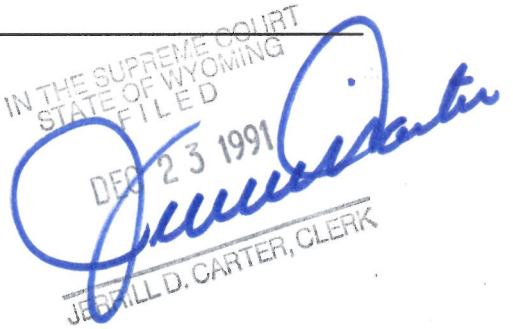
IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1991



In the Matter of the Adoption of the)
Revised Wyoming Rules of Criminal Procedure)

ORDER ADOPTING THE REVISED WYOMING RULES OF CRIMINAL PROCEDURE

The members of the Permanent Rules Advisory Committee-Criminal Division having conducted research, conferred among themselves on numerous occasions and conferred with the court; having presented to the court a copy of the Revised Wyoming Rules of Criminal Procedure, which have been approved with some modifications, and as modified and approved are filed with this order; and based upon the submission and recommendation of the advisory committee and approval of the court; it is therefore

ORDERED by this court that the Revised Wyoming Rules of Criminal Procedure, attached hereto, be hereby adopted; that said rules be published in the advance sheets of the Pacific Reporter and in the Wyoming Reporter; that said rules shall become effective 60 days after publication in the advance sheets of the Pacific Reporter, shall be spread at length upon the journal of this court and shall thereupon supersede the current Wyoming Rules of Criminal Procedure. It is further

ORDERED that the members of the Permanent Rules Advisory Committee-Criminal Division consisting of the Honorable Terrence L. O'Brien, Chairman, Thomas J. Carroll, Leonard D. Munker, David D. Uchner, and Gerald Gallivan, Recorder, be commended for the excellence of their work and that sincere appreciation be extended to each member.

Dated this 23rd day of December, 1991.

*BY THE COURT:

Walter Urbigkit

WALTER URBIGKIT
CHIEF JUSTICE

*CARDINE, Justice, partially dissenting.

WYOMING RULES OF CRIMINAL PROCEDURE

Rule 1. Scope and definitions.

(a) Scope. -- These rules govern the procedures to be followed in criminal, delinquent and CHINS (children in need of supervision) proceedings in all Wyoming courts, except as stated in Rule 54.

(b) Definitions. --

(1) "Commissioner" means commissioner of the district or county court.

(2) "Judicial officer" means justices of the supreme court, district judges, county judges, justices of the peace, municipal judges and commissioners.

(3) "Attorney for the state" means an attorney authorized by statute or by ordinance to prosecute criminal cases.

(4) "Clerk" means, depending on context:

(A) The elected clerk of district court in each county; or

(B) For county, justice of the peace and municipal courts the person so designated by the court.

(5) "State" means State of Wyoming except in prosecutions in municipal court in which it shall mean the municipality.

(6) "Sheriff" means a county sheriff except for prosecutions in municipal court in which it shall include the chief of police for the municipality.

(7) "Custodial officer" means the sheriff, chief of police or the officer in charge of a facility in which a defendant is being held on criminal charges.

(8) "Citation" means a document charging a defendant with an offense. The citation must state:

(A) The name of the court where it is to be filed;

(B) The names of the state or municipality and the defendant;

(C) For each count a reference to the statute, ordinance, rule, regulation or other provision of law which the defendant is alleged to have violated;

(D) The date and time the defendant must appear in court; and

(E) Whether a court appearance may be avoided by paying a fine and costs or forfeiture of bail.

The citation shall be signed by the citing officer and must contain a place for the defendant to sign a promise to appear in court on a date and at a time certain.

Rule 2. Purpose and construction.

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

Rule 3. Information or citation.

All offenses shall be prosecuted by indictment, information or by citation when a citation is authorized by law and shall be carried on in the name and by the authority of the State of Wyoming, and shall conclude "against the peace and dignity of the State of Wyoming".

(a) Nature and contents. --

(1) In General. -- The information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the state. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. The information shall state:

(A) The name of the court where it was filed;

(B) The names of the state and the defendant if the defendant is known, and, if not, then any names or description by which the defendant can be identified with reasonable certainty; and

(C) For each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated.

(2) Citation. -- A citation as authorized by law may issue for a violation of certain statutes and city and town

ordinances. Such citation shall contain a reference to the statute or ordinance violated and a concise statement of the alleged offense. The citation shall be signed by the issuing officer but need not be under oath.

(3) Harmless Error. -- Error in the citation of a statute or its omission shall not be grounds for dismissal of the information or citation or for reversal of a conviction if the error or omission did not mislead the defendant to the defendant's prejudice.

(b) Surplusage. -- The court on motion of the defendant may strike surplusage from the information or citation.

(c) Amendment of information or citation. -- The court may permit an information or citation to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

Rule 3.1. Use of citations; bail.

(a) Jurisdiction. -- Citations shall be filed in the county court, justice of the peace court or municipal court in the county or municipality where the offense allegedly occurred.

(b) When citation may issue. -- A person arrested and taken

into custody for any crime shall be brought before a judicial officer as provided in Rule 5, except:

(1) A peace officer who has stopped, detained or arrested any person for a misdemeanor may, then or after further investigation, issue a citation to avoid further detention of the person. If the person to whom the citation is issued signs a promise to appear in court on a date and time certain the person shall then be released from custody; and

(2) A person arrested and taken into custody for a "forfeit" offense (as later defined in this rule) must be taken before a judicial officer within six hours. If the person is not taken before a judicial officer within six hours, the person must be issued a citation and released from custody, but only if the person makes a written promise to appear in court on a date and time certain to answer to the offense charged in the citation. A judicial officer may, but is not required to, hold an initial appearance hearing for forfeit offenses other than during the regular business hours of the court.

(c) Appearance in court. -- The peace officer issuing the citation shall specify on the citation a date and time when the person cited must appear in court. The time specified must be at

least five days after the alleged violation unless the person cited demands an earlier hearing. A person to whom a citation has issued must appear in court on the day and at the time specified in the citation, unless:

(1) The appearance is continued or excused by a judicial officer of that court; or

(2) The citing officer checks the box "MAY FORFEIT BOND IN LIEU OF APPEARANCE" on the citation.

(d) Payment of fines and costs or forfeiture of bail in lieu of appearance. -- A citing officer may require any person to appear in court on a date and time certain to answer to the offense charged in the citation by checking the "MUST APPEAR" box on the citation. If the citing officer checks the "MAY FORFEIT BOND IN LIEU OF APPEARANCE" box on the citation the offense may be dealt with as follows:

(1) A person may satisfy a promise to appear in court by paying to the court, or to another authorized by that court to accept bond for misdemeanor offenses, on or before the appearance date the amount of the fine and costs as listed on a bond schedule adopted and published by competent authority;

(2) By paying fines and costs into court (by mail or

otherwise) or, when permitted, by posting bond and failing to appear as promised a person elects:

(A) To waive appearance before the court;

(B) To waive a trial; and

(C) Not to contest the offense charged (nolo contendere).

(e) Warrant for failure to appear. -- The court may issue a warrant for the arrest of any person who fails to appear as ordered by the court. The court may also issue a warrant for any person who fails to appear as promised:

(1) When "MUST APPEAR" is checked on the citation; or

(2) When the person fails to pay the fine and costs to the court (or post bond in lieu thereof) prior to the promised appearance date when "MAY FORFEIT BOND IN LIEU OF APPEARANCE" is checked on the citation.

(f) Disposition of citations. -- Every citation filed or deposited with the court must be accounted for and disposed of by that court. Disposition may include forfeiture of bail.

(g) Definitions. --

(1) Forfeit offenses are those misdemeanor offenses listed as forfeit offenses on bond schedules adopted and promulgated by competent authority. A citing officer may not check the box "MAY FORFEIT BOND IN LIEU OF APPEARANCE" on the citation for any offense other than a forfeit offense; and

(2) Must Appear offenses are those misdemeanor offenses for which a citation has issued and the citing officer has checked the "MUST APPEAR" box on the citation.

Rule 4. Warrant or summons upon information.

(a) Issuance. -- If it appears from a verified information, or from an affidavit or affidavits filed with the information, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a summons shall issue requiring the defendant to appear and answer to the information. Upon the request of the attorney for the state the court shall issue a warrant, rather than a summons. More than one warrant or summons may issue on the same information. The warrant or summons shall be delivered to the sheriff or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Form. --

(1) Warrant. -- The warrant shall be signed by a judicial officer and it shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall describe the offense charged in the information and command that the defendant be arrested and brought before the court from which it was issued.

(2) Summons. -- The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court from which it issued at a stated time and place.

(c) Execution or service; and return. --

(1) By Whom. -- A warrant shall be executed by a sheriff or by some other officer authorized by law. A summons shall be served by any peace officer or by any person over the age of 19 years, not a party to the action, appointed for such purpose by the clerk. A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute

so requires, by also mailing a copy to the corporation's last address within the state or at its principal place of business elsewhere in the United States. The officer executing a warrant shall bring the arrested person promptly before the court, or for the purpose of admission to bail, before a commissioner.

(2) Territorial Limits. -- A warrant may be executed or a summons may be served at any place as permitted by law.

(3) Manner. -- The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of the arrest, but shall provide a copy of the warrant to the defendant as soon as possible. If the officer does not have the warrant in the officer's possession at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person over the age of 14 years then residing therein or by mailing it to the defendant's last known address.

(4) Return. -- The officer executing the warrant shall forthwith make return thereof to the court from which it

issued. At the request of the attorney for the state, any unexecuted warrant shall be returned to the judicial officer by whom it was issued and shall be canceled. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the court to which the summons is returnable. At the request of the attorney for the state made at any time while the information is pending, a warrant returned unexecuted and not canceled or a summons returned unserved or a duplicate thereof may be delivered by the judicial officer to the sheriff or other authorized person for execution of service.

Rule 5. Initial appearance.

(a) Initial appearance before a judicial officer. -- A person arrested and in custody shall be taken without unnecessary delay but in any event within 48 hours before a judicial officer of the court from which the warrant issued or if no warrant has issued before a judicial officer of the court where the charging document will be filed. When a person arrested without a warrant is brought before a judicial officer an information or citation shall be filed at or before the initial appearance and probable cause shall be established by affidavit or sworn testimony. When a person, arrested with or without a warrant or given a summons, appears initially before the judicial officer, the judicial officer shall proceed in accordance with the applicable subdivision of this rule.

(b) Offenses not triable in district court. -- If the charge against the defendant is not one which must be tried in district court, the defendant may be arraigned at the initial appearance and a preliminary examination will not be required. The defendant shall be given a copy of the indictment, information or citation and the court shall read it to the defendant before the defendant is called upon to plead. In addition to the requirements of Rule 10, the judicial officer shall inform the defendant of the following:

(1) The defendant's right to retain counsel and, unless the defendant is charged with an offense for which appointment of counsel is not required, of the right to appointed counsel;

(2) That the defendant is not required to make a statement and that any statement made may be used against the defendant;

(3) Of the defendant's right to a trial by jury; and

(4) If the defendant is in custody, of the general circumstances under which pretrial release may be secured.

(c) Offenses triable in district court. -- If the charge against the defendant is triable in district court, the defendant shall not be called upon to plead until arraignment in district court. The judicial officer shall inform the defendant of the

information or citation against the defendant and of any affidavit filed therewith, of the defendant's right to retain counsel or to request the assignment of counsel if the defendant is unable to obtain counsel, and of the general circumstances under which the defendant may secure pretrial release. The judicial officer shall inform the defendant that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant. The judicial officer shall also inform the defendant of the right to a preliminary examination. The judicial officer shall allow the defendant reasonable time and opportunity to consult counsel and shall detain or conditionally release the defendant as authorized by statute or in these rules. A defendant is entitled to a preliminary examination, unless waived, when charged with any offense triable in the district court. If the defendant waives preliminary examination, the case shall be transferred to the district court. If the defendant does not waive the preliminary examination, the judicial officer shall schedule a preliminary examination. Such examination shall be held within a reasonable time but in any event not later than 10 days following the initial appearance if the defendant is in custody and not later than 20 days if the defendant is not in custody, provided, however, that the preliminary examination shall not be held if the defendant is indicted before the date set for the preliminary examination. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this subdivision may be

extended one or more times by a judicial officer. In the absence of such consent by the defendant, time limits may be extended by a judicial officer only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

Rule 5.1. Preliminary examination.

(a) Right to a preliminary examination. -- In all cases triable in the district court, except upon indictment, the defendant shall be entitled to a preliminary examination in the county court or justice of the peace court. The defendant may waive preliminary examination but the waiver must be written or on the record. If the preliminary examination is waived, the case shall be transferred to district court for further proceedings.

(b) Probable cause finding. -- If from the evidence it appears that there is probable cause to believe that the charged offense or lesser included offense has been committed and that the defendant committed it, the judicial officer shall enter an order so finding and the case shall be transferred to district court for further proceedings. The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross-examine adverse witnesses and may introduce evidence. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary

examination. Motions to suppress must be made to the trial court as provided in Rule 12 and Rule 41(g).

(c) Discharge of defendant. -- If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the judicial officer shall dismiss the information and discharge the defendant. The discharge of the defendant shall not preclude the state from instituting a subsequent prosecution for the same offense.

(d) Record of proceedings. -- On timely application to the court, counsel for the parties shall be given an opportunity to have the recording of the hearing made available for their information in connection with any further proceedings or in connection with their preparation for trial. The court may appoint the time, place and conditions under which such opportunity is afforded counsel.

Rule 6. Grand juries.

(a) County grand jury. --

(1) Summoning Grand Juries. -- A county grand jury shall be summoned only when ordered by a district judge.

(2) Manner of Summoning. -- A grand jury shall be drawn,

summoned and impaneled in the same manner as trial juries in civil actions.

(3) Term; Discharge and Excuse. -- A grand jury shall serve until discharged by the court, but no grand jury may serve more than 12 months unless the court extends the service of the grand jury. Extensions shall be for periods of six months or less, for good cause only, and upon a determination that such extension is in the public interest. At any time for cause shown, the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(4) Composition; Qualification; Alternates. --

(A) Number. -- A grand jury shall consist of 12 persons who shall possess the qualifications of trial jurors.

(B) Quorum. -- Not less than nine jurors may act as the grand jury.

(C) Alternate Jurors. -- The court may direct that alternate jurors may be designated at the time a grand jury is selected. Alternate jurors in the order in which they were designated may thereafter be impanelled as

provided in subdivision (a)(3) of this rule. Alternate jurors shall be drawn in the same manner and shall have the same qualifications as the regular jurors, and if impanelled shall be subject to the same challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors.

(5) Objections to Grand Jury and to Grand Jurors. --

(A) Challenges. -- The attorney for the state may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

(B) Motion to Dismiss. -- A motion to dismiss an indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to this rule that nine or more jurors, after deducting the

number not legally qualified, concurred in finding the indictment.

(6) Indictment. --

(A) Finding to Indict. -- No indictment shall be found unless the finding is concurred in by at least nine members of the grand jury.

(B) A True Bill. -- If an indictment is found as provided by this section, the presiding juror of the grand jury shall endorse upon the indictment the words "A True Bill" and shall sign the indictment.

(C) Sealed Indictments. -- The district judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. If so directed the clerk shall seal the indictment and no person shall disclose the return of the indictment except as necessary for the issuance and execution of a warrant or summons.

(7) Appointment of Presiding Juror; Oath of Jurors; Charge to Grand Jury. --

(A) Presiding Juror. -- The district judge shall appoint one of the jurors to be presiding juror and another to be deputy presiding juror. The presiding juror shall have power to administer oaths and affirmations and shall sign all indictments. The presiding juror or another juror designated by the presiding juror shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court. During the absence of the presiding juror, the deputy presiding juror shall act as presiding juror.

(B) Oath. -- Before entering upon their duties, jurors shall swear or affirm that each of them shall:

(i) Diligently inquire into all matters coming before them;

(ii) Find and present indictments truthfully and without malice, fear of reprisal or hope of reward; and

(iii) Keep secret matters occurring before the grand jury unless disclosure is directed or permitted by the court.

(C) Charge to Grand Jury. -- After the grand jury is impaneled and sworn, the district judge shall charge the jurors as to their duties, including their obligation of secrecy and give them any information the court deems proper concerning any offenses known to the court and likely to come before the grand jury.

(8) Powers. -- The grand jury may:

(A) Inquire into any crimes committed or triable within the county and present them to the court by indictment; or

(B) Investigate and report to the court concerning the condition of the county jail and the treatment of prisoners.

(9) Appearance. --

(A) Attorney for the State. -- Attorneys for the state may appear before the grand jury for the purpose of:

(i) Giving information relative to any matter under inquiry;

(ii) Giving requested advice upon any legal matter; and

(iii) Interrogating witnesses.

(B) Who May Be Present. -- Attorneys for the state, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

(10) Recording and Disclosure of Proceedings. -- All proceedings, except when the grand jury is deliberating or voting, shall be recorded stenographically or by an electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceedings shall not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom shall remain in the custody or control of the attorney for the state unless otherwise ordered by the court in a particular case.

(11) Process for Witnesses. -- If requested by the grand jury or the attorney for the state, the clerk of the court in which the jury is impaneled shall issue subpoenas for the

attendance of witnesses to testify before the grand jury.

(12) Administration of Oath or Affirmation to Witnesses. -- Before any witness is examined by the grand jury, an oath or affirmation shall be administered to the witness by the presiding juror.

(13) Proceedings Upon Refusal of Witness to Testify. -- If a witness appearing before a grand jury refuses, without just cause shown, to testify or provide other information, the attorney for the state may take the witness before the court for an order directing the witness to show cause why the witness should not be held in contempt. If after the hearing, the court finds that the refusal was without just cause, and if the witness continues to refuse to testify or produce evidence, the court may hold the witness in contempt subject to punishment provided by statute or these rules. The witness has the right to be represented by counsel at such hearing. Nothing in this rule shall be construed to require or permit the court to compel testimony under a grant of immunity unless such a procedure is expressly authorized by statute.

(14) Confidentiality. --

(A) Disclosure by Attorney for the State. -- Disclosure of matters occurring before the grand jury,

other than its deliberations and the vote of any juror, may be made to the attorney for the state for use in the performance of the duties of the attorney for the state. The attorney for the state may disclose so much of the grand jury's proceeding to law enforcement agencies as the attorney for the state deems essential to the public interest and effective law enforcement.

(B) Disclosure by Others. -- Except as provided in subsection (A) of this section, a juror, attorney, interpreter, stenographer, operator of a recording device or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminarily to, or in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that a particularized need exists for a motion to dismiss the indictment because of matters occurring before the grand jury. No obligation of secrecy may be imposed upon any person except in accordance with this Rule. A knowing violation of this provision may be punishable as contempt of court.

(C) Closed Hearing. -- Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury

proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury.

(D) Sealed records. -- Records, orders and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and for such time as is necessary to prevent disclosure of matters occurring before a grand jury.

(15) Presentation and Filing of Indictment. -- Indictments found by the grand jury shall be presented by the presiding juror to the district judge in open court in the presence of the grand jury and filed with the clerk.

(b) State grand jury. --

(1) Petition for Impaneling; Determination by District Judge. -- If the governor or the attorney general deems it to be in the public interest to convene a grand jury which shall have jurisdiction extending beyond the boundaries of any single county, the governor or attorney general may petition a judge of any district court for an order in accordance with the provisions of Rule 6(b). The district judge may, for good cause shown, order the impaneling of a state grand jury which shall have statewide jurisdiction. In making a determination

as to the need for impaneling a state grand jury, the judge shall require a showing that the matter cannot be effectively handled by a county grand jury impaneled pursuant to Rule 6 (a).

(2) Powers and Duties; Applicable Law; Procedural Rules. -- A state grand jury shall have the same powers and duties and shall function in the same manner as a county grand jury, except for the provisions of Rule 6(b), and except that its jurisdiction shall extend throughout the state. The rule applicable to county grand juries shall apply to state grand juries except when inconsistent with the provisions of Rule 6(b).

(3) Selection and Term of Members. -- The clerk of the district court in each county of the state, upon receipt of an order of the district judge of the court granting a petition to impanel a state grand jury shall prepare a list of 15 prospective state grand jurors drawn from existing jury lists of the county. The list so prepared shall be immediately sent to the clerk of the court granting the petition to impanel the state grand jury. The district judge granting the order shall impanel the state grand jury from the lists compiled by the clerk of court. The judge preparing the final list from which the grand jurors will be chosen need not include the names of the jurors from every county within the state having due

regard for the expense and inconvenience of travel. A state grand jury shall be composed of 12 persons, but not more than one-half of the members of the state grand jury shall be residents of any one county. The members of the state grand jury shall be selected by the court in the same manner as jurors of county grand juries and shall serve for one year following selection unless discharged sooner by the district judge.

(4) Summoning of Jurors. -- Jurors shall be summoned and selected in the same manner as jurors of county grand juries.

(5) Judicial Supervision. -- Judicial supervision of the state grand jury shall be maintained by the district judge who issued the order impaneling the grand jury, and all indictments, reports and other formal returns of any kind made by the grand jury shall be returned to that judge.

(6) Presentation of Evidence. -- The presentation of the evidence shall be made to the state grand jury by the attorney general or the attorney general's designee. In the event the office of the attorney general is under investigation, the presentation of evidence shall be made to the state grand jury by an attorney appointed by the Wyoming Supreme Court.

(7) Return of Indictment; Designation of Venue;

Consolidation of Indictments. -- Any indictment by the state grand jury shall be returned to the district judge without any designation of venue. Thereupon, the judge shall, by order, designate the county of venue for the purpose of the trial. The judge may order the consolidation of an indictment returned by a county grand jury with an indictment returned by a state grand jury and fix venue for the trial.

(8) Investigative Powers; Secrecy of Proceedings. --

(A) Report to Attorney General. -- In addition to its powers of indictment, a statewide grand jury impaneled under Rule 6(b) may, at the request of the attorney general, cause an investigation to be made into the extent of organized criminal activity within the state and return a report to the attorney general.

(B) Disclosure by Attorney General. -- Disclosure of matters occurring before the grand jury, other than its deliberations and the vote of any juror, may be made to the attorney general and to any district attorney for use in the performance of their duties. Those officials may disclose so much of the grand jury's proceedings to law enforcement agencies as they deem essential to the public interest and effective law enforcement.

(C) Disclosure by Others. -- Except as provided in subsection (b) of this section, a juror, attorney, interpreter, stenographer, operator of a recording device or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminarily to, or in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that a particularized need exists for a motion to dismiss the indictment because of matters occurring before the grand jury.

(D) Other Obligations of Secrecy. -- No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event, the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons. A knowing violation of this provision may be punishable as contempt of court.

(9) Costs and Expenses. -- The costs and expenses incurred in impaneling a state grand jury and in the performance of its functions and duties shall be paid by the

state out of funds appropriated to the attorney general for that purpose.

Rule 7. Indictment.

(a) Nature and contents. -- Prosecution by indictment shall be carried on in the name and by the authority of the State of Wyoming, and shall conclude "against the peace and dignity of the State of Wyoming". The indictment shall be a plain, concise and definite, written statement of the essential facts constituting the offense charged and it shall be signed by the attorney for the state. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown, or that the defendant committed it by one or more specified means. The indictment shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or omission, or any other defect or imperfection, which does not tend to prejudice any substantial right of the defendant upon the merits, or to mislead the defendant to the defendant's prejudice shall not be grounds for dismissal of the indictment or for reversal of a conviction.

(b) Surplusage. -- The court on motion of the defendant may strike surplusage from the indictment.

(c) Bill of particulars. -- The court may direct the filing of a bill of particulars. A motion for bill of particulars may be made before arraignment within 10 days after arraignment or at such later time as the court may permit. The bill of particulars may be amended at any time subject to such conditions as justice requires.

Rule 8. Joinder of offenses and of defendants.

(a) Joinder of offenses. -- Two or more offenses may be charged in the same citation, indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction, or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of defendants. -- Two or more defendants may be charged in the same citation, indictment or information if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together, or separately, and all of the defendants need not be charged in each count.

Rule 9. Warrant or summons upon indictment.

(a) The court shall issue or direct the clerk to issue a summons for each defendant named in the indictment unless a warrant is requested by the attorney for the state. Upon the request of the attorney for the state, the court shall order a warrant, rather than a summons, to be issued. More than one warrant or summons may issue for the same defendant. The warrant or summons shall be delivered to the sheriff or other person authorized by law to execute to serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Form. --

(1) Warrant. -- The warrant shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty and shall be signed by a judicial officer except that, upon the court's direction, it may be signed by the clerk. The warrant shall describe the offense charged in the indictment and command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) Summons. -- The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court at a stated time and place.

(c) Execution or service; and return. --

(1) Execution or Service. -- A warrant shall be executed by a peace officer or by some other officer authorized by law. A summons shall be served by the sheriff or by any person over the age of 19 years, not a party to the action, appointed for such purpose by the clerk. A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last address within the state or at its principal place of business elsewhere in the United States. The officer executing a warrant shall bring the arrested person promptly before the court, or for the purpose of admission to bail, before a commissioner.

(2) Territorial Limits. -- A warrant may be executed or a summons may be served at any place within the State of Wyoming and the jurisdiction of the court.

(3) Manner. -- The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in possession at the time of the arrest, but provide a copy of the warrant to the defendant as soon as possible.

If the officer does not have the warrant in possession at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person over the age of 14 years then residing therein or by mailing it to the defendant's last known address.

(4) Return. -- The officer executing a warrant shall make return thereof to the court. At the request of the attorney for the state, any unexecuted warrant shall be returned and canceled. On or before the return day, the person to whom a summons was delivered for service shall make return thereof. At the request of the attorney for the state made at any time while the indictment is pending, a warrant returned unexecuted and not canceled, or a summons returned unserved, or a duplicate thereof, may be delivered by the clerk to the sheriff or other authorized person for execution or service.

Rule 10. Arraignment.

Arraignment shall be conducted in open court and shall consist of reading the indictment, information or citation to the defendant

or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the indictment, information or citation before being called upon to plead.

Rule 11. Pleas.

(a) Alternatives. --

(1) In General. -- A defendant may plead not guilty, not guilty by reason of mental illness or deficiency, guilty, or nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(A) Nolo Contendere. -- A defendant may plead nolo contendere only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

(B) Mental Illness or Deficiency. -- A plea of "not guilty by reason of mental illness or deficiency" may be pleaded orally or in writing by the defendant or the defendant's counsel at the time of the defendant's

arraignment or at such later time as the court may for good cause permit. Such a plea does not deprive the defendant of other defenses and may be coupled with a plea of not guilty.

(2) Conditional Pleas. -- With the approval of the court and the consent of the attorney for the state, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

(b) Advice to Defendant. -- Except for forfeitures on citations (Rule 3.1) and pleas entered under Rule 43(c)(2), before accepting a plea of guilty or nolo contendere to a felony or to a misdemeanor when the defendant is not represented by counsel, the court must address the defendant personally in open court and, unless the defendant has been previously advised by the court on the record and in the presence of counsel, inform the defendant of, and determine that the defendant understands, the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law and other sanctions which could attend a conviction including,

when applicable, the general nature of any mandatory assessments (such as the surcharge for the Crime Victim Compensation Account), discretionary assessments (costs, attorney fees, restitution, etc.) and, in controlled substance offenses, the potential loss of entitlement to federal benefits. However,

(A) Disclosure of specific dollar amounts is not required;

(B) Failure to advise of assessments or possible entitlement forfeitures shall not invalidate a guilty plea, but assessments, the general nature of which were not disclosed to the defendant, may not be imposed upon the defendant unless the defendant is afforded an opportunity to withdraw the guilty plea; and

(C) If assessments or forfeitures are imposed without proper disclosure a request for relief shall be addressed to the trial court under Rule 35 before an appeal may be taken on that issue.

(2) The defendant has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent the defendant;

(3) The defendant has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury and at that trial the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses, the right to court process to obtain the testimony of other witnesses, and the right against compelled self-incrimination;

(4) If a plea of guilty or nolo contendere is accepted by the court there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial; and

(5) If the court intends to question the defendant under oath, on the record, and in the presence of counsel, about the offense to which the defendant has pleaded guilty, that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

(c) Waiver in misdemeanors. -- A misdemeanor defendant represented by counsel may waive the advisements required in Rule 11(b).

(d) Insuring that the plea is voluntary. -- The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that

the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the state and the defendant or the defendant's attorney.

(e) Plea agreement procedure. --

(1) In General. -- The attorney for the state and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser related offense, the attorney for the state will do any of the following:

(A) Agree not to prosecute other crimes or move for dismissal of other charges; or

(B) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

(C) Agree that a specific sentence is the appropriate disposition of this case.

The court shall not participate in any such discussions.

(2) Notice of Such Agreement. -- If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (e)(1)(A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subdivision (e)(1)(B), the court shall advise the defendant that if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) Acceptance of a Plea Agreement. -- If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) Rejection of a Plea Agreement. -- If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement,

afford the defendant the opportunity to then withdraw the plea, and advise the defendant that if the defendant persists in a guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) Time of Plea Agreement Procedure. -- Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(6) Inadmissibility of Pleas, Offers of Pleas, and Related Statements. -- Except as otherwise provided in this paragraph, evidence of the following is not, in any civil or criminal proceeding against the defendant, admissible against the defendant who made the plea or was a participant in the plea discussions:

(A) A plea of guilty, which was later withdrawn;

(B) A plea of nolo contendere;

(C) Any statements made in the course of any proceedings under this rule regarding either of the foregoing pleas; or

(D) Any statement made in the course of plea discussions with an attorney for the state which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement, is admissible

(i) In any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it; or

(ii) In a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(7) Pre-Sentence Investigation. -- A pre-sentence investigation may not be waived by plea agreement for any felony.

(f) Determining accuracy of plea. -- Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

(g) Record of proceedings. -- A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea.

(h) Harmless error. -- Any variance from the procedures required by this rule which does not affect substantial rights shall be disregarded.

Rule 12. Pleadings and motions before trial; defenses and objections.

(a) Pleadings and motions. -- Pleadings in criminal proceedings shall be the indictment, the information or the citation, and the pleas entered pursuant to Rule 11. All other pleas, demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) Pretrial motions. -- Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be

raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution; or

(2) Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings); or

(3) Motions to suppress evidence; or

(4) Requests for discovery under Rule 16; or

(5) Request for a severance of charges or defendants under Rule 14.

(c) Not triable because of mental illness. -- If it appears at any stage of a criminal proceeding by motion or upon the court's own motion, that there is reasonable cause to believe that the defendant has a mental illness or deficiency making the defendant unfit to proceed, all further proceedings shall be suspended and an examination ordered as required by W.S. 7-11-301, et seq.

(d) Motion date. -- Unless otherwise provided by local rule,

the court may, at the time of the arraignment or as soon thereafter as practicable, set a time for the making of pretrial motions or requests and, if required, a later date of hearing.

(e) Notice by the state of the intention to use evidence. --

(1) At the Discretion of the State. -- At the arraignment or as soon thereafter as is practicable, the state may give notice to the defendant of its intention to use specific evidence at trial in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under subdivision (b)(3) of this rule.

(2) At the Request of the Defendant. -- At the arraignment or as soon thereafter as is practicable the defendant may, in order to afford an opportunity to move to suppress evidence under subdivision (b)(3) of this rule, request notice of the state's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 16 subject to any relevant limitations prescribed in Rule 16.

(f) Ruling on motion. -- A motion made before trial shall be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after verdict, but no such determination shall be

deferred if a party's right to appeal is adversely affected. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(g) Effect of failure to raise defenses or objections. -- Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision (d), or prior to any extension thereof made by the court, shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver.

(h) Records. -- A verbatim record shall be made of all proceedings at the hearing, including such findings of fact and conclusions of law as are made orally.

(i) Effect of determination. -- If the court grants the motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be continued in custody or that bail be continued for a specified time not to exceed 48 hours pending the filing of a new indictment or information.

(j) Production of statements at suppression hearing. -- Except as herein provided, Rule 26.2 shall apply at a hearing on a motion to suppress evidence under subdivision (b)(3) of this rule. For purposes of this subdivision, a law enforcement officer shall

be deemed a witness called by the state, and upon a claim of privilege the court shall excise the portion of the statement containing privileged matter.

Rule 12.1. Notice of alibi.

(a) Notice by defendant. -- Upon written demand of the attorney for the state stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within 10 days, or at such different time as the court may direct, upon the attorney for the state a written notice of the defendant's intention to offer a defense of alibi. Such notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defendant intends to rely to establish such alibi.

(b) Disclosure of information and witness. -- Within 10 days thereafter, but in no event less than 10 days before trial, unless the court otherwise directs, the attorney for the state shall serve upon the defendant or the defendant's attorney a written notice stating the names and addresses of the witnesses upon whom the state intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

(c) Continuing duty to disclose. -- If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (a) or (b) the party shall promptly notify the other party or the attorney for the other party of the existence and identity of such additional witness.

(d) Failure to comply. -- Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from or presence at, the scene of the alleged offense. This rule shall not limit the right of the defendant to testify in the defendant's own behalf.

(e) Exceptions. -- For good cause shown, the court may grant an exception to any of the requirements of subdivisions (a) through (d) of this rule.

(f) Inadmissibility of withdrawn alibi. -- Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with such intention, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention.

Rule 12.2. Defense of mental illness or deficiency and notice of expert testimony of defendant's mental condition.

(a) Defense of mental illness or deficiency. -- If a defendant intends to rely upon the defense of mental illness or deficiency at the time of the alleged offense, the defendant shall enter a plea of not guilty by reason of mental illness or deficiency at arraignment. For good cause the court may permit the plea to be entered at a later time. If there is a failure to comply with the requirements of this subdivision, evidence of mental illness or deficiency may not be introduced.

(b) Expert testimony of defendant's mental condition. -- If a defendant intends to introduce expert testimony relating to a mental illness or deficiency or any other mental condition of the defendant bearing upon the issue of guilt, the defendant shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the state in writing of such intention and file a copy of such notice with the clerk. The requirement of this section is in addition to the disclosures required by Rule 12.3. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(c) Mental examination of defendant. -- Upon the entry of a plea of not guilty by reason of mental illness or deficiency under W.S. 7-11-301, et seq., the court shall order an examination as required by statute. No statement made by the defendant in the

course of any examination or treatment and no information received by any person in the course thereof is admissible in evidence in any criminal proceeding on any issue other than that of the mental condition of the defendant except that if the defendant testifies, any statement made by the defendant in the course of examination or treatment pursuant to W.S. 7-11-301, et seq., may be admitted:

(1) For impeachment purposes; or

(2) As evidence in a criminal prosecution for perjury.

(d) Failure to comply. -- If there is a failure to give notice when required by subdivision (b) of this rule or to submit to an examination when ordered under subdivision (c) of this rule, the court may exclude the testimony of any expert witness offered by the defendant on the issue of the defendant's defense of mental illness or deficiency.

(e) Inadmissibility of withdrawn plea or notice. -- Evidence of a plea or notice given under subdivision (b), later withdrawn, is not, in any civil or criminal proceeding, admissible against the defendant.

(f) No expansion of rights. -- Nothing in this rule is intended to expand the circumstances where a claim of mental illness or deficiency or any other mental condition may be raised.

Rule 12.3. Notice of defense of unconsciousness, automatism, or traumatic automatism.

(a) Notice by defendant. -- Upon written demand of the attorney for the state, stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within 10 days, or at such different time as the court may direct, upon the attorney for the state, a written notice of the defendant's intention to offer a defense of unconsciousness, automatism, or traumatic automatism. Such notice by the defendant shall state with particularity the facts upon which the defendant relies to justify the defense of unconsciousness, automatism, or traumatic automatism and the name and addresses of the witnesses upon whom the defendant intends to rely to establish such defense.

(b) Examination of defendant. -- Upon the filing of such notice by the defendant, the court shall order an examination of the defendant by a designated examiner. A written report of such examination shall be filed with the clerk of court, and the report shall include detailed findings and an opinion of the examiner as to whether the defendant did suffer from unconsciousness, automatism, or traumatic automatism at the time of the alleged offense. The clerk of court shall furnish copies of the report to the attorney for the state and the defendant or the defendant's counsel.

(c) Disclosure of information and witness. -- Within 10 days after the examiner's report is served upon the attorney for the state, but in no event not less than 10 days before trial unless the court otherwise directs, the attorney for the state shall serve upon the defendant or the defendant's attorney a written notice stating the names and addresses of the witnesses upon whom the state intends to rely to establish that the defendant did not, at the time of the alleged offense, suffer from unconsciousness, automatism, or traumatic automatism and any other witnesses, to be relied upon to rebut testimony of any of the defendant's witnesses relating to such a defense.

(d) Continuing duty to disclose. -- If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (a) or (b) the party shall promptly notify the other party or the attorney for the other party of the existence and identity of such additional witness.

(e) Failure to comply. -- Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defense of unconsciousness, automatism, or traumatic automatism. This rule shall not limit the right of the defendant to testify on the defendant's own behalf.

(f) Exceptions. -- For good cause shown, the court may grant an exception to any of the requirements of subdivision (a) through (e) of this rule.

(g) Inadmissibility of withdrawn defense. -- Evidence of an intention to rely upon the defense of unconsciousness, automatism, or traumatic automatism later withdrawn, or of statements made in connection with such intention, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

Rule 13. Trial together of indictments, informations or citations.

The court may order two or more indictments, informations, citations or a combination thereof to be tried together if the offenses, and the defendants, if there is more than one, could have been joined in a single indictment, information or citation. The procedure shall be the same as if the prosecution were under such single indictment, information or citation.

Rule 14. Relief from prejudicial joinder.

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment, information or citation, or by such joinder for trial together, the court may order an election or separate trials of counts, grant a

severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance, the court may order the attorney for the state to deliver to the court to inspection in camera any statements or confessions made by the defendants which the state intends to introduce in evidence at the trial.

Rule 15. Depositions.

(a) When taken. -- Whenever due to exceptional circumstances of the case, it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, or any proceedings subsequent to trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place. If a witness is detained pursuant to statute or rule the court on written motion and upon notice to the parties may direct that the witness's deposition be taken. After the deposition has been subscribed, the court may discharge the witness.

(b) Notice, place and process. --

(1) Notice of Taking. -- The party at whose instance a deposition is to be taken shall give to every party reasonable

written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce the defendant at the examination and keep the defendant in the presence of the witness during the examination, unless, after being warned by the court that disruptive conduct will cause the defendant's removal from the place of the taking of the deposition, the defendant persists in conduct which is such as to justify exclusion from that place. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the court, but a failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) of this rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(2) Subpoena. -- An order to take a deposition authorizes the clerk of court to issue subpoenas for the persons named or described therein.

(3) Place. -- The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court, taking into account the convenience of the witness and the parties.

(c) Payment of expenses. -- Whenever a deposition is taken at the instance of the state, or whenever a deposition is taken at the instance of a defendant who is indigent, the court may direct that the expense of travel and subsistence of the defendant and the defendant's attorney for attendance at the examination, and the cost of the transcript of the deposition be paid by the public defender's office.

(d) How taken. -- Subject to such additional conditions as the court shall provide, a deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these rules, provided that:

(A) In no event shall a deposition be taken of a party defendant without that defendant's consent; and

(B) The scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. The state shall make available to the defendant or the defendant's counsel for examination and use at the taking of the deposition any statement of the witness being deposed

which is in the possession of the state and to which the defendant would be entitled at the trial.

(e) Use. -- At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, as unavailability is defined in Rule 804(a) of the Wyoming Rules of Evidence, or the witness gives testimony at the trial or hearing inconsistent with that witness's deposition. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering of all of it which is relevant to the part offered and any party may offer other parts.

(f) Objections to deposition testimony. -- Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) Deposition by agreement not precluded. -- Nothing in this rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the court.

Rule 16. Discovery and inspection.

(a) Disclosure of evidence by the state. --

(1) Information Subject to Disclosure. --

(A) Statement of Defendant. -- Upon written demand of a defendant the state shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the state; the substance of any oral statement which the state intends to offer in evidence at the trial made by the defendant whether before or after arrest; and recorded testimony of the defendant before a grand jury which relates to the offense charged. Where the defendant is a corporation, partnership, association or any other entity, the court may grant the defendant, upon its motion, discovery of relevant recorded testimony of any witness before a grand jury who:

(i) Was, at the time of that testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to

conduct constituting the offense; or

(ii) Was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which the witness was involved.

(B) Defendant's Prior Record. -- Upon written demand of the defendant, the state shall furnish to the defendant such copy of the defendant's prior criminal record, if any, as is within the possession, custody, or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the state.

(C) Documents and Tangible Objects. -- Upon written demand of the defendant, the state shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the state, and which are material to the preparation of the defendant's defense or are intended for use by the state as evidence in chief at the trial, or were obtained from

or belong to the defendant.

(D) Reports of Examinations and Tests. -- Upon written demand of a defendant, the state shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the state, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the state, and which are material to the preparation of the defense or are intended for use by the state as evidence in chief at the trial.

(2) Information Not Subject to Disclosure. -- Except as provided in paragraphs (A), (B), and (D) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by the attorney for the state or other state agents in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses except as provided in Rule 26.2.

(3) Grand Jury Transcripts. -- Except as provided in Rules 6, 12(j) and 26.2, and subdivision (a)(1)(A) of this rule, these rules do not relate to discovery or inspection of

recorded proceedings of a grand jury.

(b) Disclosure of evidence by the defendant. --

(1) Information Subject to Disclosure. --

(A) Documents and Tangible Objects. -- If the defendant demands disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such demand by the state, the defendant, on demand of the state, shall permit the state to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which the defendant intends to introduce as evidence in chief at the trial and which are within the possession, custody, or control of the defendant or which the defendant can reasonably obtain.

(B) Reports of Examinations and Tests. -- If the defendant demands disclosure under subdivision (a)(1)(C) or (D) of this rule, upon compliance with such demand by the state, the defendant, on demand of the state, shall permit the state to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the

defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness's testimony.

(2) Information Not Subject To Disclosure. -- Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or the defendant's attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by state or defense witnesses, or by prospective state or defense witnesses, to the defendant, the defendant's agents or attorneys.

(c) Continuing duty to disclose. -- If, prior to or during trial, a party discovers additional evidence or material previously demanded or ordered, which is subject to discovery or inspection under this rule, such party shall promptly notify the other party or that other party's attorney or the court of the existence of the additional evidence or material.

(d) Regulation of discovery. --

(1) Protective and Modifying Orders. -- Upon a sufficient showing the court may at any time order that the

discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Failure To Comply With a Written Demand. -- If at any time during the course of the proceedings, it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

(e) Alibi witnesses. -- Discovery of alibi witnesses is governed by Rule 12.1.

Rule 17. Subpoena.

(a) For attendance of witnesses; form; issuance. -- Upon the filing of a precipe therefore, a subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served.

(b) Civil procedure applicable. -- Except as otherwise provided, the provisions of the Wyoming Rules of Civil Procedure, the Wyoming Rules of Evidence and the Wyoming Statutes, relative to or compelling the attendance and testimony of witnesses, their examination and the administering of oaths and affirmations, and proceedings for contempt, to enforce the remedies and protect the rights of the parties, shall extend to criminal cases, so far as they are in their nature applicable.

(c) Fees and Expenses. --

(1) Non-expert Fees. -- In addition to actual costs of travel, meals and lodging each non-expert witness shall be paid a witness fee of $30.00 for each full day and $15.00 for each half day necessarily spent traveling to and from the proceeding and in attendance at the proceeding.

(2) Expert Fees. -- In addition to actual costs of travel, meals and lodging each expert witness paid from public funds shall be allowed a fee approved by the court before the subpoena is issued.

(d) For production of documentary evidence and of objects. -- A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or other objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents, objects, and portions thereof, to be inspected by the parties and their attorneys.

(e) Service. -- A subpoena may be served by the sheriff, or by any other person, over the age of 19 years, not a party to the action, appointed for such purpose by the clerk. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to that person the fee for one day's attendance and the mileage allowed by law. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the state or an indigent defendant.

(f) Place of service. -- A subpoena requiring the appearance of a witness at a hearing or trial may be served at any place within the jurisdiction of the state of Wyoming.

(g) Contempt. -- Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

(h) Information not subject to subpoena. -- Statements made by witnesses or prospective witnesses may not be subpoenaed from the state or the defendant under this rule, but shall be subject to production only in accordance with the provision of Rule 26.2.

(i) Defendants unable to pay. -- Upon an ex parte application of a defendant and a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense, the court shall order that a subpoena be issued for service on a named witness and that the fees and expenses incurred therefore be paid by the public defender's office. If the court orders the subpoena to be issued at public expense for the actual costs incurred by the witness for travel, meals and lodging shall be paid by the public defender's office, but such costs may not exceed the amounts authorized for state employees in W.S. 9-3-103 and 104.

Rule 17.1. Pretrial conference.

At any time after the filing of the indictment, information or citation the court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or the defendant's attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and the defendant's attorney. This rule shall not be invoked in the case of a defendant who is not represented by counsel.

Rule 18. Place of prosecution and trial.

Except as otherwise permitted by statute or by these rules, the prosecution shall be had in the county; or, for violation of a municipal ordinance, in the municipality against which the offense is alleged to have been committed. The court shall fix the place of trial with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

Rule 19. Reserved.

Rule 20. Transfer from the county for plea and sentence.

(a) Indictment, information or citation pending. -- A

defendant arrested, held or present in a county other than that in which the indictment, information or citation is pending against that defendant may state in writing a wish to plead guilty or nolo contendere, to waive examination and/or trial in the county in which the indictment, information or citation is pending and to consent to disposition of the case in the county in which that defendant was arrested, held, or present, subject to the approval of the attorney for the state in each county. Upon receipt of the defendant's statement and the written approval of the attorney for the state in each county, the clerk of the court in which the indictment, information or citation is pending shall transmit the court file in the proceeding or certify copies thereof to the clerk of the court for the county in which the defendant is arrested, held, or present and the prosecution shall continue in that county.

(b) Indictment, information or citation not pending. -- A defendant arrested, held or present in a county other than the county in which the indictment, information or citation will be filed may state in writing a wish to plead guilty or nolo contendere, to waive venue, preliminary examination and/or trial in the county in which prosecution is contemplated and to consent to disposition of the case in the county in which that defendant was arrested, held or present, subject to the approval of the attorney for the state in each county. Upon receipt of the defendant's statement and of the written approval of the attorney for the state for each county and upon the filing of an information or a citation

or the return of an indictment, the clerk of the court for the county in which the prosecution has initiated shall transmit the papers in the proceedings, or certified copies thereof, to the clerk of the court for the county in which the defendant is present and the prosecution shall continue in that county.

(c) Effect of not guilty plea. -- If after the proceeding has been transferred pursuant to subdivision (a) or (b) of this rule, the defendant pleads not guilty; or not guilty by reason of mental illness or deficiency; or if suggestion is made that the defendant is not triable because of a mental illness or deficiency, the clerk shall return the papers to the court in which the prosecution was commenced and the proceedings shall be restored to the docket of that court. The defendant's statement that the defendant wishes to plead guilty or nolo contendere shall not be used against that defendant.

(d) Summons. -- For the purpose of initiating a transfer under this rule, a person who appears in response to a summons issued under Rule 4 shall be treated as if arrested on a warrant in the county of such appearance.

Rule 21. Transfer from the county for trial.

(a) For prejudice in the county. -- Upon timely motion of the defendant, the court shall transfer the proceeding as to that

defendant to another county, but only if the court is satisfied that there exists within the county where the prosecution is pending so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial in that county.

(b) Transfer in other cases. -- For the convenience of parties and witnesses, and in the interest of justice, the court upon consent of the parties may transfer the proceeding as to that defendant or any one or more of the counts thereof to another county.

(c) Proceedings on transfer. -- When a transfer is ordered the clerk shall transmit to the clerk of the court to which the proceeding is transferred the court file in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that county.

Rule 21.1. Change of judge.

(a) Peremptory disqualification. -- A district judge may be peremptorily disqualified from acting in a case by the filing of a motion so requesting. The motion shall be filed by the state at the time the indictment, information or citation is filed in the district court, designating the judge to be disqualified. The motion shall be filed by a defendant represented by counsel at arraignment following the entry of a plea, if a plea is entered, or

in the case of a defendant without an attorney within 10 days after the arraignment, designating the judge to be disqualified. Upon the filing of a motion for peremptory disqualification the disqualified judge shall take no further action except to assign the case to another judge. A party may exercise the peremptory disqualification only one time and against only one judge.

(b) Disqualification for cause. -- Promptly after the grounds for such motion become known, the state or the defendant may move for a change of judge on the ground that the presiding judge is biased or prejudiced against the state, the attorney for the state, the defendant or the defendant's attorney. The motion shall be supported by affidavits stating sufficient facts to demonstrate such bias or prejudice. Prior to a hearing on the motion other affidavits may be filed. The motion shall be referred to another judge, or a court commissioner, who shall rule on the motion, and if granted shall immediately assign the case to a judge other than the disqualified judge. A ruling on a motion for a change of judge is not an appealable order, but the ruling shall be made a part of the record, and may be assigned as error in an appeal of the case or on a bill of exceptions.

Rule 22. Reserved.

Rule 23. Trial by the jury or by the court.

(a) Trial by jury. -- Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial with the approval of the court and the consent of the state. A waiver of jury shall be made in writing or on the record.

(b) Jury of less than twelve or six. -- Juries shall be of 12 for felonies and six for misdemeanors but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12 or less than six as the case may be, or that a valid verdict may be returned by a jury of less than 12 or less than six should the court find it necessary to excuse one or more jurors for any just cause after trial commences.

(c) Trial without a jury. -- In a case tried without a jury the court shall make a general finding and shall in addition, on request made before the trial begins, find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient that the findings of fact appear therein.

Rule 24. Trial jurors.

(a) Qualifications. -- All prospective jurors must answer as to their qualifications to be jurors; such answers shall be in writing, signed under penalty of perjury and filed with the clerk of the court. The written responses of the prospective jurors

shall be preserved by the clerk of the court for the longer of the following:

(1) One year after the end of the jury term; or

(2) Until all appeals from any trial held during that term of court have been finally resolved.

The judge shall inquire of the jurors in open court on the record to insure that they are qualified.

(b) Excused jurors. -- For good cause but within statutory limits a judge may excuse a juror for a trial, for a fixed period of time, or for the term. All excuses shall be written and filed with the clerk or granted in open court on the record.

(c) Examination of jurors. -- After the jury panel is qualified the judge may question prospective jurors. Thereafter, the parties, or their attorneys, may conduct the examination of prospective jurors, but such examination shall be under the supervision and control of the judge, and the judge may conduct such further examination as the judge deems proper. The judge may assume the examination if counsel fail to follow this rule. If the judge assumes the examination, the judge may permit counsel to submit questions in writing. The examination shall be on the record.

(1) The only purpose of the examination is to select a panel of jurors who will fairly and impartially hear the evidence and render a just verdict.

(2) The court shall not permit counsel to attempt to precondition prospective jurors to a particular result, comment on the personal lives and families of the parties or their attorneys, nor question jurors concerning the pleadings, the law, the meaning of words, or the comfort of jurors.

(3) In voir dire examination counsel shall not:

(A) Ask questions of an individual juror that can be asked of the panel or a group of jurors collectively;

(B) Ask questions answered in a juror questionnaire except to explain an answer;

(C) Repeat a question asked and answered;

(D) Instruct the jury on the law or argue the case; or

(E) Ask a juror what the juror's verdict might be under any hypothetical circumstance.

(d) Peremptory challenges. --

(1) Felony Cases. -- If the offense charged is punishable by death, each defendant is entitled to 12 peremptory challenges. If the offense charged is punishable by imprisonment for more than one year, each defendant is entitled to eight peremptory challenges. If two or more defendants are being tried jointly, each defendant shall be allowed separate peremptory challenges. The state shall be allowed the same number of peremptory challenges as the total of peremptory challenges permitted all defendants.

(2) Misdemeanor and Juvenile Delinquency Cases. -- If the offense charged is punishable by imprisonment for not more than one year, each defendant is entitled to four peremptory challenges. In juveile delinquency cases, each juvenile is entitled to four peremptory challenges. The state shall be allowed the same number of peremptory challenges as the total of peremptory challenges permitted all defendants.

(e) Alternate jurors. -- The court may direct that not more than six jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties.

Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to one peremptory challenge in addition to those otherwise allowed by law if one or two alternate jurors are to be impanelled, two peremptory challenges if three or four alternate jurors are to be impanelled, and three peremptory challenges if five or six alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by these rules may not be used against an alternate juror.

Rule 25. Disability of judge.

(a) During trial. -- If by reason of death, sickness or other disability, the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying familiarity with the record of the trial, may proceed with and finish the trial.

(b) After verdict or finding of guilt. -- If by reason of absence, death, sickness or other disability, the judge before whom the defendant has been tried is unable to perform the duties to be

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(b) After verdict or finding of guilt. -- If by reason of absence, death, sickness or other disability, the judge before whom the defendant has been tried is unable to perform the duties to be

performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if that judge is satisfied that a judge who did not preside at the trial cannot perform those duties or that it is appropriate for any other reason, that judge may grant a new trial.

Rule 26. Taking of testimony.

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute, or by these rules, by the Wyoming Rules of Evidence, or by other rules adopted by the Supreme Court of Wyoming.

Rule 26.1 Determination of foreign law.

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

Rule 26.2 Production of statements of witnesses.

(a) Order for production. -- Upon order of the court, the attorney for the state or the defendant and the defendant's attorney shall produce for the examination and use of the other party, any written or recorded statement of a witness other than the defendant in their possession or which they may reasonably obtain and which relates to the subject matter about which the witness has testified or will testify:

(1) Upon demand of the other party, the court shall order the statement to be produced after a witness has testified; and

(2) Upon motion of a party or upon its own motion, the court may require the statement to be produced before a prospective witness testifies, before the trial begins or at a pretrial conference.

(b) Production of entire statement. -- If the entire contents of the statement relate to the subject matter of the witness's testimony, the court shall order that the statement be produced.

(c) Production of excised statement. -- If a party claims that the statement contains matter that does not relate to the subject matter of the witness's testimony, the court shall order that it be delivered to the court <u>in camera</u>. Upon inspection, the court shall excise the portions of the statement that do not relate

to the subject matter of the witness's testimony, and shall order that the statement, with such material excised, be produced. Any portion of the statement that is withheld over objection shall be preserved by the court, and, in the event of an appeal by the defendant or a bill of exceptions by the state, shall be made available to the appellate court for the purpose of determining the correctness of the decision to excise portions of the statement.

(d) Recess for examination of statement. -- After delivery of the statement to the other party, the court, upon application of that party, may recess proceedings in the trial for the examination of the statement and for preparation for its use in the trial.

(e) Sanction for failure to produce statement. -- If a party elects not to comply with an order to deliver a statement, the court shall order:

(1) That the witness not be permitted to testify; or

(2) That the testimony of the witness be stricken from the record and that the trial proceed; or

(3) If it is the attorney for the state who elects not to comply, shall declare a mistrial if required in the interest of justice.

(f) Definition. -- As used in this rule, a "statement" of a witness means:

(1) A written statement that is signed or otherwise adopted or approved by the witness or an oral statement contained in a stenographic, mechanical, electrical, or other recording made by the witness, or a transcript thereof; or

(2) A substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or

(3) A statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury.

(4) Statement does not include the work product of attorneys.

Rule 27. Proof of official record. [Abrogated]

Rule 28. Interpreters.

The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such

compensation shall be paid out of funds provided by law or by the county, as the court may direct.

Rule 29. Motion for judgment of acquittal.

(a) Motion before submission to jury. -- Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment, information or citation after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the state is not granted, the defendant may offer evidence without having reserved the right.

(b) Reservation of decision on motion. -- If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns the verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(c) Motion after discharge of jury. -- If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed

within 10 days after the jury is discharged or within such further time as the court may fix during the 10 day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal within 10 days after such motion is filed, and if not so entered shall be deemed denied, unless within such 10 days the determination shall be continued by order of the court, but a continuance shall not extend the time to a day more than 30 days from the date the verdict is returned. If no verdict is returned, the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

(d) Same; conditional ruling on grant of motion. -- If a motion for judgment of acquittal after verdict of guilty under this Rule is granted, the court shall also determine whether any motion for a new trial should be granted if the judgment of acquittal is thereafter vacated or reversed, specifying the grounds for such determination. If the motion for a new trial is granted conditionally, the order thereon does not affect the finality of the judgment. If the motion for a new trial has been granted conditionally and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. If such motion has been denied conditionally, the appellee on appeal may assert error in that denial, and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the

order of the appellate court.

Rule 29.1. Closing argument.

After the evidence has been presented and the judge has instructed the jury on the law closing argument shall be permitted. The prosecution shall open the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal.

Rule 30. Instructions to jury; objections.

At the close of the evidence or at such earlier time before or during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to all parties. Before instructing the jury the court shall conduct a formal instruction conference out of the presence of the jury at which the court shall inform counsel of the proposed action upon their requests and shall afford them an opportunity to offer specific, legal objection to any instruction the court intends to give and to offer alternate instructions. No party may assign as error any portion of the charge or omission therefrom unless that party objects thereto before the jury is instructed, stating distinctly the matter to which the party objects and the grounds of the objection. The judge shall instruct

the jury before the arguments and, if it becomes necessary, after the arguments.

Rule 31. Verdict.

(a) Return. -- The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

(b) Several defendants. -- If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) Conviction of lesser offense. -- The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) Poll of jury. -- When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

Rule 32. Judgment and sentence.

(a) Presentence investigation. --

(1) When Made. -- In every felony case the Department of Probation and Parole shall conduct a presentence investigation and submit a report to the court. The court may order an investigation and report in misdemeanor cases. In felony cases the investigation and report may not be waived but, with the parties consent, the court may permit the report to be filed after sentencing. Otherwise, it shall be considered by the court before the imposition of sentence or the granting of probation. Except with the written consent of the defendant, the report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty.

(2) Report. -- The report of the presentence investigation shall contain:

(A) Information about the history and characteristics of the defendant, including prior criminal record, if any, financial condition, and any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant;

(B) Verified information stated in a nonargumentative style containing an assessment of the financial, social, psychological, and medical impact upon, and cost to, any individual against whom the offense has been committed and attaching a victim impact statement as provided in W.S. 7-21-103 if the victim chooses to make one in writing. In any event the report shall state that the victim was advised of the right to make such a statement orally at the defendant's sentencing or in writing. If the victim could not be contacted, the report shall describe the efforts made to contact the victim;

(C) Unless the court orders otherwise, information concerning the nature and extent of non-prison programs and resources available for the defendant; and

(D) Such other information as may be required by the court.

(3) Disclosure. --

(A) At least 10 days before imposing sentence, unless this minimum period is waived by the defendant, the court shall provide the defendant and the defendant's counsel with a copy of the report of the presentence

investigation, including the information required by subdivision (a)(2). The court shall afford the defendant and the defendant's counsel an opportunity to comment on the report and, in the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in it;

(B) Any material which may be disclosed to the defendant and the defendant's counsel shall be disclosed to the attorney for the state; and

(C) If the comments of the defendant and the defendant's counsel or testimony or other information introduced by them allege any factual inaccuracy in the presentence investigation report or the summary of the report or part thereof, the court shall, as to each matter controverted, make:

(i) A finding as to the allegation; or

(ii) A determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. A written record of such findings and determinations shall be appended to and accompany any copy of the presentence investigation report thereafter made

available to penal institutions.

(b) Judgment. --

(1) Except for forfeit offenses for which citations have issued (Rule 3.1) and pleas entered under Rule 43(c)(2), judgment of conviction upon a plea of guilty or nolo contendere shall include:

(A) The plea, including the name and statute number of each offense to which the defendant pleaded and whether such offense was a felony or a misdemeanor.

(B) Findings that:

(i) The defendant was competent to enter a plea;

(ii) The defendant was represented by competent counsel with whom the defendant was satisfied including the name of the attorney (or that the defendant knowingly waived such right);

(iii) The defendant was advised as required by Rule 11 and understood those advisements; and

(iv) The plea was voluntary, and not the result of force or threats or of promises apart from a plea agreement.

(C) A statement as to whether the plea was the product of a plea agreement and, if so, that the plea agreement was fully disclosed and accepted by the court as required by Rule 11(d).

(D) An adjudication as to each offense.

(E) Any other advisements required by law or that the court deems appropriate.

(2) A judgment of conviction after a trial shall include:

(A) The plea and the verdict for each offense for which the defendant was tried;

(B) A statement as to whether the defendant testified and whether or not the defendant was advised by the court with respect to the defendant's right to testify or not to testify;

(C) An adjudication as to each offense including

the name and statute number for each convicted offense and whether such offense is a felony or a misdemeanor; and

(D) The name of the defendant's attorney or a statement that the defendant appeared pro se.

(3) If the defendant is found not guilty or for any reason is entitled to be discharged, judgment shall be entered accordingly.

(4) The judgment shall be promptly signed by the judge and entered by the clerk.

(c) Sentence. --

(1) Imposition of Sentence. -- Sentence shall be imposed without unnecessary delay, but the court may, when there is a factor important to the sentencing determination that is not then capable of being resolved, postpone the imposition of sentence for a reasonable time until the factor is capable of being resolved. Prior to the sentencing hearing, the court shall provide the counsel for the defendant and the attorney for the state with a copy of the probation officer's report. Pending sentence, the court may continue or alter the defendant's bail or may confine the defendant. At the

sentencing hearing, the court shall afford the counsel for the defendant and the attorney for the state an opportunity to comment upon the probation officer's report and on other matters relating to the appropriate sentence. Before imposing sentence, the court shall also:

(A) Determine that the defendant and defendant's counsel have had the opportunity to read and discuss the presentence investigation report made available pursuant to subdivision (a)(3)(A);

(B) Afford counsel for the defendant an opportunity to speak on behalf of the defendant; and

(C) Address the defendant personally and determine if the defendant wishes to make a statement and to present any information in mitigation of the sentence.

The attorney for the state shall have an equivalent opportunity to speak to the court. Upon a motion that is jointly filed by the defendant and by the attorney for the state, the court may hear in camera such a statement by the defendant, counsel for the defendant, or the attorney for the state.

(2) Written Sentence. -- A written sentence shall be

signed by the judge and entered by the clerk of court without delay. The sentence may be included in the judgment or separately entered. As a minimum it shall:

(A) State each offense for which sentence is imposed, including the statute number and whether the offense is a felony or a misdemeanor;

(B) State the sentence imposed for each convicted offense including for felonies the minimum and maximum term and state whether multiple sentences are to run concurrently or consecutively;

(C) State whether the sentence is to run concurrently with or consecutive to any other sentence being served or to be served by the defendant;

(D) If probation is not granted, state whether probation was considered by the court;

(E) Include a finding of all time served by the defendant in presentence confinement for any sentenced offense;

(F) State the extent to which credit for presentence confinement is to be given for each sentenced

offense;

(G) Include an assessment for the victims of crime compensation fund as required by W.S. 1-40-119; and

(H) Include a finding as to whether the defendant is able to make restitution and if restitution is ordered fix the reasonable amount owed to each victim resulting from the defendant's criminal acts.

(3) Notification of Right to Appeal. -- After imposing sentence in a case which has gone to trial, the court shall advise the defendant of:

(A) The defendant's right to appeal, including the time limits for filing a notice of appeal; and

(B) The right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis, to have appointed counsel represent the defendant on appeal, and to have the clerk of the court file a notice of appeal.

There shall be no duty on the court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere.

(4) Clerk to Prepare Notice of Appeal. -- If the defendant so requests, the clerk of the court shall prepare and serve forthwith a notice of appeal in accordance with the Wyoming Rules of Appellate Procedure on behalf of the defendant.

(d) Plea withdrawal. -- If a motion for withdrawal of a plea of guilty or nolo contendere is made before sentence is imposed, the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. At any later time, a plea may be set aside only to correct manifest injustice.

(e) Probation. -- After conviction of an offense not punishable by death or by life imprisonment, the defendant may be placed on probation if permitted by law.

Rule 33. New trial.

The court on motion of a defendant may grant a new trial to that defendant if required in the interest of justice. If trial was by the court without a jury, the court, on motion of a defendant for a new trial, may vacate the judgment if entered, take additional testimony, and direct the entry of a new judgment.

(a) Any grounds except newly discovered evidence. -- A motion for a new trial based on any grounds, except newly discovered

evidence, shall be made within 10 days after verdict or finding of guilty or within such further time as the court may fix during the 10 day period. The motion shall be determined and a dispositive order entered within 10 days after the motion is filed and if not so entered shall be deemed denied, unless within that period the determination shall be continued by order of the court, but no continuance shall extend the time to a day more than 30 days from the date the verdict or finding of guilty is returned.

(b) Newly discovered evidence. -- A motion for a new trial based on the grounds of newly discovered evidence may be made only before or within two years after final judgment but if an appeal is pending, the court may grant the motion only on remand of the case. A motion for new trial based on the ground of newly discovered evidence shall be heard and determined and a dispositive order entered within 30 days after the motion is filed unless, within that time, the determination is continued by order of the court, but no continuance shall extend the time to a day more than 60 days from the date that the original motion was filed. When disposition of a motion for new trial based on newly discovered evidence is made without hearing, the order shall include a statement of the reason for determination without hearing.

Rule 34. Arrest of judgment.

The court on motion of a defendant shall arrest judgment if

the indictment, information or citation does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 10 days after verdict or finding of guilty, or after the plea of guilty or nolo contendere, or within such further time as the court may fix during the 10 day period. The motion shall be determined and an order entered within 10 days after such motion is filed and if not so entered it shall be deemed denied, unless within such 10 days the determination shall be continued by order of the court, but a continuance shall not extend the time to a day more than 30 days from the date the motion is filed.

Rule 35. Correction or reduction of sentence.

(a) Correction of sentence. -- The court may correct an illegal sentence at any time. Additionally the court may correct, reduce, or modify a sentence within the time and in the manner provided herein for the reduction of sentence.

(b) Reduction of sentence. -- A motion to reduce a sentence may be made, or the court may reduce a sentence without motion, within one year after the sentence is imposed or probation is revoked, or within one year after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within one year after entry of any order or judgment of the Wyoming Supreme Court denying review of, or having the effect of

upholding, a judgment of conviction or probation revocation. The court shall determine the motion within a reasonable time. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision. The court may determine the motion with or without a hearing.

Rule 36. Clerical mistakes.

Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

Rule 37. Reserved.

Rule 38. Stay of execution.

(a) Death. -- A sentence of death shall be stayed pending automatic review by the Wyoming Supreme Court.

(b) Imprisonment. -- A sentence of imprisonment shall be stayed if an appeal is taken from the conviction or sentence and the defendant is released pending disposition of appeal. If not stayed, the court may require of the state penal authorities that the defendant be retained at, or transferred to, a place of

confinement near the place of trial or the place where an appeal is to be heard, for a period reasonably necessary to permit the defendant to assist in the preparation of an appeal.

(c) Fine. -- A sentence to pay a fine or a fine, costs and other assessments, if an appeal is taken, may be stayed by the sentencing court or by an appellate court upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating such defendant's assets.

(d) Probation. -- A sentence of probation may be stayed if an appeal from the conviction or sentence is taken. If the sentence is stayed, the court shall fix the terms of the stay.

(e) Restitution. -- A sanction imposed as part of the sentence pursuant to W.S. 1-40-119 (victims fund) or W.S. 7-9-101, et seq. (restitution) may, if an appeal of the conviction or sentence is taken, be stayed by the sentencing court or by the appellate court upon such terms as the court finds appropriate. The court may issue such orders as may be reasonably necessary to ensure compliance with the sanction upon disposition of the appeal, including the entering of a restraining order or an injunction or

(B) A hearing on the petition shall be held within the following time limits:

(i) If the probationer is in custody because of the probation revocation proceedings, a hearing upon a petition for revocation of probation shall be held within 15 days after the probationer's first appearance before the court following the filing of the petition. If the probationer is not in custody because of the probation revocation proceedings, a hearing upon the petition shall be held within 30 days after the probationer's first appearance following the filing of the petition. For good cause the time limits may be extended by the court.

(ii) Where it appears that the alleged violation of conditions of probation consists of an offense with which the probationer is charged in a criminal proceeding then pending, the court may continue the probation revocation proceedings until the termination of the criminal proceeding if the probationer consents, or regardless of consent, if the probationer is not in custody because of the probation revocation proceedings.

(4) Hearing. -- At the hearing upon the petition for revocation of probation, the state must establish the violation of the conditions of probation alleged in the petition by a preponderance of the evidence.

(A) The probationer shall have the right to appear in person and by counsel, and to confront and examine adverse witnesses.

(B) The Wyoming Rules of Evidence shall apply to the adjudicative phase of probation revocation hearings, but not to the dispositional stage.

(7) Findings. -- If the court finds a violation of conditions of probation and revokes probation, it shall enter an order reciting the violation and the disposition.

(b) Modification of probation. -- Proceedings for modification of conditions of probation may be initiated by a petition for modification filed by the attorney for the state, a probation agent or the probationer, setting forth the proposed modification and a statement of the reasons therefor. A copy of the petition shall be served upon the adverse party; if made by a probation officer it shall also be served upon the attorney for the state and, unless the attorney for the state consents, no action may be taken for five days without a hearing. Thereafter, the

adverse party shall have 20 days to respond to the petition for modification of probation. If the adverse party consents to the requested modification or fails to respond to the petition, the court may act upon the requested modification with or without a hearing. If the adverse party responds by opposing the requested modification the court may hold a hearing. The Wyoming Rules of Evidence shall not apply at the modification hearing; all relevant, probative evidence may be received if the adverse party is given a fair opportunity to rebut the evidence. Within a reasonable time, the court shall grant or deny the requested modification in whole or in part.

Rule 40. Reserved.

Rule 41. Search and seizure.

(a) Authority to issue warrant. -- A search warrant authorized by this rule may be issued by a judicial officer. If issued by a judicial officer other than a district judge it shall be by a judicial officer for the jurisdiction wherein the property sought is located.

(b) Property or persons which may be seized with a warrant. -- A warrant may be issued under this rule to search for and seize any:

(1) Property that constitutes evidence of the commission of a criminal offense; or

(2) Contraband, the fruits of crime, or things otherwise criminally possessed; or

(3) Property designed or intended for use or which is or has been used as the means of committing a criminal offense; or

(4) Person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) Issuance and contents. -- A warrant shall issue only on affidavit sworn to before a person authorized by law to administer oaths and establishing the grounds for issuing the warrant. If the judicial officer, is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, the judicial officer, shall issue a warrant particularly identifying the property or person to be seized and naming or describing the person or place to be searched. Before ruling on a request for a warrant the judicial officer may require the affiant to appear personally and may examine under oath the affiant and any witnesses the affiant may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. The warrant shall be directed to any

officer authorized to enforce or assist in enforcing the state law. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person or place named for the property or person specified. The warrant shall direct that it be served between 6 a.m. and 10 p.m., unless the issuing authority, by appropriate provision in the warrant, and reasonable cause shown, authorizes its execution at other times. It shall designate the judicial officer to whom it shall be returned.

(d) Execution and return with inventory. -- The warrant may be executed and returned only within 10 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken, a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken. The return shall be made within five days after execution unless the time is extended for good cause and in writing by the judicial officer issuing the warrant and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from

whose possession or premises the property was taken, and shall be verified by the officer. The judicial officer shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for return of property. -- A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the court in which charges are pending or if charges have not been filed the court from which the warrant issued for the return of the property on the ground that such person is entitled to lawful possession of the property. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned to the movant, although reasonable conditions may be imposed to protect access and use of the property in subsequent proceedings. If a motion for return of property is made or comes on for hearing after criminal charges have been filed, it shall be treated also as a motion to suppress under Rule 12.

(f) Return of papers to clerk. -- The judicial officer who has issued a search warrant shall attach to the warrant the copy of the return, inventory and all of the papers in connection therewith and shall file them with the clerk of the district, county court or justice of the peace in the county in which the property was seized.

(g) Motion to suppress. -- A motion to suppress evidence may be made in the court where the case is to be tried as provided in Rule 12.

(h) Scope and definition. -- This rule does not modify any law inconsistent with it, regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made. The term "property" is used in this rule to include documents, books, papers and any other tangible objects.

(i) Confidentiality. -- All information filed with the court for the purpose of securing a warrant for a search, including but not limited to an application, affidavits, papers and records, shall be a confidential record until such time as a peace officer has executed the warrant and has made return thereon. During the period of time the information is confidential, it shall be sealed by the court, and the information contained therein shall not be disseminated to any person other than a peace officer, judge, court commissioner or another court employee, in the course of official duties.

Rule 42. Criminal contempt.

(a) Types. -- Criminal contempts of court are of two kinds, direct and indirect.

(1) Direct. -- Direct contempts are those occurring in the immediate view and presence of the court, including but not limited to the following acts:

(A) Disorderly, contemptuous or insolent behavior, tending to interrupt the due course of a trial or other judicial proceedings;

(B) A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the business of the court; and

(C) Refusing to be sworn or to answer as a witness.

(2) Indirect (Constructive). -- Indirect (constructive) contempts are those not committed in the immediate presence of the court, and of which it has no personal knowledge, including but not limited to the following acts or omissions:

(A) Misbehavior in office, or other willful neglect or violation of duty, by an attorney, court administrator, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

(B) Deceit or abuse of the process or proceedings

of the court by a party to an action or special proceeding;

(C) Disobedience of any lawful judgment, order, or process of the court;

(D) Acting as or assuming to be an attorney or other officer of the court without such authority;

(E) Rescuing any person or property in the custody of an officer by virtue of an order or process of the court;

(F) Unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is to be tried;

(G) Any other unlawful interference with the process or proceedings of a court;

(H) Disobedience of a subpoena duly served;

(I) When summoned as a juror in a court, neglecting to attend or serve, improperly conversing with a party to an action to be tried at the court or with any person relative to the merits of the action, or receiving a

communication from a party or other person in reference to it, and failing to immediately disclose the same to the court;

(J) Disobedience, by an inferior tribunal or officer, of the lawful judgment, order, or process of a superior court proceeding in an action or special proceeding, in any court contrary to law after it has been removed from it jurisdiction, or disobedience of any lawful order or process of a judicial officer;

(K) Willful failure or refusal to pay a penalty assessment levied pursuant to statute.

(b) Direct criminal contempt. -- A criminal contempt may be punished summarily if the judge saw or heard the conduct constituting the contempt and the conduct occurred in the immediate view and presence of the court. It may be dealt with immediately or, if done without unnecessary delay and to prevent further disruption or delay of ongoing proceedings, may be postponed to a more convenient time. The judgment of guilt of contempt shall include a recital of those facts upon which the adjudication is based. Prior to the adjudication of guilt the judge shall inform the accused of the accusation and afford the accused an opportunity to show why the accused should not be adjudged guilty of contempt and sentenced therefor. The accused shall be given the opportunity

to present evidence of excusing or mitigating circumstances. The judgment shall be signed by the judge and entered of record. Sentence shall be pronounced in open court and reduced to writing, signed by the judge and entered of record. Rule 32 shall not apply to judgment and sentencing for direct contempt.

(c) Indirect (constructive) criminal contempt. -- A criminal contempt except as provided in the preceding subsection concerning direct contempt, shall be prosecuted in the following manner:

(1) Order to Show Cause. -- On the court's motion or upon affidavit of any person having knowledge of the facts, a judge may issue and sign an order directed to the accused, stating the essential facts constituting the criminal contempt charged and requiring the accused to appear before the court and show cause why the accused ought not be held in contempt of court. The order shall specify the time and place of the hearing, with a reasonable time allowed for preparation of a defense.

(2) Motions; Answer. -- The accused, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars or answer such order by way of explanation or defense. All motions and the answer shall be in writing unless specified otherwise by the judge. An accused's omission to file motions or answer shall not be

deemed as an admission of guilt of the contempt charged.

(3) Order of Arrest; Bail. -- If there is good reason to believe the accused will not appear in response to the order to show cause the judge may issue an order of arrest of the accused. The accused shall be admitted to bail in the manner provided by these rules.

(4) Arraignment; Hearing. -- The accused shall be arraigned at the time of the hearing, or prior thereto upon the request of the accused. A hearing to determine the guilt or innocence of the accused may follow a plea of not guilty or may be set for trial at a later date or time. The judge may conduct a hearing without assistance of counsel or may be assisted by the attorney for the state or by an attorney appointed by the court for that purpose. The accused is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and may testify in the accused's own defense. Unless the charged contempt is tried to a jury as provided in part (e) of this rule, all issues of law and fact shall be heard and determined by the judge.

(5) Disqualification of Judge. -- If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the hearing and shall assign the matter to another judge.

(6) Verdict; Judgment. -- At the conclusion of the hearing the judge shall sign and enter of record a judgment of guilty or not guilty. In addition to the requirements of Rule 32, a judgment of guilt for contempt of court shall include a recital of the facts constituting the contempt.

(7) Sentence; Indirect Contempt. -- Unless an accused may be sentenced to the penitentiary, a presentence investigation is not required but may be ordered. In other respects, Rule 32 shall apply to sentencing for contempt.

(d) Punishment. -- Punishment for contempt may not exceed the criminal jurisdiction of the court. A sanction for contempt of court may be imposed by a justice of the supreme court, a judge or commissioner of a district court or county court, or a justice of the peace or a municipal judge.

(e) Jury trial. -- Sentence to imprisonment upon a conviction on a charge of criminal contempt shall not exceed a term of six months unless the accused shall have been afforded the right to trial by jury on the charge.

(f) Other remedies not affected. -- An action for or adjudication of criminal contempt shall not limit nor be limited by any other criminal or civil remedies.

Rule 42.1. Remedial sanctions; payment for losses.

(a) Initiation. -- The court may initiate a proceeding to impose a remedial sanction on its own motion or on the motion of any person aggrieved by a contempt of court in the criminal proceeding to which the contempt is related. The proceeding shall be civil in nature and the Wyoming Rules of Civil Procedure shall apply.

(b) Coercive remedies. -- If, after notice and hearing, the court finds that a person has failed or refused to perform an act that is yet within the person's power to perform, the court may find the person in civil contempt of court and impose one or more of the following remedial sanctions:

(1) Imprisonment which may extend only so long as it serves a coercive purpose;

(2) An order designed to ensure compliance with a prior order of the court; or

(3) Any other remedial sanction other than the sanctions specified in (1) or (2) of this subsection if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

(c) Compensatory remedies. -- The court may, in addition to the remedial sanctions set forth in subsection (b) of this section, order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees.

(d) Other remedies not affected. -- An action for or imposition of remedial sanctions under this rule shall not limit nor be limited by any other criminal or civil remedies.

(e) Punishment. -- A remedial sanction may be imposed by a justice of the supreme court, a judge or commissioner of a district or county court or by a justice of the peace or municipal judge.

Rule 43. Presence of the defendant.

(a) Presence required. -- The defendant shall be present at the initial appearance at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.

(b) Continued presence not required. -- The further progress of the trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to have waived

the right to be present whenever a defendant, initially present:

(1) Is voluntarily absent after the trial has commenced (whether or not the defendant has been informed by the court of the obligation to remain during the trial); or

(2) After being warned by the court that disruptive conduct will cause the removal of the defendant from the courtroom, persists in conduct which is such as to justify exclusion from the courtroom.

(c) Presence not required. -- A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes;

(2) In prosecutions for offenses punishable by fine or by imprisonment for not more than one year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial, and imposition of sentence in the defendant's absence;

(3) At a conference or argument upon a question of law; and

(4) At a reduction of sentence under Rule 35.

Rule 44. Right to assignment of counsel.

(a) Right to assigned counsel. -- Every defendant who is unable to obtain counsel is entitled to be represented by assigned counsel at every stage of the proceedings from the filing of an indictment, information or citation through appeal, unless that right is waived.

(b) Assignment procedure. -- The procedures for implementing the right set out in subdivision (a) shall be those provided by law and by the rules of the court establishing a standard for indigence adopted pursuant to W.S. 7-6-103(c).

(c) Joint representation. -- Whenever two or more defendants have been charged with offenses arising from the same or related transactions and are represented by the same retained or assigned counsel or by retained or assigned counsel who are associated in the practice of law, the court shall promptly inquire with respect to such joint representation and shall personally advise each defendant of the right to the effective assistance of counsel, including separate representation. Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court shall order separate representation.

Rule 45. Time.

(a) Computation. -- In computing any period of time, the day of the act or event 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 in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When a period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the governor.

(b) Enlargement. -- When an act is required or allowed to be done at or within a specified time, the court, for cause shown, may at any time in its discretion:

(1) With or without motion or notice, order the period enlarged if request therefor is made before the expiration of

the period originally prescribed or as extended by a previous order; or

(2) Upon motion made after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect, but the court may not extend the time for taking any action under Rules 29, 33, 34 and 35 except to the extent and under the conditions stated in them.

(c) For Motions; affidavits. -- A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than one day before the hearing unless the court permits them to be served at a later time.

(d) Additional time after service by mail. -- Whenever a party has a right or is required to do an act within a prescribed period after the service of a notice or other paper upon that party and the notice or other paper is served upon that party by mail, three days shall be added to the prescribed period.

(e) Continued existence or expiration of term of court. -- The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any criminal action which has been pending before it.

Rule 46. Release from custody.

(a) Release prior to trial. -- Eligibility for release prior to trial shall be in accordance with Rule 46.1 and 46.3.

(b) Release during trial. -- A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the court determines that other terms and conditions or termination of release are necessary to assure such person's presence during the trial or to assure that such person's conduct will not obstruct the orderly and expeditious progress of the trial.

(c) Release pending sentence and notice of appeal. -- Eligibility for release pending sentence or pending notice of appeal or expiration of the time allowed for filing notice of appeal, shall be in accordance with Rule 46.2. The burden of establishing that the defendant will not flee or pose a danger to

any other person or to the community rests with the defendant.

(d) Justification of sureties. -- Every surety, except a corporate surety which is approved as provided by law, shall justify by affidavit and may be required to describe in the affidavit the property by which the surety proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by the surety and remaining undischarged and all the other liabilities of the surety. No bond shall be approved unless the surety thereon appears to be qualified.

(e) Forfeiture. --

(1) Declaration. -- If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail.

(2) Setting Aside. -- The court may direct that a forfeiture be set aside in whole or in part, upon such conditions as the court may impose, if a person released upon execution of an appearance bond with a surety is subsequently surrendered by the surety into custody or if it otherwise appears that justice does not require the forfeiture.

(3) Enforcement. -- When a forfeiture has not been set aside, the court shall on motion enter a judgment of default

and execution may issue thereon. By entering into a bond, the obligors submit to the jurisdiction of the court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Obligor's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses.

(4) Remission. -- After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(f) Exoneration. -- When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(g) Supervision of detention pending trial. -- The court shall exercise supervision over the detention of defendants and witnesses within its jurisdiction pending trial for the purpose of eliminating all unnecessary detention. Each Monday and Thursday, or if Monday or Thursday is a holiday, the first working day

following, the custodial officer shall make a report to the court listing each defendant and witness who has been in custody pending initial appearance, extradition proceedings, or a probation revocation hearing for a period in excess of 48 hours. The sheriff shall make a biweekly report to the court listing each defendant and witness who has been held in custody pending, arraignment or trial for a period in excess of 10 days. As to each witness so listed the attorney for the state shall make a statement of the reasons why such witness should not be released with or without the taking of a deposition pursuant to Rule 15(a). As to each defendant so listed the attorney for the state shall make a statement of the reasons why the defendant is still held in custody.

Rule 46.1. Release or detention.

(a) Release or detention of a defendant pending further proceedings. -- When a person charged with the commission of a crime is brought before a court or has made a written application to be admitted to bail, a judicial officer shall order that such person be released or detained pending judicial proceedings, under this rule.

(1) Request for Release. -- Within four hours after a person is confined to jail, the custodial officer shall advise the person of the right to file a written request with the

court to be admitted to bail. The custodial officer shall provide the necessary writing materials.

(A) No particular form of request for bail shall be required and the request may be hand-written.

(B) If a request for bail is presented to the court before criminal charges have been filed, it shall be docketed as a criminal case and if criminal charges are later filed they shall be filed in the same case.

(C) The custodial officer shall deliver any written request for bail to the court:

(i) Immediately, if made during the court's regular hours; and

(ii) Without unnecessary delay, but in no event in less than 24 hours, if made other than during the court's regular hours.

(D) Notwithstanding the foregoing, a judicial officer may consider written petitions for bail presented during non-business hours.

(2) Appearance Before the Court. -- Upon a person's

first appearance before the court, the judicial officer shall order that, pending trial or the filing of charges, the person be:

(A) Released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;

(B) Released on a condition or combination of conditions under subsection (c) of this section;

(C) Temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or

(D) Detained under subsection (e) of this section.

(b) Release on personal recognizance or unsecured appearance bond. -- The judicial officer shall order the pretrial release of the defendant on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the defendant not commit a federal, state, or local crime during the period of release, unless the judicial officer determines that such release will not reasonably assure the appearance of the defendant as required or will endanger the safety of any other person or the community.

(c) Release on conditions. --

(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the defendant as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the defendant:

(A) Subject to the condition that the defendant not commit a federal, state, or local crime during the period of release; and

(B) Subject to the least restrictive further condition, or combination of conditions, will reasonably assure the appearance of the defendant as required and the safety of any other person and the community, which may include the condition that the person:

(i) Remain in the custody of a designated person who agrees to assume supervision and to report any violation of a release condition to the court if the designated person is able reasonably to assure the judicial officer that the defendant will appear as required, and will not pose a danger to the safety of any other person or the community;

(ii) Maintain employment, or if unemployed, actively seek employment;

(iii) Maintain or commence an educational program;

(iv) Abide by specified restrictions on personal associations, place of abode, or travel;

(v) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) Report on a regular basis to a designated law enforcement agency, or other agency;

(vii) Comply with a specified curfew;

(viii) Refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) Refrain from excessive use of alcohol, or any use of a controlled substance, as defined in W.S. 35-7-1002, et seq., without a prescription by a licensed medical practitioner;

(x) Undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(xi) Execute an agreement to forfeit upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the defendant as required, and post with the court such indicia of ownership of the property or such percentage of the money as the judicial officer may specify;

(xii) Execute a bail bond with solvent sureties in such amount as is reasonably necessary to assure the appearance of the defendant as required;

(xiii) Return to custody for specified hours following release for employment, schooling, or other limited purposes;

(xiv) Execute a waiver of extradition; and

(xv) Satisfy any other condition that is reasonably necessary to assure the appearance of

requiring a deposit in whole or in part of the monetary amount involved into the registry of the sentencing court or execution of a performance bond.

(f) Disabilities. -- A civil or employment disability arising under a statute by reason of the defendant's conviction or sentence, may, if an appeal is taken, be stayed by the sentencing court or by the appellate court upon such terms as the court finds appropriate. The court may enter a restraining order or an injunction, or take any other action that may be reasonably necessary to protect the interest represented by the disability pending disposition of the appeal.

Rule 39. Revocation or modification of probation.

(a) Revocation of probation. -- Proceedings for revocation of probation shall be initiated by a petition for revocation filed by the attorney for the state, setting forth the conditions of probation which are alleged to have been violated by the probationer and the facts establishing the violation.

(1) Process. -- If it appears from a verified petition to revoke probation, or from an affidavit or affidavits filed with the petition, that there is probable cause to believe the probationer violated the terms of probation, the court shall order the probationer to appear before the court on a date and

time stated to answer to the allegations in the petition. Upon the written request of the attorney for the state demonstrating good cause therefor, the court may issue a warrant for the probationer. A copy of the petition for revocation shall be served upon the probationer along with the order to appear or warrant.

(2) Appearance. -- A probationer arrested on a warrant and taken into custody shall be taken before a judicial officer without unnecessary delay, but in any event within 48 hours of arrest.

(3) Advice to Probationer. -- At the probationer's first appearance before the court, the court shall advise the probationer of the allegations of the petition for revocation and of the contents of any affidavits and shall further advise the probationer:

(A) Of the probationer's right to retain counsel and, where applicable, the right to appointed counsel;

(B) That the probationer is not required to make a statement and that any statement made could be used against the probationer;

(C) Of the right to a hearing before a judge

without a jury;

(D) Of the state's burden of proof;

(E) Of the probationer's right to confront adverse witnesses, to call other witnesses and have court process to obtain the testimony of reluctant witnesses and to present other evidence at the hearing; and

(F) If the probationer is in custody, of the general circumstances under which release may be secured pending a hearing.

(3) Plea. -- The probationer shall be given a copy of the petition for revocation of probation before being called upon to plead. The probationer shall be called upon to admit or deny the allegations of the petition for revocation. If the probationer admits the allegations of the petition, the court may proceed immediately to disposition, or may set a future date for disposition. If the petitioner denies the allegations of the petition, or declines to admit or deny, the court shall set the matter for hearing.

(A) If further proceedings are to follow the first appearance, the court may commit or release the probationer as provided in Rule 46.2.

the defendant as required and to assure the safety of any other person and the community.

(2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

(3) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) Temporary detention to permit revocation of conditional release, deportation, or exclusion. -- If the judicial officer determines that the defendant:

(1) Is and was at the time the offense was committed; on

(A) Release pending trial for a felony under federal, state, or local law;

(B) Release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under federal, state, or local law; or

(C) Probation or parole for any offense under federal, state, or local law; or

(2) Is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and

(3) The defendant may flee or pose a danger to any other person or the community; such judicial officer shall order the detention of the person, for a period of not more than 10 days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the state to notify the appropriate court, probation or parole official, federal, state or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take the defendant into custody during that period, the defendant shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B) of this subsection, the defendant has the burden of proving to the court such person's United States citizenship or lawful admission for permanent residence.

(e) Detention. -- If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will

reasonably assure the appearance of the defendant as required and the safety of any other person and the community, such judicial officer shall order the detention of the defendant before trial. In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that:

(1) The defendant has been convicted of an offense that is described in subsection (f)(1) of this section;

(2) The offense described in paragraph (1) of this subsection was committed while the defendant was on release pending trial for a federal, state, or local offense; and

(3) A period of not more than five years has elapsed since the date of conviction, or the release of the defendant from imprisonment, for the offense described in paragraph (1) of this subsection, whichever is later.

(f) Detention hearing. -- The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of the defendant as required and the safety of any other person and the community:

(1) Upon motion of the attorney for the government state, in a case that involves

(A) A crime of violence;

(B) An offense for which the maximum sentence is life imprisonment or death; or

(C) Any felony if the defendant has been convicted in separate proceedings of two or more felonies within the last five years.

(2) Upon motion of the attorney for the state or upon the judicial officer's own motion, in a case that involves:

(A) A serious risk that the defendant will flee; or

(B) A serious risk that the defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror or solicit or encourage others to do any of the above.

The hearing shall be held immediately upon the defendant's first appearance before the judicial officer unless that person, or

the attorney for the state, seeks a continuance. Except for good cause, a continuance on motion of the defendant may not exceed five days, and a continuance on motion of the attorney for the state may not exceed three days. At the hearing, such defendant has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The defendant shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The defendant may be detained pending completion of the hearing. The hearing may be reopened before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of the defendant as required and the safety of any other person and the community.

(g) Factors to be considered. -- The judicial officer shall, in determining whether there are conditions of release that will

reasonably assure the appearance of the defendant as required and the safety of any other person and the community, take into account the available information concerning:

(1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;

(2) The weight of the evidence against the person;

(3) The history and characteristics of the person, including:

(A) The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings;

(B) Whether, at the time of the current offense or arrest, the defendant was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal, state, or local law; and

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

(h) Contents of release order. -- In a release order issued under subsection (b) or (c) of this section, the judicial officer shall:

(1) Include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) Advise the defendant of the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest.

(i) Contents of detention order. -- In a detention order issued under subsection (e) of this section, the judicial officer shall:

(1) Include written findings of fact and a written statement of the reasons for the detention;

(2) Direct that the defendant be committed to the custody of the sheriff for confinement; and

(3) Direct that the defendant be afforded reasonable opportunity for private consultation with counsel.

The judicial officer may, by subsequent order, permit the temporary release of the defendant in the custody of a sheriff or another appropriate person to the extent that the judicial officer determines such release to be necessary for preparation of the defendant's defense or for another compelling reason.

(j) Presumption of innocence. -- Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

Rule 46.2. Post conviction release or detention.

(a) Release or detention pending sentence. -- The court shall order that a defendant who has been found guilty of an offense and who is waiting imposition or execution of sentence be detained, unless the judicial officer finds that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released under Rule 46.1 (b) or (c). If the judicial officer makes such a finding, such judicial officer shall order the release of the person in accordance with Rule 46.1 (b) or (c).

(b) Release or detention pending appeal by the defendant. The court shall order that a defendant who has been found guilty of

an offense who is waiting and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released under Rule 46.1 (b) or (c) of this title.

If the court makes such findings, such judicial officer shall order the release of the defendant in accordance with Rule 46.1 (b) or (c).

Rule 46.3. Release or detention of a material witness.

If it appears from an affidavit filed by the state or the defendant that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of Rule 46.1. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Wyoming Rules of Criminal Procedure.

Rule 46.4. Review and appeal of release or detention order.

(a) Review of a release order. -- If a defendant is ordered released by a judicial officer other than a judge of a court having original jurisdiction over the offense:

(1) The attorney for the state may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release; and

(2) The defendant may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release.

The motion shall be determined promptly.

(b) Review of a detention order. -- If a defendant is ordered detained by a judicial officer other than a judge of a court having original jurisdiction over the offense, the defendant may file with the court having original jurisdiction over the offense a motion for revocation or amendment of the order. The motion shall be determined promptly.

Rule 46.5. Sanctions for failure to appear or for violation of release order.

(a) Failure to appear. -- A defendant who having been released under this rule knowingly fails to appear before a court as required by the conditions of release, or fails to surrender for service of sentence pursuant to a court order may be punished for contempt. It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the defendant from appearing or surrendering, and that the defendant did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear or surrender, and that the defendant appeared or surrendered as soon as such circumstances ceased to exist.

(b) Declaration of forfeiture. -- If a defendant fails to appear before a court as required and the defendant executed an appearance bond, the judicial officer may regardless of whether the defendant has been charged with an offense under this section declare any property designated pursuant to that section to be forfeited to the State of Wyoming.

(c) Sanctions for violation of a release condition. -- A defendant who has been released under Rule 46.1 or 46.2, and who has violated a condition of that release, is subject to a revocation of release, an order of detention, and a prosecution for contempt of court.

(1) Revocation of Release. -- The attorney for the state

may initiate a proceeding for revocation of an order of release by filing a motion with the court. A warrant may issue for the arrest of a defendant charged with violating a condition of release, and the defendant shall be brought before the court for a proceeding in accordance with this section. An order of revocation and detention shall issue if, after a hearing, a judicial officer:

(A) Finds that there is:

(i) Probable cause to believe that the defendant has committed a federal, state, or local crime while on release; or

(ii) Clear and convincing evidence that the defendant has violated any other condition of release; and

(B) Finds that:

(i) Based on the factors set forth in Rule 46.1 (g), there is no condition or combination of conditions of release that will assure that the defendant will not flee or pose a danger to the safety or any other person or the community; or

(ii) The defendant is unlikely to abide by any condition or combination of conditions of release.

If there is probable cause to believe that while on release the defendant committed a federal, state, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the defendant will not pose a danger to the safety of any other defendant or the community. If the judicial officer finds that there are conditions of release that will assure that the defendant will not flee or pose a danger to the safety of any other person or the community, and that the defendant will abide by such conditions, the judicial officer shall treat the defendant in accordance with the provisions of Rule 46.1 and may amend the conditions of release accordingly.

(2) Prosecution for Contempt. -- The judicial officer may commence a prosecution for contempt, if the defendant has violated a condition of release.

A defendant charged with an offense who is released upon the execution of an appearance bond with a surety may be arrested by the surety, and if so arrested, shall be delivered promptly to a sheriff and brought before a judicial officer. The judicial officer shall determine in accordance with the provisions of this rule whether to revoke the release of the

person, and may absolve the surety of responsibility to pay all or part of the bond. The defendant so committed shall be held in official detention until released pursuant to this rule or another provision of law.

Rule 47. Motions.

An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

Rule 48. Dismissal.

(a) By the attorney for the state. -- The attorney for the state may, by leave of court, file a dismissal of an indictment, information or citation, and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.

(b) Speedy trial. --

(1) It is the responsibility of the court, counsel and the defendant to insure that the defendant is timely tried.

(2) A criminal charge shall be brought to trial within 120 days following arraignment unless continued as provided in this rule.

(3) The following periods shall be excluded in computing the time for trial:

(A) All proceedings related to the mental illness or deficiency of the defendant;

(B) Proceedings on another charge;

(C) Delay granted by the court pursuant to Section (b)(4) or (5);

(D) The time between the dismissal and the refiling of the same charge; and

(E) Delay occasioned by defendant's change of counsel or application therefor.

(4) Continuances not to exceed six months from the date of arraignment may be granted by the trial court as follows:

(A) On motion of defendant supported by affidavit;

(B) On motion of the attorney for the state or the court if:

(i) The defendant expressly consents; or

(ii) The state's evidence is unavailable and the prosecution has exercised due diligence; or

(iii) Required in the due administration of justice and the defendant will not be substantially prejudiced.

(C) If a continuance is proposed by the state or the court, the defendant shall be notified. If the defendant objects, the defendant must show in writing how the delay may prejudice the defense.

(5) Any request to continue a trial to a date more than six months from the date of arraignment must be directed to the court to which appeals from the trial would be taken and may be granted by that court in accordance with Section (b)(4), above.

(6) Any criminal case not tried or continued as provided in this rule shall be dismissed 120 days after arraignment.

(7) If the defendant is unavailable for any proceeding at which the defendant's presence is required, the case may be continued for a reasonable time by the trial court but for no more than 120 days after the defendant is available or the case further continued as provided in this rule.

(8) A dismissal for lack of a speedy trial under this rule shall not bar the state from again prosecuting the defendant for the same offense unless the defendant made a written demand for a speedy trial or can demonstrate prejudice from the delay.

Rule 49. Service and filing of papers.

(a) Service; when required. -- Written motions other than those which are heard ex parte, written notices and similar papers shall be served upon each of the parties.

(b) Service; how made. -- Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party personally is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided by the Wyoming Rules of Civil Procedure.

(c) Notice of orders. -- Immediately upon the entry of an

order made on a written motion subsequent to arraignment, the clerk shall mail to each party a notice thereof and shall make a note on the docket of the mailing. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by the Wyoming Rules of Appellate Procedure.

(d) Filing. -- Papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions.

Rule 50. Calendars.

The district courts may provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings as far as practicable.

Rule 51. Exceptions unnecessary.

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which that party desires the court to take or that party's objection to the action of the court and the grounds therefor; but

if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice that party.

Rule 52. Harmless error and plain error.

(a) Harmless error. -- Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain error. -- Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Rule 53. Media access to courts.

The taking of photographs in the courtroom during the progress of judicial proceedings, or radio or television broadcasting of judicial proceedings from the courtroom, may be permitted at the discretion of the court. Permission may be granted if there is substantial compliance with the following requirements and conditions:

(a) The media shall apply for approval of media coverage to the judge presiding over the proceedings to be covered. This application must be made at least 24 hours prior to the proceedings unless good cause is shown for a later application. Only the

equipment approved by the presiding judge in advance of the court proceedings may be used during the proceedings;

(b) In a trial of major importance, the presiding judge may appoint a media coordinator and may require that photographic, television or radio broadcast coverage of the trial be pooled;

(c) No photographic, radio or television broadcast equipment shall be used which produces any distracting sound or light. Audio pickup should be made through any existing audio system in the court facility if practical. If no suitable audio system exists in the court facility, microphones and related wiring shall be as unobtrusive as possible. Artificial lighting devices shall not be used;

(d) There shall be no movement of equipment during court proceedings;

(e) No person may enter the courtroom for the purpose of taking photographs or radio or television broadcast after court is already in session;

(f) There shall be no audio broadcast of conferences between attorney and client or between counsel, or between counsel and the presiding judge;

(g) There shall be no close-up photography or visual recording of members of the jury;

(h) The privilege to photograph, televise or record court proceedings may be exercised only by persons or organizations which are part of the accredited news media. Film, videotape, photographic and audio reproduction shall not be used for unrelated advertising purposes;

(i) The presiding judge may for cause prohibit the photographing, radio or television broadcast of a participant in a court proceedings on the judge's own motion or on the request of a participant in a court proceeding. In cases involving the victims of crimes, confidential informants, undercover agents and in evidentiary suppression hearings, a presumption of validity attends such requests. The trial judge shall exercise broad discretion in deciding whether there is cause for prohibition. This list of requests which enjoy the presumption of validity is not exclusive; the court may, in its discretion, find cause for prohibition in comparable situations.

Rule 54. Application and exceptions.

(a) In general. -- Except as noted in sub-part (b) these rules shall apply to all criminal actions in all courts. Rules 6, 9 and 21.1 do not apply in county or justice of the peace courts.

Rules 6, 9, 20, and 21 and 21.1 do not apply in municipal courts. In proceedings to hold to security of the peace and for good behavior, proceedings for the extradition and rendition of fugitives, and the collection of fines and penalties, these rules shall apply unless in conflict with existing statutes.

(b) Juvenile proceedings. -- These rules shall apply in all juvenile cases involving allegations that a child is in need of supervision or delinquent.

Rule 55. Court reporters.

(a) In the district court, the court reporter shall report all testimony and all proceedings held in open court including but not limited to voir dire, opening statements, motions and final arguments, as well as conferences with the presiding judge in open court and in chambers. Informal discussions, informal instruction conferences and pre-trial conferences shall be reported when requested by a party.

(b) In county court, justice of the peace court and municipal court, all testimony and all proceedings held in open court including but not limited to voir dire, opening statements, motions and final arguments, as well as conferences with the presiding judge in open court and in chambers, shall be recorded by electronic means. Informal discussions, informal instruction

conferences and pre-trial conferences shall be recorded when requested by a party. At their own expense, any party may have proceedings reported by a court reporter.

Rule 56. Courts and clerks.

The court shall be deemed always open for the purpose of filing any paper, or issuing and returning process and of making motions and orders. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. With the approval of the supreme court, a court may provide by local rule or order that its clerk's office shall close for specified hours other than New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day and any day officially recognized as a legal holiday in this state by designation of the legislature or appointment as a holiday by the governor.

Rule 57. Rules governing practice.

The Wyoming Judicial Conference or the County Court Conference may from time to time make and amend rules governing practice in the district courts or the county courts not inconsistent with rules adopted by the Wyoming Supreme Court or applicable statutes. Copies of rules and amendments so made shall, upon their adoption,

be furnished to the supreme court and shall be promulgated only if approved by the Wyoming Supreme Court and shall be effective 60 days after publication in the Pacific Reporter Advance Sheets.

Rule 58. Forms.

The forms contained in the appendix of forms are illustrative and not mandatory. Form No. 1, Criminal Complaint, is abrogated and shall be deleted.

Rule 59. Effective date.

These rules shall take effect 60 days after their publication in the Pacific Reporter Advance Sheets and shall be in force from and after that date.

Rule 60. Title.

These rules shall cited as the Wyoming Rules of Criminal Procedure, W.R.Cr.P.

Rule 61. Laws superseded.

From and after the effective date of these rules, the sections of the Wyoming Statutes, 1977, as amended, hereinafter enumerated, shall be superseded, and such statutes and all other laws in

conflict with these rules shall be of no further force or effect:

7-4-206

7-6-101 through 7-6-108

7-6-110 through 7-6-204

7-6-206 through 7-6-216

7-7-101 through 7-7-107

7-8-102 through 7-8-105

7-8-107 through 7-8-109

7-8-111 through 7-8-115

7-8-117 through 7-8-122

7-9-102 through 7-10-102

7-10-104

7-10-106 through 7-10-119

7-10-121

7-11-103

7-11-202 through 7-11-203

7-11-205

7-11-207 through 7-11-208

7-11-403 through 7-11-406

7-11-410 through 7-11-417

7-11-501

7-11-503 through 7-11-504

7-11-506 through 7-11-509

7-11-511

7-11-601 through 7-11-602

7-11-604

7-12-101

7-12-201 through 7-12-204

7-12-301

7-13-407 through 7-13-410

7-13-504

7-16-210