

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2015

In the Matter of Amendments to the)
Wyoming Rules of Appellate Procedure)

**ORDER AMENDING THE WYOMING
RULES OF APPELLATE PROCEDURE**

The Permanent Rules Advisory Committee, Appellate Division has recommended that this Court amend the Wyoming Rules of Appellate Procedure. This Court finds that the Appellate Division's recommendations should be adopted. It is, therefore,

ORDERED that the Amendments to the Wyoming Rules of Appellate Procedure, attached hereto, be, and hereby are, adopted by the Court to be effective July 1, 2015; and it is further

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

DATED this 6th day of April, 2015.

BY THE COURT:

/s/

E. JAMES BURKE
Chief Justice

Wyoming Rules of Appellate Procedure

Rule 1. General rules.

1.01. Electronic Filing; N number of copies to be filed; format.

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

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

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

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

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

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

(b) Attachments to electronically filed documents:

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

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

~~(a)~~ (c) Unless otherwise specified in these rules Until otherwise ordered, in addition to electronic filing, the following paper copies are required:

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

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

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

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

~~(e) If a brief or petition has been prepared in an electronic format, an electronic copy of the brief or petition shall also be provided to the court by means of a 3.5 inch disk in a Word readable form.~~

1.02. Scope of rules.

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

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

1.03. Failure to comply with rules.

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

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

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

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

1.04. Review by supreme court and district court.

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

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

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

1.06. Joint appeals.

If two or more parties are entitled to appeal from a judgment or order, and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate notices of appeal. Appellants filing jointly shall file only one combined brief and, if applicable, one combined reply brief.

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

~~(a) Any document, except as noted below, which may be filed and/or served under any of the rules appearing in this volume, may be filed with the supreme court and/or served by facsimile transmission.~~

~~(b) No documents shall be transmitted to the supreme court without prior telephonic notification to the clerk of court. Only under emergency circumstances shall documents be filed by facsimile transmission with the court.~~

~~(c) Documents to be filed by facsimile transmission must be received by the clerk of court no later than 4:30 p.m. on a weekday, which is not a legal holiday, or service shall be deemed made on the following weekday, which is not a legal holiday. All documents filed and/or served by facsimile shall be deemed filed and/or served on the date the facsimile is received by the clerk of court. Computation of time will be the same as contained in the rules of this court, with the exception that the date of transmission will be considered the date of delivery to all parties concerned and the allowance for time for delivery by mail will not apply.~~

~~(d) No document which exceeds ten (10) pages in length may be filed or served by facsimile. All format requirements contained in applicable rules must be followed.~~

~~(e) Proof of service for documents served by facsimile transmission shall state the date and time of service and the facsimile number or identification symbol of the receiving attorney.~~

~~(f) No briefs or petitions for review may be filed or served by facsimile.~~

~~(g) Any document filed and/or served by facsimile transmission must be replaced by a signed or otherwise duly executed original (plus six copies) within twenty four (24) hours of the filing and/or service by facsimile. The clerk of court, upon receiving the replacement document(s) shall note its date of actual delivery, but shall show that it was filed on the date the facsimile copy was received.~~

~~(h) Attorneys shall not be required to have a facsimile transmission device. Delivery of facsimile documents is the responsibility of the entity from which they originate and delivery must be made to the clerk of the court where the document is to be filed, or to the office, usual place of business or other location as provided for in the court rules pertaining to service.~~

~~(i) (a) The supreme court shall not be required to~~ will neither accept facsimile filings nor transmit any court documents, including orders, in response to filings made by facsimile transmission. Responses by the court will be mailed/distributed in accordance with applicable rules.

(b) In a death penalty case with a scheduled execution date, the prohibition against fax filing of an original proceeding or other documents may be waived by the supreme court.

Rule 2. Processing appeal.

2.01. How and when taken; cross-appeals and dismissals.

(a) An appeal from a trial court to an appellate court shall be taken by filing the notice of appeal with the clerk of the trial court within 30 days from entry of the appealable order and concurrently serving the same in accordance with the provisions of Rule 5, Wyo.R.Civ.P., (or as provided in Wyo.R.Cr.P. 32 (c)(4)). The pro se filing of a notice of appeal by an inmate confined in a penal institution is additionally subject to the provisions of Rule 14.04. ~~Within five days of~~ Contemporaneously with the filing of the notice of appeal with the clerk of the trial court, a copy of the notice of appeal shall also be ~~filed with~~ served on the clerk of the appellate court, . See Rule 1.03. ~~and in a~~ In criminal cases appealed to the supreme court, the notice of appeal shall be served upon the office of public defender and the office of attorney general. In cases specified in Wyo.Stat. Ann. § 14-12-101(a), the notice of appeal shall be served upon the Wyoming Guardian Ad Litem Program.

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

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

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

(c) An amended notice of appeal shall be limited to the correction of clerical errors or omissions in the original notice of appeal. It may not be used for the purpose of appealing an order or judgment entered subsequent to the filing of the original notice of appeal, except as provided in 2.02(c) or when a subsequent order or judgment amends the order or judgment from which the

appeal was initially taken. The amended notice shall be served and filed pursuant to the provisions of Rule 14.01, provided, however, that no filing fees need be paid.

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

(a) ~~The running of the time for appeal in a civil case ceases to run is tolled as to all parties when a party timely files by the timely filing of a motion for judgment under Rule 50(b), Wyo.R.Civ.P.; a motion to amend or make additional findings of fact under Rule 52(b), Wyo.R.Civ.P., whether or not alteration of the judgment would be required if the motion is granted; a motion to alter or amend the judgment under Rule 59, Wyo.R.Civ.P., or a motion for a new trial under Rule 59, Wyo.R.Civ.P.~~

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

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

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

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

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

2.04. Premature notice of appeal.

~~A notice of appeal filed prematurely shall be treated as though filed on the same day as entry of the appealable order, provided it complies with Rule 2.07(a).~~

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

2.05. Certification of transcript request; statement of evidence, or agreed statement.

(a) Concurrently with filing the notice of appeal, appellant must order and either make arrangements satisfactory to the court reporter for the payment for a transcript of the portions of the evidence deemed necessary for the appeal or make application for in forma pauperis status as provided in Rule ~~10.07~~ 2.09. A certificate of compliance with this rule shall be endorsed upon ~~or filed with~~ the notice of appeal. If appellant does not intend to order a transcript, the certificate of compliance shall include a statement indicating whether appellant intends to procure a statement of evidence pursuant to Rule 3.03 or an agreed statement pursuant to Rule 3.08.

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

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

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

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

2.07. Notice of appeal; contents.

(a) The notice of appeal shall:

- (1) Specify the party or parties taking the appeal;
- (2) Identify the judgment or appealable order, or designated portion appealed; ~~and~~
- (3) Name the court to which the appeal is taken;
- (4) ~~Be accompanied by~~ Include the certificate ~~or endorsement~~ required by Rule 2.05(a);

and

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

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

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

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

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

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

2.08. Designation of parties.

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

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

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

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

~~If the trial court denies the motion for leave to proceed in forma pauperis, an appellant may, within 30 days of entry of the order denying the motion, deliver to the clerk of the trial court the filing fee for docketing the case in the appellate court. If such fee is not paid within those 30 days, the appeal will not proceed further. A docketing fee shall be collected for each notice of appeal. If the appeal is dismissed prior to the notice from the clerk of the trial court to the clerk of the appellate court that the record on appeal has been completed, the filing fee for docketing the case in the appellate court shall be refunded to appellant. The clerk of the trial court shall forward the appellate court's filing fee to the clerk of the appellate court at the time the clerk of the trial court submits its notice that the record on appeal has been completed. The case then shall be docketed in the appellate court. A subsequent dismissal by the appellate court of the appeal shall not entitle appellant to refund of the filing fee. All fees under this rule due from or payable by the State of Wyoming or its subdivisions will be paid to the clerk of the trial court by check, voucher or other appropriate fund transfer request in the proper form.~~

~~(b) The fee for filing an appeal or other action in the supreme court shall be set by order of court.~~

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

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

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

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

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

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

Rule 3. Record.

3.01. Composition of record.

(a) The record shall consist of:

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

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

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

(b) The transmitted record shall consist of all portions of the record designated by the parties to the appeal for transmission to the appellate court, as described in Rule 3.05 (b), (c) and (d).

3.02. Transcript of proceedings.

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

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

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

(d) All transcripts of testimony, evidence and proceedings shall be certified by the official court reporter, or such other person designated by the trial court to prepare the transcript, to be true and correct in every particular, and when certified it shall be received as prima facie evidence of the facts, testimony, evidence, and proceedings set forth in the transcript. The transcript format shall be 8½ x 11 inches and a maximum of 25 lines per page and no more than 10 characters per inch. Condensed transcripts are disfavored by the supreme court. The reporter shall indicate at the bottom of each page the name of the witness, the name of counsel examining, and the type of examination (e.g., direct, cross). Appended to the transcript shall be a table with page references reflecting the names of the witnesses, the type of examination and the points at which exhibits were offered and admitted or refused. The reporter shall file the original of the completed transcript with the clerk of the trial court within the time fixed or allowed by these rules and the Rules Governing Redactions from Court Records. The transcript shall be certified by the clerk as a part of the trial court record.

3.03. Statement of evidence or proceedings when no report was made or when the transcript is unavailable.

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, appellant may prepare a statement of the evidence or proceedings from the best available means including appellant's recollection. The statement shall be filed in the trial court and served on appellee within 35 days of the filing of the notice of appeal. Appellee may file and serve objections or propose amendments within 15 days after service. The trial court shall, within 10 days, enter its order settling and approving the statement of evidence, which shall be included by the clerk of the trial court in the record on appeal. If the trial court is

unable to settle the record within 10 days, the judge shall notify the appellate court clerk, trial court clerk, and the parties of the delay and anticipated date of completion.

3.05. Designation, transmission and retention of record.

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

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

(2) ~~the~~ The transcript or parts ordered for inclusion ~~(or that no transcript was created and/or ordered)~~ and necessary exhibits, have been filed or notice that no transcript was created or ordered; is complete for purposes of the appeal and certified in accordance with these rules. The clerk of the trial court's advisement shall also include a statement indicating whether the

(3) Notification that the trial court has approved a statement of evidence pursuant to Rule 3.03 or an agreed statement pursuant to Rule 3.08. ~~Within five working days after the record has been completed, the clerk of the trial court shall number each page in the record, prepare an index, and provide copies of the index to the clerk of the appellate court and to the parties. After the remainder of the steps in subparagraph (b), (c), and (d) of this rule are completed, the clerk of the trial court shall transmit to the appellate court the designated portions of the record within five working days after a request by the clerk of the appellate court which notes the reply brief has been filed or the time for filing the reply has expired.~~

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

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

(c) If appellee desires to designate additional parts of the record for transmission ~~not designated by appellant,~~ appellee shall, contemporaneously with ~~the~~ filing of appellee's brief in the appellate court ~~and service of that brief upon appellant,~~ file with the clerk of the trial court and serve upon all parties and the appellate court clerk ~~appellant~~ a designation of those parts of the record desired by appellee. See Rule 1.03. ~~If appellee does not wish to designate additional portions of the trial court record, then such a certification shall be made to the clerk of the trial court.~~

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

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

who designates unnecessarily duplicative pleadings or other papers not relevant to the appeal may be subject to sanction as provided in Rule 1.03.

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

(1) The designated pleadings;

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

(3) Confidential file;

(4) Designated exhibits.

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

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

~~(h) The transmitted record in matters arising pursuant to Rule 13 is limited to the attachments described in Rule 13.05, unless good cause is shown why additional portions of the record are essential.~~ If one or more parties to the appeal fail to designate portions of the record or designate the entire record in a civil appeal, the clerk of the trial court shall promptly notify the clerk of the appellate court.

3.07. Return of record to the trial court.

After an appeal has been determined, the transmitted record shall be returned to the custody of the trial court when mandate issues or the appeal is dismissed.

3.08. Agreed statement.

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

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

3.09. Withdrawing records.

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

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

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

Rule 6. Docketing appeal.

6.01. Docketing appeal and jurisdiction.

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

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

Rule 7. Briefs.

7.01. Brief of appellant.

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

- (a) A title page which must include:
 - (1) The ~~appropriate~~ appellate court caption and appellate court case number;
 - (2) Identification of party filing the brief; and
 - (3) The name(s), address(es) and telephone number(s) of the attorney(s) or pro se party(ies) preparing the brief. Members of the Wyoming Bar shall include their Wyoming Bar number.
- (b) A table of contents, with page references;
- (c) A table of cases alphabetically arranged (in one list or by jurisdiction), statutes and other authorities cited, with references to the pages where they appear;
- (d) A statement of the issues presented for review;
- (e) A statement of the case including:
 - (1) The nature of the case, the course of proceedings, and the disposition in the trial court; and
 - (2) A statement of the facts relevant to the issues presented for review with ~~appropriate references to documents listed in the index of the transmitted record~~ citations to the parts of the designated record on appeal relied on.
- (f) An argument (which may be preceded by a summary) setting forth:
 - (1) Appellant's contentions with respect to the issues presented and the reasons therefor, with citations to the authorities, statutes and parts of the designated record on appeal ~~record~~ relied on; and
 - (2) For each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues).
- (g) A short conclusion stating the precise relief sought;
- (h) The signature(s) of counsel or pro se party(ies) submitting the brief; ~~and~~
- (i) A certificate of service; and
- (j) An appendix, which shall contain (1) a copy of the judgment or final order appealed from; (2) and the trial court's decision letter or other written and/or oral reasons for judgment, if any; ; and (3) the statement of costs required by rule 10.01.

7.03. Reply brief.

- (a) Appellant may file a brief in reply which shall comply with the requirements of ~~W.R.A.P. Rule~~ 7.01 (a), (b), (c), (f), (g), (h), and (i). In lieu of any statement of the issues, the reply brief shall precisely and concisely set forth on the first page those new issues and arguments raised by the brief of the appellee which are addressed in the reply brief. A reply brief is limited to such new issues and arguments, and a failure to comply with these requirements may subject the party to sanctions under these rules including the reviewing court disregarding appellant's reply brief.
- (b) If two or more appellees file briefs and new issues and arguments are raised in two or more briefs, the appellant may file a single reply brief addressing those issues. If a single reply brief is filed, the deadline for filing shall be based on the filing of the last brief of appellee.

7.04. Additional authorities.

When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party may file a Notice of Additional Authority ~~promptly advise the clerk of the court, by letter, with a copy to all counsel,~~ setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the ~~letter~~ Notice of Additional Authority shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

7.05. Length, format, binding and number of briefs.

(a) Length of Briefs.

(1) Except by permission of the appellate court, principal briefs shall not exceed 70 pages, and reply briefs shall not exceed ~~35~~ 20 pages, exclusive of pages containing the title page, table of contents, table of authorities, certificate of service and appendices.

(b) Format of Briefs.

(1) Brief pages shall not exceed 8½ by 11 inches. Margins shall not be less than one inch on all sides;

(2) Text of briefs shall be double-spaced (except quotations of more than 50 words);

(3) Briefs must be in an easily readable font, with no smaller type or font than 10 characters per inch. Fonts for word processors that will appear as no smaller than 10 characters per inch are Times New Roman 13, CG Times 13, or Courier 12 13 point.

(4) Footnotes shall be in the same size of type as the text of the brief and double-spaced except quotations of 50 words or more; and

(5) Appendices on legal-sized paper should be reduced to 8½ by 11 inch paper and readily legible.

(c) Binding of briefs.

Briefs shall be bound only at the upper left-hand corner by staple, paper clip or binder clip.

(d) Number of briefs filed is governed by Rule 1.01.

(e) The paper copy of the brief submitted for filing shall be an identical version of the brief electronically filed and accepted by the appellate court except the original signature(s).

7.06. Time for filing and serving briefs.

(a) Filing of briefs is subject to Rule 1.01.

~~(a)~~ (b) Brief of appellant.

(1) Appellant shall file, its brief within 45 days after service of the notice that the case is docketed in the appellate court as provided in Rule 6.01 and, in cases where service is not accomplished through CTEF, the required number of copies of the brief in the appellate court, ~~and~~ concurrently serve one copy of that brief on each party.

~~(b)~~ (c) Brief of appellee.

(1) Appellee shall file ~~its brief~~ within 45 days after service of appellant's brief and, in cases where service is not accomplished through CTEF, the required number of briefs and shall concurrently serve one copy on each party.

~~(c)~~ (d) Reply brief.

(1) Appellant ~~shall may~~ file ~~its reply brief~~ within 15 days after the service of appellee's brief and, in cases where service is not accomplished through CTEF, the required number of reply briefs and shall concurrently serve one copy on each party.

(d) Abbreviated schedule.

(1) The appellate court may order a shorter time to file and serve briefs.

(2) In all cases involving termination of parental rights, adoptions, abuse and neglect, juvenile delinquency and CHINS, the supreme court will not entertain a motion to extend briefing by any party.

7.09. Pleadings in original cases.

(a) In all cases originally commenced in the supreme court, the party shall file that pleading, along with the filing fee required by Rule ~~10.02, 2.09~~ or a motion to proceed in forma pauperis, with the clerk of the supreme court. Any party against whom such relief is sought shall file such response and briefs as the court may direct.

(b) Rule 1.01 applies.

7.10. Extension of time.

(a) An extension of time in which to file briefs may only be obtained from the appellate court upon a motion certifying good cause made before the time to file the brief expires. A motion for extension of time shall be filed at least 3 working days before the brief is due. If the motion is filed less than 3 working days before the brief is due, then the motion shall detail why the party was unable to make the request in a timely manner. A motion for an extension of time to file brief Motions filed in the district court must be accompanied by an order in the proper form.

(b) Good cause, as used in this rule, includes such things as a death in counsel's immediate family, serious illness, or other unanticipated circumstances which justify delay of the appellate process. Generalities such as "counsel is too busy" are not a sufficient reason for granting an extension.

(c) Absent extraordinary circumstances, motions to extend the time to file reply briefs will not be considered.

7.11. Failure to file.

(a) If in any case the party holding the affirmative fails to file a brief within the time fixed by law or the rules herein, the case ~~may shall~~ be dismissed on the ground of want of prosecution.

(b) When the party holding the negative has failed to file and serve a brief as is required by these rules, and the brief of the party holding the affirmative has been duly filed and served within the

time required, the party holding the affirmative may submit the case, with or without oral argument, and the other party shall not be heard.

7.12. Amicus curiae.

(a) A brief of an amicus curiae may be filed only by leave of court granted on motion or the request of the appellate court.

(b) The motion must be accompanied by a separate ~~the~~ proposed brief and state:

(1) the movant's interest in the issues raised in the case;

(2) the reasons an amicus brief is appropriate and desirable;

(3) the view of the movant with respect to whether a party is not represented competently or is not represented at all;

(4) the interest of the amicus in some other case that may be affected by the decision in the case before the court; and

(5) any unique information or perspective the amicus has that can be of assistance to the court beyond that the lawyers for both parties can provide.

(c) The amicus brief shall comply with Rule 7.01 except that no statement of issues, statement of the case, or an appendix shall be required. In addition the cover page must identify the party or parties supported and indicate whether the brief supports affirmance or reversal.

(d) The amicus brief shall not exceed 35 pages, and shall otherwise conform to the requirements of ~~W.R.A.P.~~ Rule 7.05.

(e) An amicus curiae must file its motion not later than 11 days after the principal brief of the party being supported is filed. An amicus curiae who does not support either party must file its brief not later than 11 days after the first brief of any party is filed.

(f) An amicus curiae is not permitted to file a reply brief.

(g) The motion will be considered by the court and, if granted, the proposed brief shall be filed as part of the case. If the motion is denied, then the proposed brief shall not be filed and will not be made part of the case.

(h) Participation in oral arguments by the amicus curiae shall be granted only with the court's permission and the consent of the party supported, and only for extraordinary reasons with the time used to be charged against the party whose contentions amicus curiae supports.

7.13. Guardian ad litem.

(a) A lawyer appointed as a guardian *ad litem* (GAL) by a district court, or a lawyer retained to represent a GAL, may participate in any appeal involving the matter for which the GAL has been appointed.

(b) *Brief of GAL.* A GAL may submit a brief in support of any party to an appeal. If the GAL does not support any party, the GAL may submit a brief only with the permission of the court, which may be granted upon motion of the GAL made on or before the time specified in Rule 7.12. All provisions of Rule 7.12 shall apply to a GAL who does not support any party. If the GAL supports a party:

(1) The brief of the GAL shall be submitted on or before the time specified for the party whom the GAL supports.

(2) The brief of the GAL shall comply with Rule 7.01, except that no statement of issues, statement of the case, or an appendix shall be required. In addition, the cover page must identify that the brief is being submitted by a GAL and indicate whether the brief supports affirmance or reversal.

(3) The brief of the GAL shall not exceed 35 pages, and shall otherwise conform to the requirements of ~~W.R.A.P.~~ Rule 7.05.

(4) A GAL who supports an appellant is not permitted to file a reply brief.

~~(c) Oral argument. Unless otherwise ordered by the court, a GAL's argument may not exceed 10 minutes, which shall be in addition to the time allotted to the parties pursuant to Rule 8.02. If more time is desired, the request must be made by motion at the time of filing the GAL's brief. The court may make such order as it deems proper. Participation in oral argument by the GAL shall be granted only with the court's permission and only for extraordinary reasons. The GAL's argument shall not exceed 10 minutes, which shall be in addition to the time allotted to the parties pursuant to Rule 8.02.~~

Rule 8. Oral arguments.

8.01. Settings and appearance.

(a) In the supreme court there ~~There~~ will be two disposition dockets:

(1) The expedited brief only docket. -- Cases assigned to this docket will be considered submitted ~~when the time for reply briefs has expired,~~ upon entry of an order assigning case to the brief only docket, without oral argument; and

(2) The oral argument docket. -- Cases assigned to this docket will not be considered submitted until the oral argument has been held.

(b) Any party may request submission of its case upon its brief without oral argument upon written notice to the clerk.

(c) The clerk of the appellate court shall promptly notify all parties if a case is assigned to the ~~expedited~~ brief only docket. Any party may move, with good cause shown, not later than 15 days after the entry of the order assigning a case to the ~~expedited~~ brief only docket, to have the case reassigned to the argument docket, ~~and the~~ The case may be reassigned in the discretion of the appellate court.

(d) The clerk shall notify parties of cases set for oral argument. A motion to vacate an oral argument may be considered by the court without hearing. If counsel has a conflict with other court proceedings, then the motion to vacate oral argument shall include the reasons why those proceedings should take priority over the case before the appellate court. In cases where two or more attorneys represent a party or parties and one or more of the attorneys is unavailable for oral argument, the court expects appearance of other counsel of record.

8.02. Procedure; time allowed for argument.

(a) In oral argument, appellant shall be entitled to the opening. Appellee may then be heard. Appellant may then conclude. Unless otherwise ordered by the court, each side may not exceed 30 minutes in argument. ~~If the appeal involves a guardian ad litem, he or she may be entitled to~~

~~additional time pursuant to Rule 7.13(e). If more time is desired, the request must be made by filing a motion no less than 15 days before oral argument, at the time of filing the brief in the case. The court may make such order additional time as it deems proper.~~

(b) When two or more cases are consolidated or otherwise combined for oral argument, it will be limited to 1 hour unless otherwise ordered by the court. If there are multiple appellants or appellees, 30 minutes is allotted for each side and the attorneys are expected to divide the time.

Rule 9. Decisions, rehearing, mandate.

9.06. Abbreviated opinions.

~~When all parties to an appeal stipulate in writing for a ruling by the appellate court without a published decision, by entry of an abbreviated opinion, that court may, in its discretion with unanimous vote, determine the case by an abbreviated opinion. The decision for the case will provide the ultimate disposition without a detailed statement of facts or law. The opinion will not be published, or generally disseminated, and shall not constitute precedent of the appellate court.~~

(a) The supreme court by unanimous vote may, sua sponte, enter an abbreviated opinion affirming or reversing the judgment or order of the district court for the reason that it is clear that affirmance or reversal is required because:

(1) the issues are clearly controlled by settled Wyoming law or federal law binding upon the states;

(2) the issues are factual and there clearly is sufficient evidence to support the jury verdict or findings of fact below;

(3) summary judgment was erroneously granted because a genuine issue of material fact exists; or

(4) the issues are ones of judicial discretion and there clearly was or was not an abuse of discretion.

(b) An abbreviated opinion will provide the ultimate disposition without a detailed statement of facts or law. Such abbreviated opinions shall be published.

(c) A petition for rehearing of a case decided under this rule may be served and filed pursuant Rule 9.08.

9.07 Answering Certified Questions.

The written opinion of the reviewing court, stating the law governing each question certified, shall be sent by the clerk of the reviewing court under the court's seal to the certifying court or agency and to the parties. No mandate shall issue after publication of answers to certified questions.

9.07 9.08. Application Petition for rehearing.

(a) ~~An application~~ A petition for rehearing of a case in the appellate court ~~shall be by petition to that court, signed by counsel, briefly stating the points wherein it is alleged that the appellate court has erred, and shall~~ may be filed within no later than 15 days after the decision is rendered. The petition shall be accompanied by a brief covering the points and authorities upon which the petitioner relies. The petition and brief may be combined and filed as one document. A copy of the petition and the brief shall, within the time above specified, be served upon all parties. There shall be no oral argument on petitions for rehearings unless argument is requested by the appellate court.

(b) Rule 1.01 applies.

9.08 9.09. Suspension of proceedings.

The filing of the petition for rehearing within the time allowed shall suspend proceedings under the decision until the petition is decided, unless the appellate court shall otherwise order.

9.09 9.10. Hearing Rehearing granted.

When a rehearing is granted, the other party, within 15 days of ~~that grant~~ entry of the order granting rehearing, shall file with the appellate court an answer and supporting brief as described in Rule 9.078, which shall also be served upon petitioner. After considering the petition and response, the court may amend the written opinion or direct other proceedings if it is deemed necessary.

9.10 9.11. Mandate.

(a) Upon the denial of a petition for rehearing, or if within 15 days after the decision no petition for rehearing or other motion is filed, a mandate shall be issued to the trial court, as the case may require, for execution. A copy of the mandate shall be sent to all parties.

(b) In a criminal appeal when the judgment and sentence is reversed either in part or entirely, a copy of the mandate and opinion shall be sent to the warden of the facility if the party is incarcerated and to the attorney general representing the department of corrections.

(c) The mandate issued will award costs, if applicable, to the prevailing party. The appellate court is without jurisdiction to entertain a motion for costs once the mandate has issued returning jurisdiction to the trial court.

Rule 10. Costs and fees.

10.01. Cost of record, docket and service fees.

(a) Appellant, at the time of filing appellant's brief, must file with the clerk of the appellate court a statement of the cost of the original transcript of the evidence with ~~information~~ certification regarding the payment.

(b) The docket fees charged for the services of the clerk in the appellate court for criminal cases, where there is no statute to the contrary, shall be the same as those prescribed in civil cases.

(c) No award of costs shall be made in a case where the party is proceeding in forma pauperis unless costs are awarded by the reviewing court in the mandate.

(d) A party not admitted to the practice of law in Wyoming and proceeding pro se on appeal shall not be entitled to an award of attorney fees.

10.02. ~~Costs~~ Fees in reserved cases, certified cases, and rule 13 cases.

In each civil case sent to an appellate court upon reserved questions, certified cases and Rule 13 cases, the usual docketing fee required by law to be paid in other cases shall be paid upon the filing of the papers in the court. Such docketing fee shall be advanced by the party or parties designated by the trial court or judge, but in the absence of any such designation, then by the plaintiff or petitioner in the action. ~~The costs in such reserved cases accruing in the court shall be taxed and abide the suit as in other cases.~~ Recovery of costs in these cases shall be the same as in appeals with petitioner and respondent substituted for appellant and appellee where applicable.

10.03. Costs on bill of exceptions, certified and reserved questions in criminal cases.

No fees shall be collected in criminal cases properly filed with the supreme court on certification, reserved questions, or by bill of exceptions of a district attorney unless otherwise provided by statute.

10.04. Costs on reversal.

When a judgment or appealable order is reversed, appellant shall recover costs; The costs are awarded in the mandate and shall be as follows: the cost of making the transcript of the evidence in the case, the docketing fees paid at the time of filing the notice of appeal, the cost of producing the original brief which shall be computed at the per page rate allowed by law for making the transcript, and the cost of copies for the briefs filed in the court and served on appellee. ~~and when~~ When the judgment of appealable order is reversed in part and affirmed in part, the court may apportion the costs between the parties in such manner as it deems equitable; ~~and there shall be taxed as a part of such costs the cost of making the transcript of the evidence in the case and for typewriting and reproducing of briefs, such costs to be computed at the rate allowed by law for making the transcript of such evidence; provided, however, that the appellate court may, by order entered of record,~~ The appellate court may refuse to allow as part of such costs those costs as may result from the insertion in the transcript of the evidence, or in the briefs, those portions as may clearly appear to have been unnecessary.

10.05. Costs and penalties on affirmance.

(a) When the judgment or appealable order is affirmed in a civil case, appellee shall recover costs. The appellee may also recover costs when appeal is dismissed in the court opinion after full briefing. The costs are awarded in the mandate and shall be as follows: the costs of producing the original brief which shall be computed at the per page rate allowed by law for making the transcript, and the cost of copies for the briefs filed in the court and served on the appellant. If the appellant failed to order and pay for a transcript of the evidence of the case or only ordered a portion of the transcript, then if appellee ordered necessary portions of the transcript, appellee shall recover the costs expended ordering the transcript. If the judgment or appealable order is affirmed in a civil case, appellee shall recover the cost for publication of the brief with the cost to be computed at the rate allowed by law for making the transcript of the evidence. If the court certifies there was no reasonable cause for the appeal, a reasonable amount for attorneys' fees and damages to the appellee shall be fixed by the appellate court and taxed as part of the costs in the case. The amount for attorneys' fees shall not be less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000.00). The amount for damages to the appellee shall not exceed two thousand dollars (\$2,000.00).

(b) If the court certifies, whether in the opinion or upon motion, there was no reasonable cause for the appeal, a reasonable amount for attorneys' fees and damages to the appellee shall be fixed by the appellate court and taxed as part of the costs in the case. The amount for attorneys' fees shall not be less than one hundred dollars (\$100.00) nor more than ten thousand dollars (\$10,000.00). The amount for damages to the appellee shall not exceed two thousand dollars (\$2,000.00).

(c) If the court finds that circumstances warrant, the taxation of fees, costs and sanctions may be entered against counsel of record and not the appellant if the court finds any of the following:

(1) Counsel has filed a deficient brief or the brief contains misrepresentations and omissions;

(2) Counsel has filed a brief that failed to follow these rules;

(3) Counsel ignored or failed to perform any meaningful research of the law and to make a determination the claim on appeal is without merit;

(4) Counsel, not appellant, is responsible for bringing a frivolous appeal;

(5) Counsel is dilatory in prosecuting the appeal by missing filing deadlines, receiving sanctions for failure to provide notice of appeal and/or designation of record or failing to comply with orders entered by the court;

(6) Other misconduct determined in the discretion of the appellate court.

10.07. In forma pauperis.

~~A defendant in a criminal case who desires to proceed on appeal in forma pauperis shall file in the trial court one copy of a motion for leave so to proceed, together with an affidavit documenting the defendant's inability to pay fees and costs or to give security. The motion shall be accompanied by a proposed order. If the trial court finds defendant is qualified to proceed in forma pauperis, defendant may proceed without further application to the appellate court, and without payment of fees or costs in either court or the giving of security. In original proceedings, the application shall be made in the appellate court.~~

Rule 11. Certification of questions of law.

11.04. Preparation of certification order.

(a) The certification order shall be prepared by the certifying court or agency, signed by the judge presiding at the hearing or a designated individual for the agency, and forwarded to the reviewing court by the clerk of the certifying court or the designated individual for the agency under the official seal of the court or agency along with the appropriate docket fee. The reviewing court may require the original or copies of all, or of any portion of the record before the certifying court, to be filed under the certification order, if, in the opinion of the reviewing court, the record or any portion may be necessary in answering the questions.

(b) The reviewing court shall accept or reject a certified question within 30 days of ~~receiving~~ docketing the certification order. A request for certification is deemed denied if not granted within 30 days of filing in the reviewing court. If the reviewing court rejects the question, the case will be closed and no request for reconsideration will be allowed.

11.05. Costs.

(a) Fees and costs shall be the same as in civil appeals docketed before the reviewing court. Payment of the docketing fee shall be borne by the party seeking certification. If both parties seek certification, then the parties shall each pay one-half of the docketing fee. In any other circumstances, fees and costs shall be paid as directed by the certifying court in its order of certification.

(b) No fees shall be collected in questions certified in criminal cases properly filed with the appellate court.

11.06. Briefs and argument.

Upon the agreement of the reviewing court to answer the certified questions, notice shall be given to all parties. The question(s) to be answered may be altered by the reviewing court. The appellant ~~in the appellate court~~ shall file a brief within 45 days from service of the order agreeing to answer questions and the date of receipt of the notice, and the opposing party the appellee shall file a brief within 45 days from service of ~~copies~~ of appellant's brief. Briefs must be in the manner and form of briefs as provided in Rules 1.01 and 7, and oral arguments shall be as provided in Rule 8.

11.07. Opinion.

~~The written opinion of the reviewing court, stating the law governing each question certified, shall be sent by the clerk of the reviewing court under the court's seal to the certifying~~

~~court or agency and to the parties. No mandate shall issue after publication of answers to certified questions.~~

Rule 12. Judicial review of administrative action.

12.03. Institution of proceedings.

(a) The proceedings for judicial review under Rule 12 shall be instituted by filing a petition for review in the district court having venue. No other pleading shall be necessary, either by petitioner or by the agency or by any other party. No summons shall be necessary. The petition shall conform to the requirements set forth in Rule 12.06.

(b) Copies of the petition shall be served ~~without unnecessary delay~~ upon the agency and all parties in accordance with Rule 5, Wyo.R.Civ.P.

Rule 12.04. Time for Filing Petition; cross-petitions for review; ordering transcript.

(a) In a contested case, or in an uncontested case, even where a statute allows a different time limit on appeal, the petition for review shall be filed within 30 days after service upon all parties of the final decision of the agency or denial of the petition for a rehearing, or, if a rehearing is held, within 30 days after service upon all parties of the decision.

(b) Upon a showing of excusable neglect the district court may extend the time for filing the petition for review, ~~said extension not to exceed~~ for no more than 30 days from the expiration of the original time prescribed in paragraph (a).

(c) If a timely petition for review is filed by any party, any other party may file a cross-petition for review within 15 days of the date on which the first petition for review was filed. A cross-petition for review shall conform to the requirements set forth in Rule 12.06.

(d) Concurrently with the filing of a petition for review, or a cross-petition for review, the party so filing shall order and arrange for the payment for a transcript of the testimony necessary for the appeal. Written evidence disclosing the portions of the transcript ordered and compliance with this paragraph shall be served upon the agency and all parties as provided in Rule 5, Wyo.R.Civ.P.

12.07. Record.

(a) Within 60 days after the service of petition, or within the time allowed by the reviewing court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review and a separate letter of transmittal marked for the personal attention of the judge or judges of the reviewing court.

(1) The record papers ~~transmitted to the appellate court by the agency~~ shall be securely fastened, in an orderly manner, in one or more volumes consisting of no more than 250 pages per volume, with pages sequentially numbered ~~and~~ with a “redback” or other sturdy cover page

bearing the title of the case and containing the designation "Transmitted Record," followed by a complete index of all papers.

(2) Transcripts shall be in separate folder, with the designation "Transcripts";

(3) Exhibits considered by the agency shall be compiled with the designation, "Exhibits."

The agency shall provide copies of the index to the reviewing court and to the parties. Concurrently with transmitting the record, the agency shall serve notice of the transmittal on all parties.

(b) The record in a contested case shall consist of the matter required by ~~W.S.~~ Wyo.Stat. Ann. § 16-3-107(o), Wyoming Administrative Procedures Act. To the extent any matter required was not preserved by the agency and there is no record, the court may take evidence on that matter. The record in all other cases shall consist of the appropriate agency documents reflecting the agency action and its basis. By stipulation of all parties to the review proceedings, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be disciplined in accordance with Rule 1.03. The reviewing court may require or permit subsequent additions or corrections to the record. A record remanded by a court to an agency for any reason or purpose may be recalled by the remanding court, as necessary, upon its own motion.

(c) Any record which fails to comply with Rule 12.07(a) may be returned to the agency by the district court or supreme court for compliance.

12.09. Extent of review.

(a) Review shall be conducted by the reviewing court and shall be confined to the record as supplemented pursuant to Rule 12.08 and to the issues set forth in the petition and raised before the agency. Review shall be limited to a determination of the matters specified in Wyo.Stat. Ann. § 16-3-114(c).

(b) Upon such review, or in response to a motion for certification or interlocutory appeal by any party within 30 days of the filing of the petition for review and after allowing fifteen (15) days from service for response, the district court may, as a matter of judicial discretion, certify the case to the supreme court. In determining whether a case is appropriate for certification, the district court shall consider whether the case involves:

(1) a novel question;

(2) a constitutional question;

(3) a question of state-wide impact;

(4) an important local question which should receive consideration from the district court in the first instance;

(5) a question of imperative public importance; or

(6) whether an appeal from any district court determination is highly likely such that certification in the first instance would serve the interests of judicial economy and reduce the litigation expenses to the parties.

(c) Not later than 15 days after its receipt of the completed record, the district court shall notify the parties of its decision concerning certification by order, which shall include a concise statement of the issues raised in the petition and findings which support the determination concerning certification. Upon entry of an order of certification, the petitioner shall pay the

required docketing fee. After receipt of the docket fee from the petitioner, The the clerk of the district court shall:

~~(1) promptly forward copies a copy of the order of certification, the petition for review, and agency decision to the reviewing court; and and the record made with respect to the six factors considered in determining whether the case is appropriate for certification~~

(2) send the docket fee to the clerk of the supreme court.

~~(d)~~ (d) The supreme court, in its discretion, may accept or reject a certified case, and it shall accept or reject the case within 30 days of receiving the certification order. If a case is rejected by the supreme court the review shall be conducted by the district court in accordance with paragraphs (a), ~~(e) and (d)~~ (e) and (f) of this rule. The filing of the record, briefs, and oral argument in the supreme court shall be as in civil cases pursuant to Rules 2.08~~(b)~~, 4, 7, and 8.

~~(e)~~ (e) For all cases not certified to the supreme court, the district court may receive written briefs and hear oral argument in its discretion. The briefing schedule shall be fixed by the district court.

~~(d)~~ (f) ~~The district court may, in its discretion, remand the case to the agency for proceedings in accordance with the direction of the court. The district court's judgment shall be in the form of an order shall enter judgment affirming, reversing, vacating, remanding or modifying the order for errors appearing on the record. The district court may also dismiss the appeal for procedural defects including want of prosecution and such dismissal shall be subject to reinstatement pursuant to Rule 15. No mandate shall issue from the district court in Rule 12 cases.~~

(g) The district court's judgment may be challenged by a petition for rehearing pursuant to W.R.A.P. 9.08. Except where there has been a timely petition for rehearing filed, the time for appeal is measured from the entry of the judgment.

12.11. Review by supreme court.

(a) An aggrieved party may obtain review of any final judgment of the district court by appeal to the supreme court.

(b) If the final judgment of the district court is appealed to the supreme court, ~~the~~ filing of the record, including transcripts of relevant electronically recorded proceedings, briefs, and oral argument in the supreme court shall be as in civil cases pursuant to Rules 1.01, 3, 7, and 8.

Rule 13. The petition for a writ of review.

13.01. Generally.

(a) All applications to the supreme court for interlocutory or extraordinary relief from orders of the district courts, including such applications as are established by statute (e.g., Wyo.Stat. Ann. § 5-2-119 and 7-14-107), may be made as petitions for a writ of review. Granting of a petition is within the discretion of the supreme court.

(b) All applications to a district court for interlocutory or extraordinary relief from orders of administrative agencies and the municipal and circuit courts, including such applications as are established by statute, may be made as petitions for a writ of review. Granting of a petition is within the discretion of the district court.

(c) The petitioner for a writ of review shall specifically state the nature of review desired and the relief sought.

(d) Writs of habeas corpus, mandamus, prohibition, quo warranto or any prerogative writ shall be treated as a writ of review under this rules. In any petition made to the supreme court for a writ to be issued in the exercise of its original jurisdiction and for which an application might have been lawfully made to some other court in the first instance, the petition shall, in addition to the necessary matter required by the rules of law to support the application, also set forth the circumstances which, in the opinion of the petitioner, render it necessary or proper that the writ should issue originally from the supreme court, and not from such other court, and the sufficiency or insufficiency of such circumstances will be determined by the court in awarding or refusing the application. In case any court, justice or other officer, or any board or other tribunal, in the discharge of duties of a public character, be named in the petition as defendant or respondent, the petition shall also disclose the name or names of the real party or parties, if any, in interest, or whose interest would be directly affected by the proceedings.

13.03. Petition and response to petition.

(a) A petition for a writ of review must be filed with the reviewing court within 15 days after entry of the order from which relief is sought. Each petition shall be accompanied by:

(1) a docket fee; or

(2) a petitioner in a criminal case eligible to proceed in forma pauperis shall file a motion for leave to proceed, together with an affidavit documenting the petitioner's inability to pay fees and costs or to give security. The affidavit shall have attached a statement from the institution in which petitioner is incarcerated detailing income and expenses for the prior six months.

(b) Any party may file a response within 15 days after filing of the petition.

(c) The reviewing court may grant the petition anytime after the 30th day after entry of the order from which relief is sought or as soon as both the petition and the response have been filed with the reviewing court. The petition but it shall be deemed denied if the reviewing court does not accept review within 40 days from the date of filing of the petition.

(d) Rule 1.01 applies.

13.04. Contents of petition for writ of review.

The petition shall be captioned in the reviewing court. It shall contain concise statements of the following:

(a) The nature of the review desired and the relief sought;

(b) The facts necessary to an understanding of the controlling questions of law determined by the lower court or administrative agency;

(c) The question itself;

(d) The principles of law upon which petitioner relies, with citation of authorities in support but without argument;

(e) A statement explaining why the ends of justice require review;

(f) A certification that the petition is not interposed for purpose of delay; and

(g) A certification that no notice of entry of the order sought to be reviewed was provided, if such is the case.

(h) In addition to service on respondent, a copy of the petition, without attachments, shall also be served on the trial court and/or administrative agency whose decision is subject to review.

13.07. Writ of review.

(a) The order granting the writ of review may set forth the particular issue or point of law which will be considered and may be on such terms as the reviewing court conditions. If the petition is granted, all proceedings including briefing, designation and transmission of the record shall be within the time and in the manner required for appeals unless otherwise ordered by the reviewing court. Pursuant to Rule 3.02(c), any audio recording relevant to the review shall be transcribed and filed as part of the record. Oral argument will not be held except at the direction of the reviewing court. No petition for rehearing shall be permitted.

(b) If the petition for writ of review is denied, then the case shall be closed upon entry of the order denying review and no petition for reconsideration or rehearing will be allowed.

13.09. Duties of clerks.

~~(a) Grant of petition.~~ When a petition for a writ of review is granted decided, the clerk of the reviewing court shall enter that order and shall notify serve the order on the trial court or administrative agency and counsel of record either by CTEF or mail. ~~The order may direct that all or part of the record be transmitted to the reviewing court.~~

~~(b) Denial of petition.~~ Upon ~~denial of a petition for a writ of review, the clerk of the reviewing court shall notify the trial court or administrative agency and counsel of record of such denial and forward copies of the order.~~

Rule 14. Service of papers and computation of time.

14.01. Service; how made.

(a) Whenever, under these rules, service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless personal service upon the party is ordered by the court. Service upon the attorney or upon the party shall be made by delivering a copy to that party or by mailing it to the last known address, ~~or, if no address is known, by leaving it with the clerk of the appellate court. Copies deposited with the clerk shall~~

~~be promptly mailed or delivered by the clerk to the attorney of the party so entitled, or to the party, if the party has no attorney of record.~~

(b) Delivery of a copy within this rule means handing it to the attorney or to the party, or leaving it at the party's office with the clerk or other person in charge, or leaving it in a conspicuous place, or, if the office is closed or the person to be served has no office, leaving it at the party's dwelling house or usual place of abode with some member of the family over the age of 14 years who resides there or otherwise, as provided in Wyo.R.Civ.P.5. Service by mail is complete upon mailing.

(c) For all cases filed through CTEF, the notice of electronic filing that is automatically generated constitutes service of the document on CTEF users and the additional service of a hardcopy is not necessary. Each registered user of the CTEF system is responsible for assuring that their email account is current, is monitored regularly, and that email notices are opened in a timely manner. The notice of electronic filing generated by CTEF does not replace the certificate of service on the document being filed.

(d) The registered user's name and password required to submit documents to the CTEF serve as the user's signature on all electronic documents filed with the Court. An electronically filed document shall contain a signature line in the following manner: s/ Attorney's Name.

14.02. Computation of time.

In computing any period of time prescribed or allowed by these rules, or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper, a day on which weather or other conditions have closed the office of the clerk of the court, in which event the period runs until the end of the next day which is not one of the above described days. As used in this rule "legal holiday" includes any day officially recognized as a legal holiday in this state by designation of the legislature, ~~or~~ appointment as a holiday by the chief justice of the Wyoming Supreme Court, or any day designated as such by local officials.

14.03. Additional time after service by mail.

(a) Whenever a party has the right, or is required to do some act or take some proceedings within a prescribed period from or after the service of a brief, notice or other paper upon that party, and the brief, notice or other paper, is served upon the party by mail or by delivery to the clerk, three days shall be added to the prescribed period.

(b) When a party is required to take action within a prescribed period after filing or date certain, no additional time shall be added for service by mail to the prescribed period or date certain.

Rule 14.05. Pro se filings by criminal appellant represented by counsel.

In any appeal where a criminal appellant is represented by counsel, the appellant may not file any pro se brief, motion, or other pleading, with the following two exceptions: the appellant may file a pro se motion to terminate counsel's representation in the appeal and/or the appellant may also file a motion for leave to consider a pro se supplemental brief, i.e., a brief in addition to the one filed by counsel. The motion for leave to file shall be accompanied by the proposed pro se supplemental brief and shall be contemporaneously served on appellant's counsel of record and the State of Wyoming. If a pro se brief is presented for filing without a motion for leave to file the same, the clerk of court shall acknowledge receipt, retain the brief, and notify appellant, appellant's counsel of record, and the State of Wyoming that the brief will not be filed or considered unless (1) appellant files the required motion for leave to file and (2) the Court grants the motion for leave to file.

Rule 15. Petition for reinstatement.

(a) Petition for reinstatement of a case in the appellate court, after dismissal, shall be by petition to the appellate court, signed by counsel, stating the reasons, and supported by a showing, in writing, as may be essential. The petition shall be filed within 15 days after the order of dismissal has been made, entered and shall be accompanied by a brief containing contain the points and authorities upon which petitioner relies. The petition and brief may be combined and filed as one document. Rule 1.01 applies. A copy of such petition, ~~as well as the brief,~~ shall also be served on the counsel for opposing party, ~~who may have appeared in the appellate court in the case within the above specified time.~~

(b) Counsel for opposing party shall have 15 days after such service within which to file with the court any objections to the petition, ~~together with a brief~~ covering the points and authorities upon which the opposing party relies. The opposing party shall also serve upon counsel for the petitioner a copy of the objections ~~and brief.~~

(c) There shall be no oral argument on the petition and the objections, unless requested by the court. If the appeal is reinstated, the court will establish a new briefing schedule. If reinstatement of the appeal is denied, the case shall be closed.

Rule 16. Motions.

(a) Motions submitted to an appellate court shall be filed with the clerk and served in accordance with ~~Wyo.R.Civ.P. 5~~ Rule 14.

(b) A motion directed to a subject matter which may substantially affect the disposition of a case shall, at the time of filing, be supported by a memorandum of points and authorities. The motion and memorandum may be combined and filed as one document. Rule 1.01 applies. Upon filing, such motion and memorandum shall be served upon the adverse party or the attorney of record who, within 15 days after service, may file and serve a similar memorandum. The court may resolve a motion without oral argument, or may order a hearing. All motions not previously determined shall be heard or submitted at the time regularly assigned for the hearing of the case. All motions shall be in the same form as described in Rule 7.05(b). ~~Each motion filed must be accompanied by a proposed order.~~

Rule 17. Substitution of parties.

17.01. Death of a party.

(a) If a party dies after a notice of appeal is filed, or while a proceeding is otherwise pending in the appellate court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the appellate court. The motion of a party shall be served upon the representative in accordance with the provisions of ~~Rule 5, Wyo.R.Civ.P.~~ Rule 14. If the deceased party has no representative, any party may notify the appellate court of the death on the record and proceedings shall then be had as the appellate court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the trial court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred.

17.03. Public officers; death or separation from office.

(a) When a public officer is a party to an appeal or other proceeding in the appellate court in an official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and the successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(b) When a public officer is a party to an appeal or other proceeding in an official capacity the public officer may be described as a party by the official title rather than by name; but the court may require the name to be added.

Rule 18. Voluntary dismissal.

If the parties to an appeal or other proceeding ~~shall sign and~~ file with the clerk of the appellate court an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, ~~and shall pay whatever fees are due,~~ the clerk shall enter an order dismissing the case. ~~the case dismissed, but no mandate or other process shall issue without an order of the appellate court.~~ An appeal may be dismissed on motion of appellant upon such terms as may be agreed upon by the parties or fixed by the appellate court. In a criminal case, a voluntary dismissal shall also be accompanied by a waiver of appeal signed by the appellant. No mandate shall issue.

Rule 19. Appearance, withdrawal or substitution of counsel.

19.01. Appearance; admission pro hac vice.

(a) Definitions.

(1) "Applicant" means a member of the bar of any state, district or territory of the United States applying for admission pro hac vice.

(2) "Local counsel" means an active member of the Wyoming State Bar.

(3) ~~"Rule 11" refers to Rule 11 of the Rules Providing for the Organization and Government of the Bar Association and Attorneys at Law of the State of Wyoming.~~ "Rule 8" refers to Rule 8 of the Rules Governing the Wyoming State Bar and the Authorized Practice of Law.

(b) Counsel or firms shown as participating in the filing of any motion, other pleading, or brief in the appellate court shall, unless otherwise indicated, be deemed to have appeared in the cause. Counsel shall not include the name of, nor allow the signature of, any attorney not admitted pro hac vice by the appellate court on any motion, pleading or brief.

(c) Any attorney who is not an active member of the Wyoming State Bar must seek admission pro hac vice upon a motion made by local counsel in order to appear in any matter in a Wyoming appellate court. The applicant must also be a member in good standing of the bar of another jurisdiction. Admission pro hac vice in a trial court does not confer admission before an appellate court.

(d) Unless otherwise ordered, a motion to appear pro hac vice may be granted only if the applicant complies with Rule ~~11~~ 8 and associates with local counsel. Unless excused by the court, local counsel must sign all papers filed, be present in court during all proceedings in connection with the case, and have full authority to act for and on behalf of the client(s) in all matters in connection with the case.

(e) Applicants consent to the exercise of disciplinary jurisdiction by the court over any alleged misconduct which occurs during the progress of the case in which the attorney so admitted participates.

19.02. Withdrawal.

No attorney or firm who has appeared in a cause on appeal may withdraw from it without written consent of the appellate court filed with the clerk. Such consent may be conditioned upon substitution of other counsel by written appearance or upon written statement submitted by the client acknowledging withdrawal of counsel and stating a desire to proceed pro se.

19.03. Notice of withdrawal or substitution.

Notice of withdrawal or substitution of counsel shall be given to all parties either by withdrawing counsel or by substituted counsel and proof of service filed with the clerk. If an attorney ceases to act in a cause for a reason other than withdrawal with consent, upon motion of any party, the court may require the taking of such steps as it may deem advisable to insure that the cause will proceed ~~with promptness and dispatch.~~

~~Rule 21. Motion to remand for hearing on ineffective assistance of counsel claim.~~

~~(a) An appellant in a criminal case, following the docketing of an appeal, may move to remand the case to the trial court for a hearing on a claim of ineffective assistance of counsel. Such remand shall be available only if the motion is accompanied by affidavits containing nonspeculative allegations of facts, not fully appearing in the record on appeal, which, if true, could support a determination that counsel's representation was deficient and prejudiced the appellant. The motion shall also be accompanied by a proposed order of remand that identifies the ineffectiveness claims and specifies the factual issues relevant to each such claim to be addressed on remand. A copy of the motion for remand shall be served upon all trial counsel.~~

~~(b) The motion shall be filed prior to the filing of the appellant's brief. A response may be filed within 15 days after the motion is served. Upon a showing of extraordinary circumstances, a motion may be filed after the filing of appellant's brief, but in no event shall the court permit a motion to be filed after the case has been taken under advisement.~~

~~(c) The appellate court may, within 30 days of the filing of the motion, order that the case be temporarily remanded to the trial court for a hearing on a claim of ineffective assistance of counsel. The order of remand shall identify the ineffectiveness claims and specify the factual issues relevant to each such claim to be addressed by the trial court. The order shall also direct the trial court to complete the proceedings on remand and file its findings of fact and conclusions of law in the trial court within 90 days of issuance of the order of remand, absent a finding by the trial court of good cause for a delay of reasonable length.~~

~~(d) Deadlines for filing of briefs shall be stayed upon the filing of a motion to remand under this rule until further order of the appellate court.~~

~~(e) Upon remand the trial court shall promptly conduct hearings and take evidence as necessary to enter its findings of fact and conclusions of law on the claim of ineffective assistance of counsel. Any claims of ineffectiveness not identified in the order of remand shall not be considered by the trial court on remand unless the trial court determines that the interests of justice or judicial efficiency require consideration of issues not specifically identified in the order of remand. The burden of proving a fact shall be upon the proponent of the fact by a preponderance of the evidence. The trial court shall enter written findings of fact and conclusions of law concerning the claimed deficient performance by counsel and the claimed prejudice suffered by appellant as a result, in accordance with the order of remand. Errors claimed to have been made during the trial court proceedings conducted pursuant to this rule are reviewable under the same standards as the review of errors in other appeals.~~

~~(f) At the conclusion of all proceedings before the trial court, the clerk of the trial court and the court reporter shall immediately prepare and file the record of supplemental proceedings as required by these rules. The clerk of the trial court shall notify the clerk of the appellate court when the record of these proceedings is complete and provide a copy of the order on remand.~~

~~(g) Upon receipt of the notification from the trial court that the record of the proceedings is complete, the clerk of the appellate court shall notify the parties of the new briefing schedule.~~

Rule 21. Motion based on ineffective assistance of trial counsel.

(a) Following the docketing of a direct criminal appeal, the appellant may file, in the trial court, a motion claiming ineffective assistance of trial counsel. The motion may be used to seek a new trial or to seek plea withdrawal. The motion shall be filed prior to the filing of the appellant's initial appellate brief. Upon a showing of extraordinary circumstances, the appellate court may grant leave to file a motion after appellant has filed his brief, but in no event shall a motion be filed after the case has been taken under advisement by the appellate court. A copy of the motion shall be served upon all trial counsel and the appellate court. The motion shall contain nonspeculative allegations of facts which, if true, could support a determination that counsel's representation was deficient and prejudiced the appellant. Any claims of ineffectiveness not made in the motion shall not be considered by the trial court unless the trial court determines that the interests of justice or judicial efficiency require the consideration of issues not specifically indicated in the motion. A response may be filed within 15 days after the motion is served.

(b) Upon the filing of the motion, briefing in the appeal shall be stayed until further notice from the appellate court.

(c) The trial court may grant or deny the motion without a remand from the appellate court. The trial court shall determine the motion within 90 days after the motion is filed, unless the determination is continued by written order of the trial court, which continuation may not exceed 90 days from the expiration of the initial 90 day period, unless the appellate court orders a further extension. If the trial court enters such a continuation order, the trial court shall provide a copy of the order to the appellate court. In no event shall a motion filed under this rule be deemed denied. The trial court shall enter an order determining the motion.

(d) The order determining the motion shall include findings of fact and conclusions of law concerning the claimed deficient performance by counsel and the claimed prejudice suffered by appellant as a result. When disposition of a motion filed under this rule is made without a hearing, the order shall include a statement of the reason(s) for determination without hearing. The clerk of the trial court shall provide the clerk of the appellate court with a copy of the trial court's order disposing of the motion.

(e) If trial court denies the motion, appellant may file a notice of appeal to challenge the trial court's order denying the motion. When such an appeal is docketed in the appellate court, that appeal shall be consolidated with the initial direct appeal. If the appellant does not appeal from the trial court's order denying the motion, the clerk of the appellate court shall notify the parties of a new briefing schedule for the initial appeal.

Rule 27. Rules superseded.

From and after the effective date of these rules, all other rules in conflict with these rules shall be of no further force or effect. ~~The following rules are superseded:~~

~~W.R.A.P.C.L.J.—all.~~

Rule 28. Title.

These rules shall be known as the Wyoming Rules of Appellate Procedure and may be cited as ~~Wyo. R. App. P.~~ W.R.A.P.

Rule 29. Effective date.

The amendments to these rules shall become effective ~~60 days after their publication in the advance sheets of the Pacific Reporter~~ by order of the supreme court.

APPENDICES

These appendices are not a part of the ~~Wyo. R. App. P.~~ W.R.A.P. and have not been adopted by the Wyoming Supreme Court as a part of the rules.

Appendix I is a timetable which summarizes the salient time limitations which are applicable to the appellate process. Again, the timetable should not be used as a substitute for consulting the applicable rules, but it does provide a general outline and limited index to the most frequently applicable time limitations.

Appendix II consists of forms which may be used by practitioners in drafting pleadings appropriate to an appeal. However, they are not intended to be a substitute for careful drafting of appellate pleadings. No attempt is made to furnish a manual of forms.

The forms and the timetable are intended for illustration only and have not been adopted as official documents.

**APPENDIX I
TIMETABLE FOR LAWYERS ON APPEAL**

(Unofficial)

(w/in = within; N of A = Notice of Appeal;
D. Ct. = District Court; S. Ct. = Supreme Court;
Tr. Ct. = Trial Court; App. Ct. = Appellate Court)

Procedure	Filed in:	When	Served
Notice of Appeal (Wyo. R. App. P. 2.01, 2.02, 2.03)	Tr. Ct.	w/in 30 days after entry of judgment, or appealable order; or w/in 15 days thereafter for excusable neglect; or w/in 15 days after original notice filed, for any other party; or w/in 30 days from	By appellant

		entry of order made on motions 50(b), 52(b), and 59 W.R.C.P.; 29(c), 33, and 34 W.R. Cr. P; or w/in 30 days after above motions deemed denied	
Transcript Ordered From Reptr. (2.05)		Concurrently with filing N of A	Evidence of order filed or endorsed on N of A
Designate transcript (2.05, 3.02)	Tr. Ct.	With N of A	Appellant
Bond for Costs (4.01)	Tr. Ct.	When N of A filed	
Supersedeas Bond (4.02)	Tr. Ct.	At or before filing N of A	
Docket Fee (2.09)	Tr. Ct.	With N of A	Appellant
Designate Record (3.05)	Tr. Ct.	With brief With response brief With reply brief	Appellant Appellee Appellant
Statement of Evidence when no transcript (3.03)	Tr. Ct.	Appellant prepares <u>filed in Tr. Ct. w/in 35 days filing N of A</u>	Serve on appellee
		w/in 15 days after service appellee may amend or object	Serve on appellant
Transmitting Record (3.05)	Tr. Ct. Clerk	w/in 5 working days after reply brief filed or due	To clerk of App. Ct.
Time for filing briefs (7.06)	App. Ct.	w/in 45 days after service of notice case docketed in App. Ct. w/in 45 days after service of appellant brief, appellee must file w/in 15 days after service of appellee brief, appellant may file reply brief	Served by appellant, see 1.01 Served by appellee, see 1.01 See 1.01
Amicus Curiae Brief (7.12)	App. Ct.	Filed w/in 11 days after principal brief of party being supported, or 11 days after first brief of any party	
Settings (8.01)			
Expedited docket	App. Ct.	App. Ct. clerk will notify by mail	All counsel
Objection to expedited docket	Any party	w/in 15 days after entry of order assigning to expedited docket	

Oral argument	App. Ct.	Clerk will notify by mail or telephone	All counsel
Rehearing (9.07) (9.08)	App. Ct.	w/in 15 days after decision	Serve on opposing party, see 1.01
Answer to application for rehearing (9.09) (9.09)	App. Ct.	w/in 15 days after rehearing granted	Serve applicant, see 1.01
Mandate (9.10) (9.10)	App. Ct.	w/in 15 days after decision, or after denial of rehearing	To all counsel
Certification of questions of law (11)			
Briefs (11.06)	App. Ct.	w/in 45 days from notice to all parties of agreement to answer w/in 45 days from service of appellant brief	Appellant Opposing party
Administrative agency review (12)			
Petition Filed (12.04)	D. Ct.	w/in 30 days after agency written notice of decision; or w/in 30 days thereafter if D. Ct. extends time period (Appellant orders transcript when petition filed)	
Record transmitted (12.07)	D. Ct.	w/in 60 days after service of petition or as allowed by D. Ct., agency shall transmit record to D. Ct. Notice of transmittal by agency, by personal letter to judge and notice to all parties.	
Motion for certification (12.09)	D. Ct.	w/in 30 days of fil- ing petition for review	Any party
Response to motion for certification (12.09)	D. Ct.	w/in 15 days from service of motion	Any party
Certification (12.09)	D. Ct.	Not later than 60 days after petition for review filed, but not sooner than 15 days after motion for certification filed	
Writ of Review (13)			
Petition (13.03)	App. Ct.	w/in 15 days of en- try of order from which review is	Any party

Response to petition Time Computation (14)	App. Ct.	sought w/in 15 days of fil- ing of petition	Any party
Reinstatement af- ter dismissal (15)	App. Ct.	w/in 15 days after dismissal w/in 15 days of service opponent may serve objections and briefs	
Motions (16)	App. Ct.	Copy of motion and memo of authorities shall be served on adverse party or attorney w/in 15 days of service, any response to motion	

*****.