WYOMING RULES OF CRIMINAL PROCEDURE

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Rule 1. SCOPE AND DEFINITION

(a) Scope. These rules govern the procedures to be followed in criminal proceedings in district courts and proceedings before justices of the peace, district court commissioners and other committing magistrates in all criminal cases triable in district courts, except as stated in Rule 51.

(b) Definitions.

(1) "Commissioner" means justices of the peace, district court commissioners and such other officers as are authorized by law to commit persons charged with the commission of offenses triable in the district courts.

(2) "Judicial Officer" means justices of the supreme court, district judges and commissioners.

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Rule 2. PURPOSE AND CONSTRUCTION

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

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Rule 3. THE COMPLAINT

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a commissioner.

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Rule 4. WARRANT OR SUMMONS UPON COMPLAINT

(a) Issuance. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the prosecuting attorney a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) Form.

(1) Warrant. The warrant shall be signed by the commissioner and it shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available commissioner.

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

(c) Execution or service; and return.

(1) By Whom. The warrant shall be executed by a sheriff or by some other officer authorized by law. The summons may be served by any person over the age of 21 years appointed by the sheriff.

(2) Territorial Limits. The warrant may be executed or the summons may be served at any place within the jurisdiction of the State of Wyoming.

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

(4) Return. The officer executing the warrant shall make return thereof to the commissioner pursuant to Rule 5. At the request of the prosecuting attorney, any unexecuted warrant shall be returned to the commissioner by whom it was issued and shall be cancelled by him. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the commissioner before whom the summons is returnable. At the request of the prosecuting attorney made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the commissioner to the sheriff or other authorized person for execution or service.

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Rule 5. PROCEEDINGS BEFORE THE COMMISSIONER

(a) Appearance Before the Commissioner. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner. When a person arrested without a warrant is brought before a commissioner, a complaint shall be filed forthwith.

(b) Statement by the Commissioner. The commissioner shall inform the defendant of the complaint against him and of any affidavit filed therewith, of his right to retain counsel, of his right to request the assignment of counsel if he is unable to obtain counsel, and of his right to consult counsel and to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him.

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Rule 6. RIGHT TO ASSIGNMENT OF COUNSEL

(a) Right to Assigned Counsel. Every defendant who is unable to obtain counsel shall be entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before the commissioner or the court through appeal, unless he waives such appointment.

(b) Assignment Procedure. The procedures for implementing the right set out in subdivision (a) shall be those provided by law and by local rules of court established pursuant thereto.

Rule 7. 130-158 PRELIMINARY EXAMINATION

(a) Right to Preliminary Examination, Counsel and Bail. In all cases triable in the district court, except upon indictment, the defendant shall be entitled to a preliminary examination. The commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules.

(b) Procedure. The defendant shall not be called upon to plead at the preliminary examination. If the defendant waives preliminary examination, the commissioner shall forthwith hold him to answer in the district court. If the defendant does not waive examination, the commissioner shall hear the evidence within a reasonable time. The defendant may cross-examine witnesses against him and he may introduce evidence in his own behalf. If from the evidence it appears to the commissioner that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the commissioner shall forthwith hold him to answer in the district court; otherwise the commissioner shall discharge him. The commissioner shall admit the defendant to bail as provided in these rules. After concluding the proceedings the commissioner shall transmit forthwith to the clerk of the district court all papers in the proceeding, including a transcript of docket entries, if any, and any bail taken by him.

Rule 8. BAIL 130-131-132-133-158

(a) Right to Bail.

(1) Before Conviction. A person arrested for an offense not punishable by death shall be admitted to bail. A person arrested for an offense punishable by death may be admitted to bail by any court or judge authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense, except that where the proof is evident or the presumption great a defendant shall not be admitted to bail.

(2) Upon Review. During the pendency of appeal, a judge or justice of a court having jurisdiction shall admit a defendant to bail in such sum as shall be deemed proper in all bailable cases. The judge or justice allowing bail may at any time revoke or amend the order admitting the defendant to bail.

(b) Bail for Witness.

If it appears by the affidavit of the defendant or the prosecuting attorney that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impractical to secure his presence by subpoena, the district court may require him to give bail for his appearance as a witness, in an amount fixed by the court. If the person fails to give bail, the court may commit him to the custody of the sheriff pending final disposition of the proceeding in which the testimony is needed. If a witness is committed for failure to give bail to appear

to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed, the court may discharge the witness.

(c) Terms.

(1) Any person charged with an offense other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the judicial officer determines in the exercise of his discretion that such a release will not reasonably insure the appearance of the person as required. When such a determination is made the judicial officer shall, either in lieu of or in addition to the above methods of relief, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(i) Place the person in custody of a designated person or organization agreeing to supervise him;
(ii) Place restrictions on the travel, association, or place of abode of the person during the period of release;
(iii) Require the execution of an appearance bond in a specified amount and the deposit in cash, or other security as directed, of a sum not to exceed ten per centum of the amount of the bond, such deposit to be returned on the performance of the conditions of release;
(iv) Require the execution of a bail bond with sufficient solvent sureties or the deposit of cash in lieu thereof;
(v) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(2) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(3) A judicial officer authorizing the release of a prisoner under this rule shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

(4) A person for whom conditions of release are imposed and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and a person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours, shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released upon another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer in the county may review such conditions.

(5) A judicial officer ordering the release of a person on any condition specified in this rule may at any time amend his order to impose additional or different conditions of release; provided, that if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on the condition requiring him to return to custody after specified hours, the provisions of subdivision (4) shall apply.

(6) Information stated in or offered in connection with any order entered pursuant to this rule need not conform to the rules pertaining to the admissibility of evidence in a court of law.

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

(e) Forfeiture, Enforcement and Exoneration.

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

(2) Setting aside. The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) Enforcement. When a forfeiture has not been set aside, the court shall on motion enter a judgment of default, and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the district court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served upon the clerk of the court who shall forthwith mail copies to the obligors to their last known addresses.

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

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

(f) Supervision of Detention Pending Trial. The trial court shall exercise supervision over the detention of the defendant and witnesses within the county pending trial for the purpose of eliminating all unnecessary detention.

(g) Nothing contained in this rule shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court. Nor shall anything in this rule interfere with or prevent the exercise by any court of its power to punish for contempt or otherwise as provided by law.

(h) Any accused person aggrieved by the application of this rule may apply for a writ of habeas corpus.

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Rule 9. INDICTMENT AND INFORMATION

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

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

(c) Amendment of Information. An information may be amended in matter of form or of substance at any time before the defendant pleads without leave of court. The court may permit an information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(d) Bill of Particulars. The court for cause may direct the filing of a bill of particulars. A motion for bill of particulars may be made only within ten days after arraignment or at such other time before or after arraignment as may be prescribed by rule or order. The bill of particulars may be amended at any time subject to such conditions as justice requires.

Rule 10. WARRANT OR SUMMONS ON INDICTMENT

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(a) Issuance. Upon the request of the prosecuting attorney the court shall issue a warrant for each defendant named in the indictment. The clerk shall issue a summons instead of a warrant upon the request of the prosecuting attorney or by direction of the court. Upon like request or direction the clerk shall issue more than one warrant or summons for the same defendant. The clerk shall deliver the warrant or summons to the sheriff or other person authorized by law to execute or serve it. If a defendant fails to appear in response to a summons, a warrant shall issue.

(b) Form.

(1) Warrant. The form of the warrant shall be as provided in Rule 4(b)(1) except that it shall be signed by the clerk, it shall describe the offense charged in the indictment and it shall command that the defendant shall be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

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

(c) Execution or Service; and Return.

(1) Execution or Service. The warrant shall be executed or the summons served as provided in Rule 4(c)(1), (2) and (3). A summons to a corporation shall be served by serving a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last address within the state or at its principal place of business elsewhere in the United States. The officer executing the warrant shall bring the arrested person promptly before the court, or for the purpose of admission to bail, before a commissioner.

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

Rule 11. JOINDER OF OFFENSES AND OF DEFENDANTS

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

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

Rule 12. TRIAL TOGETHER OF INDICTMENTS OR INFORMATIONS

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

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Rule 13. RELIEF FROM PREJUDICIAL JOINDER

If it appears that a defendant or the State is prejudiced by a joinder of offenses or of defendants in an indictment or information, or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance, the court may order the prosecuting attorney to deliver to the court for inspection in camera any statements or confessions made by the defendant which the State intends to introduce in evidence at the trial.

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Rule 14. ARRAIGNMENT

Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. The defendant shall be given a copy of the indictment or information before he is called upon to plead.

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Rule 15. PLEAS

A defendant may plead not guilty, not guilty by reason of insanity at the time of the commission of the alleged offense, not triable by reason of present insanity, guilty, or, with the consent of the court, nolo contendere. The court may refuse to accept the plea of guilty, and shall not accept such plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If a defendant refuses to plead or if the court refuses to accept the plea of guilty, or if a defendant corporation fails to appear, the court shall enter a plea of not guilty. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

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Rule 16. PLEADINGS AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIONS

(a) Pleadings and Motions. Pleadings in criminal proceedings shall be the indictment, the information, and the pleas entered pursuant to Rule 15. All other pleas, demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) Motion Raising Defenses and Objections.

(1) Defenses and Objections which may be Raised. Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

(2) Defenses and Objections which must be Raised. Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

(3) Time of Making Motion. The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

(4) Hearing on Motion. A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue. An issue of fact shall be tried by a jury if a jury trial is required by law or the constitution. All other issues of fact shall be determined by the court with or without a jury or on affidavits or in such other manner as the court may direct.

(5) Effect of Determination. If a motion is determined adversely to the defendant, he shall be permitted to plead if he had not previously pleaded. A plea previously entered shall stand. If the court grants the motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new indictment or information.

Rule 17. DEPOSITIONS 136-158

(a) When taken. If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment or information may upon motion of any party and notice to the other parties order that his testimony be taken by deposition and that any designated books, papers or documents or tangible objects, not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct his deposition be taken. After the deposition has been subscribed, the court may discharge the witness.

(b) Notice of taking. The party at whose instance the deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, and for cause shown on notice and hearing, the court may extend or shorten the time for taking the deposition.

(c) Defendant's Counsel and Payment of Expenses. If a defendant is without counsel, the court shall advise him of his right and assign counsel to represent him unless the defendant elects to proceed without counsel or is able to obtain counsel. If it appears that a defendant can not bear the expense of depositions, the court may direct that the expenses of travel and subsistence of the defendant's attorney for attendance at the examination shall be paid by the county. In that event the county shall make payment accordingly.

(d) How taken. A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(e) Use. At the trial or upon any hearing a part or all of a deposition so far as otherwise admissible under the rules of evidence, may be used if it appears: That the witness is dead; or that the witness is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmities; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. A deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) Objections to Admissibility. Objections to receiving in evidence the deposition or part thereof may be made as provided in civil actions.

Rule 18. DISCOVERY AND INSPECTION 137-158

(a) Defendant's Statement; Report of Examinations and Tests; Defendant's Grand Jury Testimony. Upon motion of a defendant, the court may order the attorney for the State to permit the defendant to inspect and copy or photograph any relevant (1) written or recorded statements or confessions made by the defendant or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney, (2) results of reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney, and (3) recorded testimony of a defendant before a grand jury.

(b) Other Books, Papers, Documents, Tangible Objects or Places. Upon motion of a defendant the court may order the prosecuting attorney to permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the State, upon a showing of the materiality to the preparation of his defense, and that the request is reasonable. Except as provided in subdivision (a)(2) this rule does not authorize the discovery or inspection of reports, memoranda or other internal governmental documents made by governmental agents in connection with the investigation or prosecution of the case, or of statements made by State witnesses or prospective State witnesses (other than the defendant) to governmental agents except as provided in subdivision (c) of this rule.

(c) Demands for Production of Statements and Reports of Witnesses. 2-1461

(1) After a witness called by the State has testified on direct examination, the court shall, on motion of the defendant, order the State to produce any statement (as hereinafter defined) of the witness in the possession of the State which relates to subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

(2) If the State claims that any statement ordered to be produced under this subdivision contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the State to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to the adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the State, and in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to the defendant pursuant to this rule, the court in its discretion, upon application of the defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant in his preparation for its use in the trial.

(3) If the State elects not to comply with an order of the court under subdivision (1) or (2) hereof to deliver to the defendant any such statement or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

(4) The term "statement" as used in subdivisions (1) and (2) and (3) of this rule relating to any witness called by the State, means: (a) A written statement made by said witness and signed or otherwise adopted or approved by him; or (b) a stenographic, mechanical, electrical or other recording or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the State and recorded contemporaneously with the making of such oral statement.

(d) Discovery by the State. If the court grants relief sought by the defendant under subdivision (a)(2) or subdivision (b) of this rule, it may, on motion of the State, condition its order by requiring that the defendant permit the State to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects or copies or portions thereof, which the defendant intends to produce at the trial and which are within his possession, custody or control, upon a showing of materiality to the preparation of the State's case, and that the request is reasonable. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda or other internal defense documents made by the defendant or his attorneys or agents in connection with the investigation or defense of the case, or statements made by the defendant, or by State or defense witnesses, or by prospective State or defense witnesses, to the defendant, his agents or attorneys.

(e) Time, Place and Manner of Discovery and Inspection. An order of the court granting relief under this rule shall specify the time and place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

(f) Protective Orders. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by the State the court may permit the State to make such showing, in whole or in part, in the form of a written statement to be inspected by the court in camera. If the court enters an order granting relief following a showing in camera, the entire text of the statement shall be sealed and preserved in the record of the court to be made available to the appellate court in the event of an appeal by the defendant.

(g) Time of Motions. The motion under this rule may be made only within ten days after arraignment or at such reasonable later time as the court may permit. The motion shall include all relief sought under this rule. A subsequent motion may be made only upon a showing of cause why such motion would be in the interest of justice.

(h) Continuing Duty to Disclose. Failure to Comply. If, subsequent to compliance with an order issued pursuant to this rule, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection under the rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional material. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit discovery or inspection of materials not previously disclosed, grant a continuance or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

Rule 19. PRETRIAL CONFERENCE 139-158

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

Rule 20. SUBPOENA 139 140-158

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

(b) Defendants Unable to Pay. The court shall order at any time that a subpoena be issued for service on a named witness upon an ex parte application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the State.

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

(d) Service. A subpoena may be served by the sheriff, by his deputy or by any other person appointed by the sheriff who is not a party and who is not less than ~~twenty-one~~ 21 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for one day's attendance and the mileage allowed by law. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the State or an indigent defendant.

(e) Place of Service. A subpoena requiring the appearance of a witness at hearing or trial may be served at any place within the state.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued or of the court for the district in which it issued if it was issued by a commissioner.

Rule 21. PLACE OF PROSECUTION AND TRIAL

140 -158

Except as otherwise permitted by statute or by these rules, the prosecution shall be had in the county in which the offense is alleged to have been committed.

Rule 22. TRANSFER FROM THE COUNTY FOR PLEA AND SENTENCE

140 -158

(a) Indictment or Information Pending. A defendant arrested or held in a county other than that in which the indictment or information is pending against him may state in writing that he wishes to plead guilty or nolo contendere, to waive preliminary examination and trial in the county in which the indictment or information is pending and to consent to disposition of the case in the county in which he was arrested or is held, subject to the approval of the prosecuting attorney for each county. Upon receipt of the defendant's statement and the written approval of the prosecuting attorneys, the clerk of the court in which the indictment or information is pending shall transmit the papers in the proceeding or certify copies thereof to the clerk of the court for the county in which the defendant is held and the prosecution shall continue in that county.

(b) Indictment or Information Not Pending. A defendant arrested on a warrant issued upon a complaint in a county other than the county of arrest may state in writing that he wishes to plead guilty or nolo contendere, to waive preliminary examination and trial in the county in which the warrant was issued and to consent to disposition of the case in the county in which he was arrested, subject to the approval of the prosecuting attorney for each county. Upon receipt of the defendant's statement and of the written approval of the prosecuting attorneys and upon the filing of an information or the return of an indictment, the clerk of the court for the county in which the warrant was issued shall transmit the papers in the proceedings, or certified copies thereof, to the clerk of the court for the county in which the defendant was arrested and the prosecution shall continue in that county.

(c) Effect of Not Guilty Plea. If after the proceeding has been transferred pursuant to subdivision (a) or (b) of this rule, the defendant pleads not guilty, the clerk shall return the papers to the court in which the prosecution was commenced and the proceedings shall be restored to the docket of that court. The defendant's statement that he wishes to plead guilty or nolo contendere shall not be used against him.

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

Rule 23. TRANSFER FROM THE COUNTY FOR TRIAL OR FOR CHANGE OF JUDGE

141-158

(a) For Prejudice in the County. The court upon motion of the defendant made at least 15 days prior to the date set for trial, shall transfer the proceeding as to him to another county, whether or not such county is specified in the defendant's motion, if the court is satisfied that there exists within the county where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial in that county.

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

(c) Only One Change Granted. Nothing in this rule shall authorize the granting of more than one change of venue but both sides shall be heard to urge their objections to any county in the first instance, and change of venue shall be to the most convenient county to which the objections of the parties do not apply or are the least applicable.

(d) For Bias or Prejudice of Presiding Judge. The State or the defendant within the time fixed in (a) above may move for a change of district judge on the ground that the presiding judge is biased or prejudiced against the movent and thereupon such judge shall forthwith call in another district judge to whom the same objections do not apply to preside in the case; but no more than one change of judge on behalf of either party shall be granted.

Rule 24. TRIAL BY THE JURY OR BY THE COURT

141-158

(a) Trial by Jury. Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the State.

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

Rule 25. TRIAL JURORS

141-142-158

(a) Examination of Jurors. The parties, or their attorneys, may conduct the examination of prospective jurors, but such examination shall be under the supervision and control of the court, and the court may itself conduct such further examination as it deems proper.

(b) Peremptory Challenges. In every case, including the selection of alternate jurors, the State shall be entitled to the aggregate number of peremptory challenges to which the defendant or defendants are entitled. If the offense charged is punishable by death, each defendant shall be entitled to 12 peremptory challenges. If the offense charged is punishable by imprisonment for more than one year, each defendant shall be entitled to 8 peremptory challenges. If the offense charged is a misdemeanor, each defendant shall be entitled to 4 peremptory challenges.

(c) Alternate Jurors. Immediately prior to the selection of the jury, the court may direct that one or two jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their

duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges of the principal jurors. An alternate juror who does not replace a principal juror shall be discharged when the jury retires to consider its verdict. If either one or two alternate jurors are called, each defendant shall be entitled to one peremptory challenge in addition to those otherwise allowed by this rule. The additional peremptory challenge may be used only against one alternate juror, and the other peremptory challenges allowed by this rule shall not be used against the alternates.

142-159

Rule 26. JUDGE; DISABILITY

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

(b) After Verdict or Finding of Guilt. If by reason of absence, death, sickness or other disability, the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

142-159

Rule 27. EVIDENCE

In all trials the testimony of witnesses shall be taken orally in open court unless otherwise provided by law or these rules. The admissibility of evidence and the competency and privileges of witnesses shall be governed, except when otherwise provided by law, or these rules, by the principles of the common law.

142-159

Rule 28. PROOF OF OFFICIAL RECORD

An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

142-143-159

Rule 29. EXPERT WITNESSES AND INTERPRETERS

(a) Expert Witnesses. The court may order the defendant or the State or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference at which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any, and may thereafter be called to testify by the court

or by any party. He shall be subject to cross-examination by each party. The court may determine the reasonable compensation for such a witness and direct its payment out of such funds as may be provided by law. The parties also may call expert witnesses of their own selection.

(b) Interpreters. The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law or as the court may direct.

Rule 30. MOTION FOR JUDGMENT OF ACQUITTAL

143-159

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

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

(c) Motion After Discharge of Jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within seven days after the jury is discharged or within such further time as the court may fix during the seven-day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned, the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

Rule 31. INSTRUCTIONS TO JURY; OBJECTIONS

143-159

Instructions to the jury shall be given and objections thereto made at the time and in the manner provided for the giving of instructions and the making of objections thereto in the Wyoming Rules of Civil Procedure. Opportunity shall be given to make objections out of the hearing and presence of the jury. Copies of requested instructions shall be served on adverse parties.

Rule 32. VERDICT

143-159

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

(b) Several Defendants. If there are two or more defendants, the jury at any time during its deliberations may return a verdict

or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

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

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

Rule 33. SENTENCE AND JUDGMENT

144-159

(a) Sentence.

(1) Imposition of Sentence. Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit defendant, continue or alter the bail. Before imposing sentence the court shall afford counsel an opportunity to speak and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of the punishment.

(2) Notification of Right to Appeal. After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis.

(b) Judgment. A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

(c) Presentence Investigation.

(1) When made. The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless the court otherwise directs.

(2) Report. The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation, or in the correctional treatment of the defendant, and such other information as may be required by the court. The court, before imposing sentence shall disclose to the defendant or his counsel all of the material contained in the report of the presentence investigation and afford an opportunity to the defendant or his counsel to comment thereon. The material disclosed to the defendant or his counsel shall also be disclosed to the attorney for the State.

(d) Withdrawal of Plea of Guilty. A motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment or conviction and permit the defendant to withdraw his plea.

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

(f) Revocation of Probation. The court shall not revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing.

Rule 34. NEW TRIAL

144-145-159

The court on motion of defendant may grant a new trial to him if required in the interests of justice. If trial was by the court without a jury, the court on motion of a defendant for new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within ten days after verdict or finding of guilty or within such further time as the court may fix during the ten-day period.

Rule 35. ARREST OF JUDGMENT

145-159

The court on motion of a defendant shall arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within ten days after verdict or finding of guilty,or after the plea of guilty or nolo contendere, or within such further time as the court may fix during the ten-day period.

Rule 36. CORRECTION OR REDUCTION OF SENTENCE

145-159

The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence. The court may reduce the sentence within 120 ~~one hundred twenty~~ days after the sentence is imposed, or within 120 ~~one hundred twenty~~ days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 ~~one hundred twenty~~ days after entry of any order or judgment of the supreme court having the effect of upholding the judgment of conviction. The court may also reduce a sentence upon revocation of a probation as provided by law.

145-159

Rule 37. CLERICAL MISTAKES

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

145-159

Rule 38. APPEAL

Appeals to the supreme court shall be taken within the time and in the manner provided for the taking of appeals by the Wyoming Rules of Civil Procedure. Appeals from justice court shall be as provided by statute.

145-159

Rule 39. STAY OF EXECUTION AND RELIEF PENDING REVIEW

(a) Stay of Execution.

(1) Death. A sentence of death shall be stayed pending appeal.

(2) Imprisonment. A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. If the defendant is not admitted to bail, the court may recommend to the State that the defendant be retained at a place of confinement near the place of trial or the place where the appeal is to be heard, for a period reasonably necessary to permit the defendant to assist in the preparation of his appeal.

(3) Fine. A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the district court or the supreme court upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs with the clerk of the district court, or to give bond for the payment thereof, or to submit to an examination of assets, and may make any appropriate order to restrain the defendant from dissipating his assets.

(4) Probation. An order placing defendant on probation shall be stayed if an appeal is taken.

(b) Admission to bail. Admission to bail upon appeal shall be as provided in these rules.

146-147-159

Rule 40. SEARCH AND SEIZURE

(a) Authority to Issue Warrant. A search warrant authorized by this rule may be issued by a district judge or commissioner for the jurisdiction wherein the property sought is located.

(b) Grounds for issuance. A warrant may be issued under this rule to search for and seize any property

(1) Stolen or embezzled in violation of law; or

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

(3) Possessed, controlled, or designed or intended for use or which is or has been used in violation of any law; or

(4) When the property or things to be seized consist of any item, or constitute any evidence which tends to show a crime has been committed, or tends to show that a particular person has committed a crime.

(c) Issuance and Contents. A warrant shall issue only on affidavit sworn to before the judge or commissioner and establishing the grounds for issuing the warrant. If the judge or commissioner is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property, naming or describing the person or place to be searched. The warrant shall be directed to any officer authorized to enforce or assist in enforcing the State law. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified. The warrant shall direct that it be served in the daytime, but for good cause shown the warrant may direct that it be served at any time. It shall designate the district judge or the commissioner to whom it shall be returned.

(d) Execution and Return with Inventory. The warrant may be executed and returned only within ten days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge or commissioner shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the district court for the county in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) that there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision on the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence in any hearing or trial. The motion to suppress evidence may also be made in the county where the trial is to be had. The motion shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial.

(f) Return of Papers to Clerk. The judge or commissioner who has issued a search warrant shall attach to the warrant the copy of the return, inventory and all of the papers in connection therewith and shall file them with the clerk of the district court for the county in which the property was seized.

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

Rule 41. CRIMINAL CONTEMPT

147-159

(a) Summary Disposition. A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts, shall be signed by the judge and entered of record.

(b) Disposition on Notice and Hearing. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant, or on application of the prosecuting attorney, or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. Upon arrest the defendant shall be entitled to admission to bail as provided in these rules. If the contempt charge involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

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

Rule 42. PRESENCE OF THE DEFENDANT

147-148-159

The defendant shall be present at the arraignment, at every stage of the trial, including the impaneling of the jury, and the return of the verdict and at the imposition of sentence except as otherwise provided by these rules. In prosecution for offenses not punishable by death, the defendant's voluntary absence after the trial has been commenced in his presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by counsel for all purposes. In prosecutions of offenses punishable by fine or by imprisonment for not more than one year, or both, the court, with the written consent

of the defendant, may permit arraignment, plea, and imposition of sentence in a defendant's absence. The defendant's presence is not required at a reduction of sentence under Rule 36.

Rule 43. TIME

(a) Computation. In computing any period of time, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When a period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes all holidays officially recognized as legal holidays in this state.

(b) Enlargement. When an act is required or allowed to be done at or within a specified time, the court, for cause shown, may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period, permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 30, 34, 35, 36 and 38 except to the extent and under the conditions stated in them.

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

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

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

148-159

Rule 44. MOTIONS

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

148-149-159

Rule 45. DISMISSAL

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

(b) By the Court. If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against the defendant who has been held to answer to the district court, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the indictment, information or complaint.

149-159

Rule 46. SERVICE AND FILING OF PAPERS

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

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

(c) Notice of Orders. Immediately upon the entry of an order made on a written motion subsequent to arraignment, the clerk shall mail to each party a notice thereof and shall make a note on the docket of the mailing. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by Rule 73(a) of the Wyoming Rules of Civil Procedure.

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

149-159

Rule 47. CALENDARS

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

149-159

Rule 48. EXCEPTIONS UNNECESSARY

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the

action which he desires the court to take or his objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

149-159

Rule 49. HARMLESS ERROR AND PLAIN ERROR

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

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

Rule 50. REGULATIONS OF CONDUCT IN THE COURT ROOM

149-159

The taking of photographs in the court room during the progress of judicial proceedings or radio or television broadcasting of judicial proceedings from the court room shall not be permitted by the court.

Rule 51. APPLICATION AND EXCEPTIONS

150-159

(a) In General. These rules do not apply to municipal courts; to appeals to district courts; to misdemeanor proceedings tried in justice of the peace courts; to statutory procedure following an insanity plea; and to procedures following conviction or plea of guilty to certain sex crimes enumerated in § 7-348, W.S.1957 (1967 Cum.Supp.). In proceedings to hold to security of the peace and for good behavior, proceedings for the extradition and rendition of fugitives, and the collection of fines and penalties, these rules shall apply unless in conflict with existing statutes.

(b) Juvenile Proceedings. In all cases involving juveniles, the juvenile court shall, in the exercise of its discretion, determine initially whether these rules shall apply to the juvenile proceedings or whether the proceedings shall be subject to the provisions of the Juvenile Court Act of 1951. In exercising this discretion, the court shall consider whether the behavior, conditions and environment relating to, or the conduct and acts of, the juvenile (1) concern the neglect, dependency or welfare of the juvenile, or (2) constitute violations or attempted violations of any state or local law.

Rule 52. RULES OF COURT

150-159

The Wyoming Judicial Conference may from time to time make and amend rules governing practice in the district courts not inconsistent with the Wyoming Rules of Criminal Procedure or applicable statutes. Copies of rules and amendments so made shall, upon their promulgation, be furnished to the supreme court.

Rule 53. FORMS

150-159

The forms contained in the appendix of forms are illustrative and not mandatory.

Rule 54. EFFECTIVE DATE

15-1-159

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

Rule 55. TITLE

15-1-159

These rules shall be known and cited as the Wyoming Rules of Criminal Procedure, (W.R.Cr.P.).

Rule 56. LAWS SUPERSEDED

15-1-159

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

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7-118 through 7-125
7-127 through 7-134
7-136 through 7-146
7-148 through ~~7-155~~ 7-155
7-157 through 7-160
7-162 through 7-164
7-166 through 7-171
7-173 through 7-178
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APPENDIX OF FORMS

FORM NO. 1.

THE STATE OF WYOMING,	)	Before (Name of Justice)
	)	Justice of the Peace
Plaintiff,	)	
	)	
vs.	)	
	)	
JOHN DOE,	)	CRIMINAL COMPLAINT
	)	
Defendant.	)	Criminal Action No._____

THE STATE OF WYOMING)
) SS:
COUNTY OF _____)

I, Richard Roe, do solemnly swear that on or about the _____ day of _____, 19___ in the County of _____ and State of Wyoming, the said John Doe did unlawfully

(A definite statement of the essential facts, acts or omissions constituting the crime or offense charged, in plain, ordinary and concise language. Probable cause and the facts relied upon to show it must appear from the complaint or affidavits filed with it. See Rules 3 and 4(a). Also state for each count the official or customary citation of the statute, rule or regulation or other provision of the law which the defendant is alleged therein to have violated.)

contrary to the form of the statute in such case made and provided and against the peace and dignity of the State of Wyoming.

Signed Richard Roe

Subscribed and sworn to before me this _____ day of _____, 19___.

_____
Justice of the Peace

FORM NO. 2.

THE STATE OF WYOMING,	)	Before (Name of Justice)
	)	Justice of the Peace
Plaintiff,	)	
	)	
vs.	)	
	)	
JOHN DOE,	)	CRIMINAL WARRANT
	)	
Defendant.	)	Criminal Action No. _____

THE STATE OF WYOMING)
) SS:
COUNTY OF _____)

To The Sheriff or any Constable of said County, Greeting:

Whereas Richard Roe has this day complained to me, on oath, that John Doe did on or about the _____ day of _____, 19__, in the county and state aforesaid

(Describe the offense charged in the complaint.)

and prayed that the said John Doe might be arrested and dealt with according to law. Now, therefore, in the name of the State of Wyoming, you are hereby commanded forthwith to apprehend the said John Doe and bring _____ before me to be dealt with according to law.

Given under my hand this _____ day of _____ 19__.

_____
Justice of the Peace

FORM NO. 3.

THE STATE OF WYOMING)	IN THE DISTRICT COURT
) ss:	
COUNTY OF _____)	_____ JUDICIAL DISTRICT
THE STATE OF WYOMING,)	Criminal Action No._____
Plaintiff,)	
vs.)	INFORMATION
JOHN DOE,)	
Defendant)	

Comes Now A.B., County and Prosecuting Attorney of the County of _____and State of Wyoming, and in the name and by the authority of the State of Wyoming informs the court and gives the court to understand that John Doe late of the county aforesaid, on the ____ day of _____, 19__, in the County of _____ in the State of Wyoming, did unlawfully

(A definite statement of the essential facts, act or ommissions constituting the crime or offense charged, in plain, ordinary and concise language. Also state for each count the official or customary citation of the statute, rule or regulation or other provision of the law which the defendant is alleged therein to have violated.)

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Wyoming.

_____
County and Prosecuting Attorney of the County of _____, State of Wyoming

THE STATE OF WYOMING)
) ss:
COUNTY OF _____)

I, _____, County and Prosecuting Attorney of the County of _____, State of Wyoming, do solemnly swear that I have read the above and foregoing information by me subscribed, that I know the contents thereof, and that the facts therein stated are true (or that I have been reliably informed and verily believe the facts therein stated to be true.) So help me God.

_____
County and Prosecuting Attorney of the County of _____, State of Wyoming

Sworn to before me and signed in my presence this ___ day of _____, 19__, and I do hereby so certify.

_____
Clerk of the District Court

Defendant pleads _____.
Dated this ___ day of _____, 19_____.

_____
J U D G E

FORM NO. 4.

153

THE STATE OF WYOMING)
) SS:
COUNTY OF _____)

IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

THE STATE OF WYOMING, Plaintiff, vs. JOHN DOE, Defendant.	)	SUMMONS Criminal Action No. _____

TO JOHN DOE:

You are hereby summoned to appear before the District Court for the _____Judicial District, State of Wyoming, County of _____, at the courthouse thereof in the City of _____, on the _____ day of _____, 19__, at _____ o'clock ____ M. to answer to (Describe the offense charged in the complaint or information.)

Dated this _____ day of _____, 19__.

_____
Clerk of the District Court

FORM NO. 5.

153

THE STATE OF WYOMING)
) SS:
COUNTY OF _____)

IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

THE STATE OF WYOMING,

Plaintiff,

vs.

JOHN DOE,

Defendant.

MOTION BY DEFENDANT TO DISMISS THE INFORMATION

Criminal Action No. _____

The defendant moves that the information be dismissed on the following grounds:

1. The court is without jurisdiction because the offense, if any, is cognizable only in the District Court of the _____ Judicial District, _____ County, State of Wyoming.

2. The information does not state facts sufficient to constitute an offense against the State of Wyoming.

(Any other grounds upon which the defendant desires to move that the information be dismissed.)

Dated this _____ day of _____, 19__.

_____
Attorney for the Defendant

FORM NO. 6. 154

THE STATE OF WYOMING)
) SS:
COUNTY OF _____)

IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

THE STATE OF WYOMING,

Plaintiff,

vs.

JOHN DOE,

Defendant.

SUBPOENA

Criminal Action No. _____

To the Sheriff of _____ County, Wyoming, Greeting:

You are hereby commanded to notify _____ to be and appear at a term of the District Court of the _____ Judicial District of the State of Wyoming, to be held in the City of _____, County of _____, in said state, on the _____day of _____, 19__, at _____ o'clock _____M., then and there to testify as a witness on behalf of _____ in a cause now pending in said court, wherein THE STATE OF WYOMING is plaintiff, and John Doe is defendant and this you are not to omit under penalty of the law.

WITNESS, the Clerk of said Court, and the seal thereof, this _____ day of _____, 19__.

_____
Clerk of the District Court

FORM NO. 7. 154-155

THE STATE OF WYOMING)
) SS:
COUNTY OF _____)

IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

THE STATE OF WYOMING,

Plaintiff,

vs.

JOHN DOE,

Defendant.

APPEARANCE BOND

Criminal Action No. _____

KNOW ALL MEN BY THESE PRESENTS, that we, John Doe as principal, and (John Brown) AND (Mary Brown), as sureties, are held and firmly bound unto the State of Wyoming, in the penal sum of _____ Dollars ($_____) for the payment of which well and truly to be made we hereby bind ourselves, our heirs, executors and assigns, jointly, severally and firmly by these presents.

The condition of this bond is that the defendant is to appear in the District Court of the _____ Judicial District, in the City of _____, County of _____, State of Wyoming, in accordance with all orders and directions of the court relating to the appearance of the defendant before the court in the above entitled case; and if the defendant appears as ordered, then this bond to be void, but if the defendant fails to perform this condition or appear as ordered, payment of the amount of the bond shall be due forthwith. If the bond is forfeited and the forfeiture is not set aside or remitted, judgment may be entered upon motion in the said district court against each debtor jointly and severally for the amount above stated together with interest and costs, and execution may be issued or payment secured as provided by the Wyoming Rules of Criminal Procedure and by other laws of the State of Wyoming.

WITNESS our hands and seals this _____ day of _____, 19__.

_____ (Seal)
Principal

_____ (Seal)
Surety

_____ (Seal)
Surety

I approve the sufficiency of the above bond this _____ day of _____, 19__.

_____
Clerk of the District Court

JUSTIFICATION OF SURETIES

I, the undersigned surety, on oath say that I reside at _____; and that my net worth is the sum of _____ Dollars ($_____).

I further say that (A statement of additional justification if the commissioner or court so directs.)

_____
Surety

Sworn and subscribed to before me this _____ day of _____, 19__, at _____.

_____
Clerk of the District Court

I, the undersigned surety, on oath say that I reside at _____; and that my net worth is the sum of _____ Dollars ($_____).

I further say that (A statement of additional justification if the commissioner or court so directs.)

_____
Surety

Sworn and subscribed to before me this _____ day of _____, 19__, at _____.

_____
Clerk of the District Court

FORM NO. 8. 155

THE STATE OF WYOMING)
) SS:
COUNTY OF _____)

IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

THE STATE OF WYOMING,)
)
Plaintiff,) MOTION IN ARREST OF JUDGMENT
)
vs.)
)
JOHN DOE,)
)
Defendant.) Criminal Action No. _____

The defendant moves the court to arrest the judgment for the following reasons:

1. The information does not state facts sufficient to constitute an offense against the State of Wyoming.

2. This court is without jurisdiction of the offense, in that the offense, if any, was not committed in this county or district.

Dated this _____ day of _____, 19__.

_____
Attorney for the Defendant

FORM NO. 9. 186

THE STATE OF WYOMING)
) SS:
COUNTY OF _____)

IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

THE STATE OF WYOMING,

Plaintiff,

vs.

JOHN DOE,

Defendant.

MOTION FOR NEW TRIAL

Criminal Action No. _____

The defendant moves the court to grant him a new trial for the following reasons:

1. The court erred in denying defendant's motion for acquittal at the conclusion of the evidence.

2. The verdict is contrary to the weight of the evidence.

3. The verdict is not supported by substantial evidence.

4. The court erred in sustaining objections to questions addressed to the witness Richard Roe.

5. The court erred in admitting testimony of the witness Richard Roe to which objections were made.

6. The court erred in charging the jury and in refusing to charge the jury as requested. (Set out instructions.)

7. The court erred in denying the defendant's motion for a mistrial.

(Any other grounds relied upon for a new trial.)

Dated this _____ day of _____, 19__.

_____
Attorney for Defendant

FORM NO. 10.

THE STATE OF WYOMING)
) ss:
COUNTY OF_____)

IN THE DISTRICT COURT
_____JUDICIAL DISTRICT

STATE OF WYOMING,	)	SEARCH WARRANT
	)	
Plaintiff,	)	
	)	
-vs-	)	Criminal Action No._____
	)	
JOHN DOE,	)	
	)	
Defendant.	)	

Affidavit having been made before me by_____ that he has reason to believe that on the premises known as _____Street, in the City of _____, County of _____, State of Wyoming, there is now being concealed certain property, namely, (describe with particularity the property and in conformance with the rule on search warrants), and as I am satisfied that there is probable cause to believe that the said property is being concealed on the premises above described. (State the grounds of probable cause)

You are hereby commanded to search the place named for the property specified, serving this warrant and making the search _____*, and if the property be found there to seize it, prepare a written inventory of the property seized and bring the property before me.

Dated this _____ day of _____, 19___.

_____
Title of Officer Issuing Search Warrant

*See Rule 40(c) for time of search.

FORM NO. 11.

157

THE STATE OF WYOMING)	IN THE DISTRICT COURT
) ss:	
COUNTY OF _____)	_____JUDICIAL DISTRICT
THE STATE OF WYOMING,)	
)	
Plaintiff)	MOTION FOR THE RETURN OF
)	SEIZED PROPERTY AND THE
vs.)	SUPPRESSION OF EVIDENCE
)	
JOHN DOE,)	Criminal Action No._____
Defendant.)	

John Doe hereby moves this court to direct that certain property of which he is the owner, a schedule of which is annexed hereto, and which on the ___ day of _____, 19____, at the premises known as _____Street, in the City of _____, in the County of _____, State of Wyoming, was unlawfully seized and taken from him by a Deputy Sheriff of the County of _____, State of Wyoming, (Give name of deputy, if known, and if unknown, so state) be returned to him and that it be suppressed as evidence against him in any criminal proceeding.

The petitioner further states that the property was seized against his will and without a search warrant.

Defendant further moves that any and all testimony in regard to said property, and testimony or evidence based upon said unlawful search and seizure be likewise suppressed as evidence against him.

Dated this _____ day of _____, 196____.

_____
Attorney for Petitioner