

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2019

In the Matter of Amendments to)
Rule 40.1 of the Wyoming)
Rules of Civil Procedure)

**ORDER AMENDING RULE 40.1 OF THE WYOMING
RULES OF CIVIL PROCEDURE**

The Permanent Rules Advisory Committee, Civil Division, and the Board of Judicial Policy and Administration have recommended that this Court amend Rule 40.1 of the Wyoming Rules of Civil Procedure. This Court finds the proposed amendments should be adopted. It is, therefore,

ORDERED that the amendments to Rule 40.1 of the Wyoming Rules of Civil Procedure, attached hereto, be and hereby are adopted by the Court to be effective July 1, 2019; 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 2nd day of April, 2019.

BY THE COURT:

/s/

MICHAEL K. DAVIS
Chief Justice

Wyoming Rules of Civil Procedure

Rule 40.1. Transfer of trial and change of judge.

(b) *Change of Judge.* —

(1) *Peremptory Disqualification.* —

~~(A) *Motion.* A district judge may be peremptorily disqualified from acting in a case by the filing of a motion requesting that the judge be so disqualified.~~

~~(B) *Time.*~~

~~(i) *Motion by Plaintiff.* The motion designating the judge to be disqualified shall be filed by the plaintiff within five days after the complaint is filed; provided, that in multi-judge districts, the plaintiff must file the motion to disqualify the judge within five days after the name of the assigned judge has been provided by a representative of the court to counsel for plaintiff by personal advice at the courthouse, telephone call, or a mailed notice.~~

~~(ii) *Motion by Defendant.* The motion shall be filed by a defendant at or before the time the first responsive pleading is filed by the defendant or within 30 days after service of the complaint on the defendant, whichever first occurs, unless the assigned judge has not been designated within that time period, in which event the defendant must file the motion within five days after the name of the assigned judge has been provided by a representative of the court to counsel for the defendant by personal advice at the courthouse, telephone call, or a mailed notice.~~

~~(iii) *Parties Added Later.* One made a party to an action subsequent to the filing of the first responsive pleading by a defendant cannot peremptorily disqualify a judge.~~

~~(C) *One Time Challenge.* In any matter, a party may exercise the peremptory disqualification only one time and against only one judge.~~

~~(D) *Criminal and Juvenile Proceedings.* This rule, and the procedures set forth herein, shall not apply to criminal cases or proceedings in juvenile court.~~

(A) *Motion.* — A party may peremptorily disqualify a district judge from acting in a case by filing a motion to disqualify the assigned judge.

(B) *Time for Filing Motion by Plaintiff.* The motion shall be filed no later than fourteen (14) days after:

(i) the entry of a notice assigning the judge as described in sub-section (H)

or

(ii) the entry of an order re-assigning the matter to another judge following the filing of a motion by a defendant under subsection (b)(1)(C), whichever occurs later.

(C) *Time for Filing Motion by Defendant.* The motion shall be filed no later than:

(i) The time of filing defendant's first responsive pleading or W.R.C.P. 12 motion; or

(ii) Fourteen (14) days after the entry of an order re-assigning the matter to another judge following the filing of a motion by a plaintiff under subsection (b)(1)(B) or by a co-defendant under subsection (b)(1)(C), which ever occurs later.

(D) Parties Added Later. One added as a party to an action after the filing of the first responsive pleading or W.R.C.P. 12 motion by a defendant cannot peremptorily disqualify a judge.

(E) Subsequent Motions or Additional Claims. No party may move to disqualify a judge peremptorily upon the filing of any additional claims, whether counterclaims, crossclaims, or otherwise, or upon subsequent motions filed in the same docket number.

(F) One Time Challenge. In any matter, a party may exercise the peremptory disqualification only one time and against only one judge.

(G) Criminal and Juvenile Proceedings. This rule, and the procedures set forth herein, shall not apply to criminal cases or proceedings in juvenile court.

(H) Initial Notice of Assignment. No later than five (5) days after a complaint is filed, the clerk of court shall enter a notice of assignment of judge.

(I) Conduct of Proceedings. Unless otherwise ordered by the newly assigned District Judge, all proceedings, except for final trial on the merits, may be conducted by telephone or videoconference.

Advisory Notes: Subsection (E) clarifies that parties may not peremptorily disqualify a judge after the judge has already made any decision in the case. *In the Matter of Estate of Meeker*, 2017 WY 75, ¶ 19, 397 P.3d 183, 188 (Wyo. 2017), the Wyoming Supreme Court held that a party making a will contest could disqualify a judge under the rule because the will contest was a separate action from the pending probate matter. The Wyoming Supreme Court has also held that a custody modification petition, even though filed under the same docket number as the original divorce action, “is considered a separate and distinct proceeding.” *Goss v. Goss*, 780 P.2d 306, 310 (Wyo. 1989). However, in denying a petition for writ of review, the Wyoming Supreme Court in *Hendrickson v. Casey*, Case No. 02-140, held that a party to a modification petition could not peremptorily disqualify the judge who heard the initial custody case because the judge had “presided over prior modification proceedings.” Subsection (E) clarifies that a party may not seek a different judge when seeking to modify an order entered by a judge who had not been disqualified at the start of the case.

Although this Rule does not apply to Criminal and Juvenile proceedings, it does apply to all other original proceedings before the District Courts whether initiated by a “Petitioner,” a “Movant,” or otherwise.
