall a motion filed under this rule be deemed denied. The trial court shall enter an order determining the motion.

(d) The order determining the motion shall include findings of fact and conclusions of law concerning the claimed deficient performance by counsel and the claimed prejudice suffered by appellant as a result. When disposition of a motion filed under this rule is made without a hearing, the order shall include a statement of the reason(s) for determination without hearing. The clerk of the trial court shall provide the clerk of the appellate court with a copy of the trial court's order disposing of the motion.

(e) If trial court denies the motion, appellant may file a notice of appeal to challenge the trial court's order denying the motion. When such an appeal is docketed in the appellate court, that appeal shall be consolidated with the initial direct appeal. If the appellant does not appeal from the trial court's order denying the motion, the clerk of the appellate court shall notify the parties of a new briefing schedule for the initial appeal.

(Added April 6, 2015, effective July 1, 2015.)

Failure to file Motion. — Defendant was prejudiced by defense counsel's deficient performance for failing to timely file a new trial motion. On remand pursuant to this rule, the district court held that it would have granted the motion in the interest of justice, because defendant's conviction for attempted first degree murder was contrary to the weight of the

evidence. Ken v. State, 267 P.3d 567 (Wyo. Dec. 22, 2011).

Rules 22 through 26. [Reserved].

Rule 27. Rules superseded.

From and after the effective date of these rules, all other rules in conflict with these rules shall be of no further force or effect.
(Amended April 6, 2015, effective July 1, 2015.)

Stated in L Slash X Cattle Co. v. Texaco, Inc., 623 P.2d 764 (Wyo. 1981).

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

Rule 28. Title.

These rules shall be known as theWyoming Rules of Appellate Procedure and may be cited as W.R.A.P.
(Amended April 6, 2015, effective July 1, 2015.)

Rule 29. Effective date.

The amendments to these rules shall become effective by order of the supreme court.
(Amended April 6, 2015, effective July 1, 2015.)

APPENDICES

These appendices are not a part of the W.R.A.P. and have not been adopted by the Wyoming Supreme Court as a part of the rules.

Appendix I is a timetable which summarizes the salient time limitations which are applicable to the appellate process. Again, the timetable should not be used as a substitute for consulting the applicable rules, but it does provide a general outline and limited index to the most frequently applicable time limitations.

Appendix II consists of forms which may be used by practitioners in drafting pleadings appropriate to an appeal. However, they are not intended to be a substitute for careful drafting of appellate pleadings. No attempt is made to furnish a manual of forms.

The forms and the timetable are intended for illustration only and have not been adopted as official documents.

APPENDIX I

TIMETABLE FOR LAWYERS ON APPEAL

(Unofficial)

(w/in = within; N of A = Notice of Appeal;
D. Ct. = District Court; S. Ct. = Supreme Court;
Tr. Ct. = Trial Court; App. Ct. = Appellate Court)

Procedure	Filed in:	When	Served
Notice of Appeal (Wyo. R. App. P. 2.01, 2.02, 2.03)	Tr. Ct.	w/in 30 days after entry of judgment, or appealable order; or w/in 15 days thereafter for excusable neglect; or w/in 15 days after original notice filed, for any other party; or w/in 30 days from entry of order made on motions 50(b), 52(b), and 59 W.R.C.P.; 29(c), 33, and 34 W.R. Cr. P; or w/in 30 days after above motions deemed denied	By appellant
Transcript Ordered (2.05)	From Reptr.	Concurrently with filing N of A	Evidence of order filed or endorsed on N of A
Designate transcript (2.05, 3.02)	Tr. Ct.	With N of A	Appellant
Bond for Costs (4.01)	Tr. Ct.	When N of A filed	
Supersedeas Bond (4.02)	Tr. Ct.	At or before filing N of A	
Docket Fee (2.09)	Tr. Ct.	With N of A	Appellant
Designate Record (3.05)	Tr. Ct.	With brief With response brief With reply brief	Appellant Appellee Appellant
Statement of Evidence when no transcript (3.03)	Tr. Ct.	Appellant prepares filed in Tr. Ct. w/in 35 days filing N of A w/in 15 days after	Serve on appellee Serve on appellant

Procedure	Filed in:	When	Served
		service appellee may amend or object	
Transmitting Record (3.05)	Tr. Ct. Clerk	w/in 5 working days after reply brief filed or due	To clerk of App. Ct.
Time for filing briefs (7.06)	App. Ct.	w/in 45 days after service of notice case docketed in App. Ct.	Served by appellant, see 1.01
		w/in 45 days after service of appellant brief, appellee must file	Served by appellee, see 1.01
		w/in 15 days after service of appellee brief, appellant may file reply brief	See 1.01
Amicus Curiae Brief (7.12)	App. Ct.	Filed w/in 11 days after principal brief of party being supported, or 11 days after first brief of any party	
Settings (8.01)			
Expedited docket	App. Ct.	App. Ct. clerk will notify by mail	All counsel
Objection to expedited docket	Any party	w/in 15 days after entry of order assigning to expedited docket	
Oral argument	App. Ct.	Clerk will notify	All counsel
Rehearing (9.08)	App. Ct.	w/in 15 days after decision	Serve on opposing party, see 1.01
Answer to application for rehearing (9.09)	App. Ct.	w/in 15 days after rehearing granted	Serve applicant, see 1.01
Mandate (9.10)	App. Ct.	w/in 15 days after decision, or after denial of rehearing	To all counsel
Certification of questions of law (11)			
Briefs (11.06)	App. Ct.	w/in 45 days from notice to all parties of agreement to answer	Appellant
		w/in 45 days from	Opposing party

Procedure	Filed in:	When	Served
		service of appellant brief	
Administrative agency review (12)			
Petition Filed (12.04)	D. Ct.	w/in 30 days after agency written notice of decision; or w/in 30 days thereafter if D. Ct. extends time period (Appellant orders transcript when petition filed)	
Record transmitted (12.07)	D. Ct.	w/in 60 days after service of petition or as allowed by D. Ct., agency shall transmit record to D. Ct. Notice of transmittal by agency, by personal letter to judge and notice to all parties.	
Motion for certification (12.09)	D. Ct.	w/in 30 days of filing petition for review	Any party
Response to motion for certification (12.09)	D. Ct.	w/in 15 days from service of motion	Any party
Certification (12.09)	D. Ct.	Not later than 60 days after petition for review filed, but not sooner than 15 days after motion for certification filed	
Writ of Review (13)			
Petition (13.03)	App. Ct.	w/in 15 days of entry of order from which review is sought	Any party
Response to petition	App. Ct.	w/in 15 days of filing of petition	Any party
Time Computation (14)			
Reinstatement after dismissal	App. Ct.	w/in 15 days after dismissal	

Procedure	Filed in:	When	Served
(15)		w/in 15 days of service opponent may serve objections and briefs	
Motions	App. Ct.	Copy	
(16)		of motion and memo of authorities shall be served on adverse party or attorney	
		w/in 15 days of service, any response to motion	

(Amended April 6, 2015, effective July 1, 2015.)

Law reviews. — Tyler J. Garrett, Anatomy of a Wyoming Appeal: A Practitioner's Guide for Civil Cases, 16 Wyo. L. Rev. 139 (2016).

APPENDIX II

FORMS

IN THE DISTRICT COURT IN AND FOR _____ COUNTY, WYOMING

A.B.,	)	
Petitioner,	)	
vs.	)	Civil Action No. _____
C.D.,	)	
Respondent.	)	

PETITION FOR REVIEW OF ADMINISTRATIVE ACTION

Petitioner, _____, by and through undersigned attorney and pursuant to Wyo. R. App. P. 12, hereby petitions the court for judicial review of the final administrative agency decision dated _____ _____, (year). As grounds for this petition, Petitioner states as follows:

I. Jurisdiction and Venue.

A certified copy of the agency decision from which Petitioner seeks judicial review is attached to this petition as Appendix A.

II. Issues and Nature of Review Sought.

III. Relevant Facts.

IV. Conclusion.

WHEREFORE, Petitioner prays that the court grant its petition for judicial review in this matter.

Respectfully submitted,

_____

Attorney for Petitioner
Address
Telephone number
FAX/Modem number

IN THE SUPREME COURT, STATE OF WYOMING

_____ TERM, A.D. (year) __

_____

C.D.	)	
Appellant,	)	
vs.	)	Case No. _____
A.B.	)	
Appellee.	)	

MOTION TO FILE BRIEF AS AMICUS CURIAE

_____, by and through undersigned attorney and pursuant to Wyo. R. App. P. 7.12 hereby moves the court for permission to file a brief as amicus curiae in the above-entitled matter. As grounds for this motion, _____states as follows:

[Insert concise explanation of reasons for motion to file amicus brief.]

WHEREFORE, _____, prays that the court enter its order allowing it to submit a brief in this appeal as amicus curiae.

DATED this ____ day of _____, (year).

_____

Attorney for Movant
Address
Telephone number
FAX/Modem number

IN THE DISTRICT COURT IN AND FOR _____ COUNTY, WYOMING

A.B.,	)	
Plaintiff,	)	
vs.	)	Civil Action No. _____
C.D.,	)	
Defendant.	)	

ORDER CERTIFYING QUESTION TO SUPREME COURT

The court, [based upon the stipulation of the parties/based upon its own motion], having reviewed the file and being otherwise fully advised in the premises finds that it would be in the interests of justice to certify the following question of law to the Wyoming Supreme Court:

[Question of law presented.]

The undisputed facts relevant to this question are as follows:

[Insert statement of undisputed relevant facts or reference attached stipulation of undisputed facts.]

The nature of the controversy and procedural context in which the question arose are as follows:

[Insert statement of nature of controversy and procedural history of question or reference attached stipulation of nature of controversy and procedural history of the question.]

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-stated question of law is certified to the Wyoming Supreme Court for such further proceedings as the Supreme Court should order.

DATED this _____ day of _____, (year).

_____

DISTRICT JUDGE

IN THE SUPREME COURT, STATE OF WYOMING

_____ TERM, A.D. (year)

_____

C.D.	)	
Appellant,	)	
vs.	)	Case No. _____
A.B.	)	
Appellee.	)	

MOTION TO DISMISS APPEAL

Appellee, _____, by and through her undersigned attorney hereby moves this court to dismiss the above-entitled appeal based on the following grounds:

[State grounds for dismissal here and/or in accompanying memorandum.]

WHEREFORE, Appellee prays that the court dismiss this appeal and grant Appellee such other and further relief as it deems just and equitable.

Respectfully submitted,

_____

Attorney for Appellee
Address
Telephone number
FAX/Modem number

IN THE SUPREME COURT, STATE OF WYOMING

_____ TERM, A.D. (year)

_____

C.D.	)	
Appellant,	)	
vs.	)	Case No. _____
A.B.	)	
Appellee.	)	

MOTION FOR EXTENSION OF TIME TO FILE BRIEF

_____, by and through undersigned attorney hereby moves the court
(Appellant/Appellee)
for an extension of time in which to file its brief in the above-entitled matter through and including the _____ day of _____, (year). As grounds for this motion, _____, states as follows:
(Appellant/Appellee)

[State explanation of good cause for extension here.]

WHEREFORE, _____ prays that the court grant this request for an extension.

Respectfully submitted,

_____

Attorney for Appellee
Address
Telephone number
FAX/Modem number

IN THE SUPREME COURT, STATE OF WYOMING

_____ TERM, A.D. (year)

_____

C.D.	)	
Appellant,	)	
vs.	)	Case No. _____
A.B.	)	
Appellee.	)	

ORDER GRANTING EXTENSION OF TIME TO FILE BRIEF

The court, having considered the motion of _____ for an extension
(Appellant/Appellee)
of time in which to file a brief in this matter and having reviewed the file and being otherwise fully advised in the premises determines that good cause exists to grant the requested extension.

IT IS THEREFORE ORDERED that _____ shall have through
(Appellant/Appellee)
the ____ day of _____, (year) to file and serve a brief in this matter.

For the Court:

_____
Justice

IN THE DISTRICT COURT IN AND FOR _____ COUNTY, WYOMING

A.B.,	)	
Plaintiff,	)	
vs.	)	Civil Action No. _____
C.D.,	)	
Defendant	)	

NOTICE OF APPEAL

TO THE CLERK OF THE ABOVE CAPTIONED DISTRICT COURT:

NOTICE IS HEREBY GIVEN that _____, appeals the _____
(Appellant)

_____,
(description of judgment/order from which appeal is taken)

entered in the above-entitled matter on _____ _____, (year), to the Supreme Court of the State of Wyoming. A copy of said Order is attached to this notice as Exhibit A.

Appellant further hereby certifies that all relevant portions of the transcript of evidence deemed necessary for this appeal have been ordered and proper arrangements for payment of the transcript have been made.

DATED this _____ day of _____, (year).

Respectfully submitted,

By: _____
Attorney for Appellant
Address
Telephone number

IN THE SUPREME COURT, STATE OF WYOMING

_____ TERM, A.D. (year) __

_____

C.D.	)	
Appellant,	)	
vs.	)	Case No. _____
A.B.	)	
Appellee.	)	

PETITION FOR REHEARING

_____ by and through undersigned attorney, petitions the court for a
(Appellant/Appellee)
rehearing of the court's decision in the above-entitled matter. As grounds for this petition, _____ states as follows:
(Appellant/Appellee)

[Insert concise explanations of legal grounds for rehearing here or in accompanying memorandum of law.]

WHEREFORE, Petitioner prays that the court grant a rehearing in this matter.

Respectfully submitted,

_____
Attorney for Petitioner
Address
Telephone number
FAX/Modem number

IN THE SUPREME COURT, STATE OF WYOMING

_____ TERM, A.D. (year) __

_____

C.D.	)	
Appellant,	)	
vs.	)	Case No. _____
A.B.	)	
Appellee.	)	

STIPULATION AND MOTION FOR VOLUNTARY DISMISSAL

The parties to the above-entitled appeal, hereby agree and stipulate that this appeal should be dismissed. [Specific terms as to payment of costs, etc.]

WHEREFORE, the parties to the above-entitled appeal hereby move the court to enter its order voluntarily dismissing this proceeding pursuant to the parties' stipulation.

DATED this _____ day of _____, (year).

Appellant's Attorney	Appellee's Attorney
Address	Address
Telephone number	Telephone number
FAX/Modem number	FAX/Modem number

IN THE SUPREME COURT, STATE OF WYOMING

_____ TERM, A.D. (year)

_____

C.D.	)	
Appellant,	)	
vs.	)	Case No. _____
A.B.	)	
Appellee.	)	

MOTION TO WITHDRAW AS COUNSEL

_____, attorney of record for the [Appellant/Appellee] or [Petitioner/Respondent] hereby moves the court for permission to withdraw from the above-entitled appeal. As grounds for this motion to withdraw, _____ states as follows:

[Grounds for withdrawal including identity of proposed replacement counsel and status of case.]

WHEREFORE, _____ prays that the court will grant this motion to withdraw.

Respectfully submitted,

_____

Attorney
Address
Telephone number
FAX/Modem number

IN THE SUPREME COURT, STATE OF WYOMING

_____ TERM, A.D. (year)

_____

X.	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. _____
	)	
Y.	)	
	)	
Respondent.	)	

PETITION FOR WRIT OF REVIEW

Petitioner, _____, by and through undersigned attorney, petitions the court to enter a writ of review in this matter.

I. Nature of Review Desired and Relief Sought.

A certified copy of the order from which Petitioner seeks a writ of review is attached to this petition as Appendix A.

II. Relevant Facts.

III. Question(s) Presented.

IV. Applicable Principles of Law.

V. Reasons for Review.

_____ hereby certifies that this Petition is not interposed for pur-
(Petitioner's attorney)
pose of delay.

WHEREFORE, Petitioner prays that the court grant it a writ of review in this matter and allow the case to proceed.

Respectfully submitted,

_____

Attorney for Petitioner
Address
Telephone number
FAX/Modem number

IN THE SUPREME COURT, STATE OF WYOMING

_____ TERM, A.D. (year)

_____

A B,	)	
	)	
Petitioner,	)	
	)	
v.	)	No._____
	)	
C D,	)	
	)	
Respondent.	)	

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS

This matter having come before the court on the petitioner's Motion to Proceed in Forma Pauperis, and the court having reviewed the matter and finding that the petitioner qualifies as an indigent person; it is therefore

Ordered that the petitioner be allowed to proceed in forma pauperis, and this case may be filed without prepayment of filing fees.

Dated this _____ day of _____, (year)

BY THE COURT:

_____

CHIEF JUSTICE

APPENDIX III

APPELLATE RULES TRANSLATION TABLE

APPELLATE RULES TRANSLATION TABLE

Former Rule (Prior to 1992 Revision)	Present Rule
Rule 1	Rule 1
Rule 1.01	Rule 1.02
Rule 1.02	Rule 1.03
Rule 1.03	Rule 1.04
Rule 1.04	Rule 1.05
Rule 1.05	Rule 1.06
Rule 1.06	None
Rule 2	Rule 2
Rule 2.01	Rule 2.07
Rule 2.02	Rules 2.01 through 2.05
Rule 2.03	None (see note under present Rule 2.03)
Rule 2.04	None (see note under present Rule 2.04)
Rule 2.05	Rule 2.08
Rule 2.06	Rule 4.01
Rule 2.07	Rule 4.02
Rule 2.08	Rule 4.03
Rule 2.09	Rule 4.04
Rule 2.10	Rule 4.05
Rule 2.11	Rule 5.01
Rule 3	Rule 6
Rule 3.01	Rule 6.01

Rule 3.02	Rule 2.06
Rule 4	Rule 3
Rule 4.01	Rule 3.01
Rule 4.02	Rule 3.02
Rule 4.03	Rule 3.03
Rule 4.04	Rule 3.04
Rule 4.05	Rule 3.05
Rule 4.06	Rule 3.06
Rule 4.07	Rule 3.07
Rule 4.08	Rule 3.08
Rule 4.09	Rule 3.09
Rule 5	Rule 7
Rule 5.01	Rule 7.01
Rule 5.02	Rule 7.02
Rule 5.03	Rule 7.03
Rule 5.04	Rule 7.04
Rule 5.05	Rule 7.05
Rule 5.06	Rule 7.06
Rule 5.07	Rule 7.07
Rule 5.08	Rule 7.08
Rule 5.09	Rule 7.09
Rule 5.10	Rule 7.10
Rule 5.11	Rule 7.11

Rule 6	Rule 8
Rule 6.01	Rule 8.01
Rule 6.02	Rule 8.02
Rule 7	Rule 9
Rule 7.01	Rule 9.01
Rule 7.02	Rule 9.02
Rule 7.03	Rule 9.03
Rule 7.04	Rule 9.04
Rule 7.05	Rule 9.05
Rule 7.06	Rule 9.06
Rule 8	Rule 9
Rule 8.01	Rule 9.07
Rule 8.02	Rule 9.08
Rule 8.03	Rule 9.09
Rule 9	Rule 9, Rule 9.10
Rule 10	Rule 10
Rule 10.01	Rule 10.01
Rule 10.02	Rule 10.02
Rule 10.03	Rule 10.03
Rule 10.04	Rule 10.04
Rule 10.05	Rule 10.05
Rule 10.06	Rule 10.06
Rule 11	Rule 11

Rule 11.01	Rule 11.01
Rule 11.02	Rule 11.02
Rule 11.03	Rule 11.03
Rule 11.04	Rule 11.04
Rule 11.05	Rule 11.05
Rule 11.06	Rule 11.06
Rule 11.07	Rule 11.07
Rule 12	Rule 12
Rule 12.01	Rule 12.01
Rule 12.02	Rule 12.02
Rule 12.03	Rule 12.03
Rule 12.04	Rule 12.04
Rule 12.05	Rule 12.05
Rule 12.06	Rule 12.06
Rule 12.07	Rule 12.07
Rule 12.08	Rule 12.08
Rule 12.09	Rule 12.09
Rule 12.10	Rule 12.10
Rule 12.11	Rule 12.11
Rule 12.12	Rule 12.12
Rule 13	Rule 13
Rule 13.01	None
Rule 13.02	Rule 13.04

Rule 13.03	Rule 13.08
Rule 13.04	Rule 13.09
Rule 13.05	None
Rule 14	Rule 14
Rule 14.01	Rule 14.01
Rule 14.02	Rule 14.02
Rule 14.03	Rule 14.03
Rule 15	Rule 15
Rule 16	Rule 16
Rule 17	Rule 17
Rule 17.01	Rule 17.01
Rule 17.02	Rule 17.02
Rule 17.03	Rule 17.03
Rule 18	Rule 18
Rule 19.01	Rule 19.01
Rule 19.02	Rule 19.02
Rule 19.03	Rule 19.03
Rule 20	Rule 20
Rules 21 through 26	Rules 21 thorugh 26
Rule 27	Rule 27
Rule 28	Rule 28
Rule 29	Rule 29