

# **TABLE OF CONTENTS**

**Current Officers and President**

**Credits**

**An Informal History and a Formal Acknowledgement**

**Role and Responsibilities of the Municipal Judge**

## **CHAPTERS**

### **CHAPTER 1        BEFORE TRIAL**

- 1.1    Initiation of Case
- 1.2    Jurisdiction
- 1.3    Initial Appearance, Arraignment and Pleas
- 1.4    Pretrial Release
- 1.5    Payment of Fines, Costs or Forfeitures of Bail in Lieu of Appearance
- 1.6    Speedy Trial
- 1.7    Pretrial Motions
- 1.8    Right to Appointment of Competent Counsel
- 1.9    Presence of the Defendant
- 1.10   Subpoena
- 1.11   Pretrial Conference
- 1.12   Deferred Prosecution

**CHAPTER 2 TRIAL**

- 2.1 Non-Jury Trial Outline---No Attorneys Present
- 2.2 Non-Jury Trial Outline—Attorneys Present
- 2.3 Jury Trial Checklist
- 2.4 Jury Trial Procedure Outline

**CHAPTER 3 AFTER TRIAL**

- 3.1 Acquittal
- 3.2 Motion for Acquittal after Jury Trial
- 3.3 Judgment and Sentence; – Rule 32, W.R.Cr.P.
- 3.4 New Trial - Rule 33, W.R.Cr.P.
- 3.5 Arrest of Judgment – Rule 34, W.R.Cr.P.
- 3.6 Correction or Reduction of Sentence – Rule 35, W.R.Cr.P.
- 3.7 Clerical Mistakes – Rule 36, W.R.Cr.P.
- 3.8 Stay of Execution of Sentence – Rule 38, W.R.Cr.P.
- 3.9 Criminal Appeals
- 3.10 Enforcement of Penalty

**CHAPTER 4 SEARCH WARRANTS**

- 4.1 Authoritative Basis
- 4.2 Who May Issue Search Warrants
- 4.3 Grounds for Issuance
- 4.4 Issuance of a Warrant
- 4.5 Confidentiality of Information
- 4.6 Execution and Return with Inventory

4.7 Suppression Hearings

**CHAPTER 5 CONTEMPT OF COURT**

5.1 Nature and Definition

5.2 Direct Contempt

5.3 Indirect contempt

5.4 Procedure

5.5 Penalty

5.6 Remedial Sanctions

**CHAPTER 6 RECORDS MANAGEMENT**

6.1 Records Management Instructions and Information for Municipal Courts

**CHAPTER 7 CLERK OF COURT**

7.1 Duties of the Clerk

7.2 Wyoming State Statutes

7.3 Wyoming Court Rules

**CHAPTER 8 JUVENILES IN MUNICIPAL COURT**

**CHAPTER 9 MEDIA AND COURT REPORTERS**

9.1 Media access to Courts – Rule 53, W.R.Cr.P

9.2 Court Reporters – Rule 55(b), W.R.Cr.P

**APPENDIX - FORMS**

**APPENDIX – GLOSSARY OF TERMS**

**APPENDIX - JUDICIAL CONDUCT**

**APPENDIX – JURY INSTRUCTIONS**

**APPENDIX - OATHS**

**Wyoming Conference of Municipal Courts  
Bench Book Committee  
May 2009**

**Thomas H. Jordan, Chairman**  
Municipal Judge - Town of Jackson  
Post Office Box 1687  
Jackson, Wyoming 83001  
307-733-1325

**J. Michael Lamp**  
Municipal Judge - City of Kemmerer,  
Towns of Opal, LaBarge, Marbleton and Big Piney  
234 Wyoming Highway 233  
Kemmerer, WY 83101  
307-828-2350

**Michael H. Roy**  
Municipal Judge - Town of Glenrock  
Post Office Box 417  
Glenrock, Wyoming 82637  
307-436-9441

**Mary M. Hupy**  
Municipal Judge - City of Buffalo  
46 North Main Street  
Buffalo, Wyoming 82834  
307-684-5566

**Mark McDonald**  
Municipal Judge - City of Wheatland  
600 9<sup>th</sup> Street  
Wheatland, Wyoming 82201  
307-322-4929

**Patrick F. Crow, WCMC President**  
Municipal Judge - City of Newcastle - Town of Moorcroft  
Municipal Courts  
15 South Sumner Avenue  
Newcastle, Wyoming 82701  
307-746-2772



## **AN INFORMAL HISTORY AND A FORMAL ACKNOWLEDGMENT**

Many years ago there was an organization called the *Wyoming Association of Judges*. Members consisted of municipal, justice of the peace, and county court judges. This organization later came to be called the *Wyoming Association of Judges of Courts of Limited Jurisdiction*; and still later, the *Wyoming Conference of Special Court Judges* (much easier to remember than the organization's previous name). Somewhere along the way justice of the peace courts were abolished, and county courts became circuit courts. Then sometime around the fall of 2003 or spring 2004, the circuit court judges made a decision to leave the ranks of the W. C. S. C. J. and join up with the district court judges. There was much speculation whether the W. C. S. C. J. would be able to survive and continue. What was left of the organization's executive committee made a bold decision, and decided to go ahead with the annual training conference scheduled for May 2004 in Lander. Phone calls were made, letters were mailed and e-mails were sent out, informing the municipal court judges and clerks that if they wanted to see their organization and the annual training conferences continue, they needed to show up and say so.

The May 2004 training conference and business meeting were well attended. It was there in the meeting room of the Lander Best Western Motel that an overwhelming majority of the municipal judges present voted to continue a judicial organization, to be known as the *Wyoming Conference of Municipal Courts*, and to include municipal court clerks as full-fledged, voting members of the Conference (Wyoming is, after all, the Equality State).

What does this have to do with the *Bench Book*? Quite a lot, actually. The original *Bench Book* was designed and published in the 1980's; the second edition in 1991. Many judges and clerks have commented that the *Bench Book* is a valuable reference tool, especially for new judges and clerks. By 2004 the *Bench Book* was in need of updating. After all, we were now in the computer age (W. C. M. C. even has its own website!). With the major restructuring of the organization into the *Wyoming Conference of Municipal Courts*, the *Book* needed to be tailored to municipal courts. This has been accomplished through the dedicated efforts of the Bench Book Committee Members listed above.

We would be remiss if we did not recognize and credit the efforts of those who created the original and second editions of the Bench Book, and provided us an example and a foundation upon which to build. The current Bench Book Committee would therefore like to acknowledge the following individuals:

Hunter Patrick, Chairman  
Margie Meacham  
Fred Berry  
Robert Brodie  
Gary Hartman  
Ronald Jurovich  
Arlene Carlton  
Gayle R. Stewart  
Ted Fetter  
Ginger Lee Robinson

Second Edition  
Bench Book Committee – June 1991  
Wyoming Association of Judges of Courts of Limited Jurisdiction

Jim Allison, Chairman  
Robert B. Denhardt  
Ronald E. Waugh  
Brad Cary  
Louis Walrath  
Paul Jarvis  
Carol Roberts

## **Role and Responsibilities of the Municipal Court Judge**

“Four things belong to a judge:  
To hear courteously,  
To answer wisely,  
To consider soberly,  
And to decide impartially.”  
Socrates

Since ancient times, judges have been called upon to be arbiters, to settle disputes between adversaries, to rule on matters of law, and to see to it that justice was done. And although our duties in this day and age may be more complex, and certainly involve more technology than those of our predecessors, there are judicial responsibilities that remain consistent through the ages.

A judge must acquire a different perspective and attitude than what is acceptable for the typical citizen in conducting everyday affairs. Judicial duties must be performed with impartiality, objectivity, diligence and integrity. It is the judge’s responsibility to provide a forum for a fair trial or hearing by allowing all parties to present their sides of the dispute within the framework established by procedural and evidentiary rules. The judge must also administer and control courtroom activities to ensure appropriate decorum, behavior, and respect for the law and adversarial process.

As judges, we are no longer private citizens. To a certain extent, especially in smaller communities, judges are often under public scrutiny. The public’s impression of justice and its administration is often formed based on a judge’s conduct in and out of the courtroom. This can be particularly challenging for part-time and/or non-lawyer judges who still maintain private pursuits.

There are numerous written works on the subject of judicial conduct. What follows is not an exhaustive or all-inclusive list, but rather a summary of several main points that several of these sources appear to have in common.

- Hear all proceeding fairly and with patience. Do not be swayed by partisan interests, public opinion, or fear of criticism.
- Be faithful to the law, and maintain professional competence in it. (The Wyoming Conference of Municipal Courts and the Wyoming Bar Association offer excellent annual training conferences. There are numerous on-line resources readily available, including Rules of Criminal Procedure, Rules of Evidence, State Statutes, and appellate court decisions.)

- Uphold the integrity and independence of the judiciary. Judges should hold themselves to high standards of conduct, and very carefully guard their integrity and independence. Their decisions must be made “without fear or favor,” based on law, and the testimony and evidence presented.
- Refrain from actions or words that may be perceived as biased or prejudiced. Treat all parties courteously and respectfully. If necessary, advise all court participants that every person in the process will be shown respect and treated with dignity, and that the court will intervene to prevent further commission of biased behavior.
- Conduct the proceedings in an atmosphere of “unhurried and quiet dignity.” If you are a new judge and uncertain how to conduct various courtroom proceedings, visit other courts and observe how experienced judges conduct court business.
- Dress appropriately, and wear the black robe with dignity.
- It is the judge’s responsibility to maintain control of the courtroom for the orderly administration of justice. Some judges have established dress codes that prohibit the wearing of tank tops, halter tops, shorts, hats, caps, offensive T-shirts, and sunglasses in the courtroom.
- Distracting or disruptive behavior such loud conversation, whispering, newspaper or magazine reading, use of vulgar language, eating food, drinking beverages, or talking on cell phones are breaches of courtroom etiquette and should not be tolerated. Consider posting signs advising the public of such rules. Compliance is more likely when notice is given before court appearances are made.
- Use court time efficiently and effectively. Be punctual, observe scheduled court hours, and dispose of court business in a timely manner. Avoid delays, continuances, and extended recesses, except for good cause.
- Refrain from any conduct (judicial or private) that might undermine the ability to remain impartial. Even the appearance or perception of impropriety may undermine the public’s confidence in the judiciary. This includes the appearance of being too friendly with police officers, or creating the impression that the judge favors their testimony. A judge should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- Regulate extra-judicial activities to minimize the risk of conflict with judicial duties.

- Do not engage in inappropriate political activity.
- Refrain from any *ex parte* discussion of a pending case. (Canon 3(B) (7) of the *Wyoming Code of Judicial Conduct* details exceptions to this prohibition.)
- Do not make any public or nonpublic comment about a pending or impending case that could reasonably affect the outcome or impair fairness.
- If a judge has any doubt as to his ability to preside impartially, or if he believes his impartiality can reasonably be questioned, the judge should recuse himself.
- Consider using informational brochures or handouts that explain judicial proceedings, practical tips on how to behave as a litigant, or statements of defendant's rights.
- Check to see that your courtroom facilities are accessible to those with disabilities.
- In conducting bench trials, especially those trials where no attorneys are present, there will be times when it is necessary and appropriate for the judge to ask questions. Such questions should be based on the need to clarify testimony or produce pertinent facts having a bearing on the case, in order for the judge to render a correct decision. However, as a general rule, the judge should examine parties sparingly so the court does not appear to be an advocate for either party. Questions should therefore be couched in neutral language and presented in a non-leading manner.

### Recommended Reading

The following are available as part of the hardcopy *Wyoming Court Rules Annotated*, available through the LexisNexis on-line bookstore at <http://www.lexisnexis.com>, or they can be accessed electronically at <http://courts.state.wy.us/CourtRules.aspx>.

Wyoming Rules of Criminal Procedure;  
 Rules for Fees and Costs for Municipal Courts;  
 Rules for Municipal Courts – Administrative Rules;  
 Wyoming Rules of Evidence;  
 Wyoming Rules of Appellate Procedure;  
 Wyoming Code of Judicial Conduct.

*Code of Conduct for United States Judges*, at <http://www.uscourts.gov/guide/vol2/ch1/html>.

*Bench Trial Skills and Demeanor, An Interactive Manual for New Nonlawyer Judges.* This book and videotape set was previously available through the National Judicial College. Unfortunately, they no longer list it. An internet search (including Amazon.com – don't they have everything?) yielded negative results. If you can find a copy, this is a good resource, especially for non-lawyer judges.

# **PART 1 – CRIMINAL**

## **Chapter 1**

### **Before Trial**

- 1.1 Initiation of Case
- 1.2 Jurisdiction
- 1.3 Initial Appearance, Arraignment and Pleas
- 1.4 Pretrial Release
- 1.5 Payment of Fines, Costs or Forfeitures of Bail in Lieu of Appearance
- 1.6 Speedy Trial
- 1.7 Pretrial Motions
- 1.8 Right to Appointment of Competent Counsel
- 1.9 Presence of the Defendant
- 1.10 Subpoena
- 1.11 Pretrial Conference
- 1.12 Deferred Prosecution

Unless otherwise specified, all “Rules” in this section refer to the Wyoming Rules of Criminal Procedure. W.S. or WSS refer to Wyoming State Statutes.

**1.1 Initiation of Case (Rule 3. Wyoming Rules of Criminal Procedure, W.R.Cr.P.)** When a Rule is listed below, and not further identified, it will be a W.R.Cr.P.

Criminal cases are initiated by information or more commonly in municipal courts by citation.

A. The *Information* shall be a plain, concise, and definite written statement of the essential facts constituting the charge(s), and be signed by the municipal attorney. An information shall contain the name of the municipal court, the "State of Wyoming," as plaintiff, the defendant's name, if known, and if not, then any names or description by which the defendant can be identified with reasonable certainty, for each count the ordinance citation or state statute, if adopted that is charged.

B. *Citations (See Rule 3.1 W.R.Cr.P. for details)* Citations may be issued by any peace officer authorized to do so by statute or ordinance, upon probable cause to believe a misdemeanor was committed and the person to be charged committed that crime. An exception that is the exclusive jurisdiction of the Juvenile Court is a juvenile under 13 years old charged with a misdemeanor punishable by imprisonment of not more than six months. The citation must be signed by the peace officer and must contain: the name of the court, the name of the municipality, for each count a reference to the ordinance alleged to have been violated, the date and time the defendant must appear in court (at least 5 days from the date of the alleged violation unless the defendant consents), and whether a court appearance may be avoided by posting and forfeiting bail.

A person arrested and taken into custody for a forfeitable offense shall be taken before a judicial officer within 12 hours. A judge may hold an initial appearance for forfeit offenses beyond normal hours. If a person signs a promise to appear, then they shall be released. A person arrested without a warrant shall be released unless probable cause (see *affidavit of probable cause*) for the arrest is established by a judge without unnecessary delay, but in no case more than 72 hours.

C. *Harmless error or omission* that did not mislead the defendant to the defendant's prejudice is not grounds for a dismissal. Upon the defendant's motion the court may strike *surplusage* of extraneous, impertinent, superfluous, or unnecessary matter from the citation or information. Upon a motion made before arraignment, within 10 days after arraignment, or at such time later as the court may permit, the court may direct a filing of a *bill of particulars*, (a detailed statement of the charges) by the prosecutor. The prosecuting attorney may *amend a charge* until five days before trial. The court may permit an amendment at any time before trial with the defendant's consent, or if the court finds substantial rights of the defendant are not violated, and any time before verdict if no different or additional charges are filed, and there is no substantial prejudice to the defendant.

The court can issue a failure to appear *bench warrant* for contempt for a defendant who fails to appear after signing a promise to appear, or a court order to appear W.R.Cr.P. 3.1 (e).

#### D. *Warrant or Summons Upon Information*

The court may issue a warrant or summons upon a verified information, or affidavits filed with the information, and shall issue a warrant at the request of the municipal attorney. Warrants may be executed by the county sheriff, or other officer authorized by law to serve it.

The warrant shall be signed by the judge and contain the defendant's name, or if unknown, a description by which the defendant can be identified with reasonable certainty.

A *summons* shall contain the same information as a warrant and the date, time and place that the defendant is ordered to appear.

The *venue* is statewide, unless limited by the court, and the jurisdiction is limited to criminal charges resulting for municipal ordinance violations. A warrant may be issued with an expiration date, and it may be issued with a condition of "bond may be forfeited lieu of appearance."

## 1.2 JURISDICTION

The extent of *jurisdiction* of municipal judges is limited to criminal charges resulting from the violation of municipal ordinances. Fines may not exceed \$750.00 and imprisonment not more than six months, or both, to which costs (\$10.00) may be added. *Restitution*, and other assessments authorized by law (i.e., court automation fee and Crime Victim's Compensation fee) may also be additional. Contempt charges for cities of the first class may be punished by fines not more than \$750.00, incarceration for not more than 6 months, or both. Incorporated towns may punish for contempt with a fine of not more than \$20.00, a confinement of not more than two days, or both.

Venue for incorporated town and First Class cities is within the corporate limits of the municipality and for first class cities, one half of a mile beyond the corporate limits. WSS 15-1-103 (xli), 5-6-101, 5-6-201, 5-6-301. Municipal courts have jurisdiction in their municipal/county airport, regardless of the airport's proximity to the municipality. (WSS 10-5-101 (b))

Arrest warrants may be valid statewide, and search warrants only for the area within the jurisdiction of municipality.

WSS 5-6-201. The district court has jurisdiction to grant injunctive relief, and to impose any civil penalty authorized by ordinance pursuant to WSS 15-1-3 (a) (xlvi).

### **1.3 INITIAL APPEARANCE, ARRAIGNMENT AND PLEAS**

A. As some of the advisements are redundant, if the *initial appearance* (Rule 5), arraignment (Rule 10), plea (Rule 11), and judgment and sentence are done consecutively at one time, a general mass advisement of rights may be the most efficient procedure. As each defendant is called individually, the specific advisements for the charge(s) are made. (see *advisement of rights*).

For municipal ordinance charges the defendant shall be present at the initial appearance, arraignment, every stage of the trial, verdict, and sentencing except for:

- (1) A corporation or limited liability company may be represented by counsel;
- (2) With written consent of the defendant the court may permit arraignment, plea, trial, and imposition of sentence in the defendant's absence.
- (3) At a conference or argument upon a question of law; and
- (4) At a reduction of sentence. (Rule 43)

Parents may be required by the court to appear with a minor. (W.S. 14-2-205)

#### **B. INITIAL APPEARANCE.** (Rule 5)

A person arrested and in custody shall be taken without unnecessary delay before a municipal judge for the court from which the warrant was issued, or if arrested without a warrant before the municipal judge for the court in which the charges will be filed. A person arrested without a warrant shall be released from custody unless probable cause for the arrest is established to the satisfaction of the municipal judge without unnecessary delay, but in no event more than 72 hours (12 hours maximum for forfeitable offenses).

When a person arrested without a warrant is brought before a judge an information or citation shall be filed at or before the initial appearance. Unless a judge has previously found probable cause for the arrest, probable cause shall be established by sworn affidavit or testimony.

The defendant is given a copy of the citation or information and any supporting affidavits. The judge advises in open court the defendant of these rights: (1) The right to counsel in all cases, and to appointed counsel if the charge is punishable by imprisonment.; (2) that the

defendant the right to remain silent and does not have to make any statements, and any statement made may be used against the defendant, (3) the right to a jury trial, if required, and (4) if the defendant is in custody the general circumstance under which the defendant may be released before trial (see *release order*).

### **JOINDER OF OFFENSES AND DEFENDANTS** (Rule 7)

Two or more offenses may be charged in the same citation or information in a separate count for each offense if the offenses are for 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.

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

### **C. ARRAIGNMENT** (Rule 10)

The arraignment is in open court. The defendant is advised of the substance of the charge, or read the citation or information, and given copies of the charging documents. Then the defendant is called to plead to the charge.

### **D. PLEAS** (Rule 11, 43.c.2.)

A defendant may plead not guilty, not guilty by reason of mental illness or deficiency, *nolo contendere*, or guilty.

A conditional *nolo contendere* plea may be made, with consent of the court and the prosecution, for the purpose of appealing a pre-trial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

Except for forfeitures, and for defendants who have filed a written consent waiver, or unless the defendant has previously been advised on the record and in the presence of counsel, the court must address the defendant personally in open court and inform the defendant and determine that the defendant understands: the nature of the charge, the mandatory minimum penalty (if any,) the maximum penalty including assessments, costs, restitution, attorney fees, that a

conviction may affect any probation or parole status, and for drug charges may result in a potential loss of federal benefits. The judge must advise the defendant that the defendant has the right to be represented by an attorney at every stage of the proceedings and if a conviction is punishable by imprisonment, then a court appointed attorney will be appointed if necessary and the right to a trial (by jury if possible imprisonment). The defendant has the right to plead not guilty and persist in that plea if already made, the right to confront and cross examine witnesses, the right to court process to obtain testimony of other witnesses, and the right to remain silent about the nature of the charge. If the court accepts a plea of guilty or non lo contendere, then no further trial of any kind, so by pleading guilty or no contest, the defendant waives the right to a trial. If the defendant is represented by counsel, this advisement may be waived. If the court intends to question the defendant under oath, on the record, and in the presence of counsel, about the offense which the defendant has pled guilty, those answers may be used later against the defendant for prosecution of perjury or false statement. If a plea of no lo contender or guilty is accepted by the court, then there will be no further trial of any kind and the defendant waives the right to a trial.

The court before accepting a plea must find that it is voluntary and not the result of force or threats or of promises apart from any plea agreement. The court must also ask the defendant if the prosecutor has had discussion with the defendant or defendant's attorney which resulted in the defendant's willingness to enter the plea.

**Plea Agreements:** The prosecutor and the defendant's attorney, or defendant, if pro se, may discuss a resolution to the charge resulting in the defendant's plea of guilty or no lo contendere, by (A) the prosecutor's agreement not to prosecute other charges; (B) make a recommendation or agree not to oppose a particular sentence, with the understanding that the court is not bound by this agreement, or; (C) agree that a specific sentence is appropriate for this charge. The charge may also be reduced to a lesser related offense. The judge may not be present during these discussions.

If a plea agreement has been reached, the court shall have the terms disclosed on the record in open court, or *in camera* for good cause. If the agreement is based on (B above) the prosecution's recommendation for a particular sentence, or not opposing the defendant's request for a particular sentence with the understanding this is not binding upon the court, the defendant does not have the right to withdraw the plea. If the court rejects an agreement stipulating other terms (A & C above), then the court shall advise the defendant of the right to withdraw the plea, and if the defendant persists in the plea the sentence may be less favorable to the defendant than the terms discussed in the agreement.

The plea agreement shall be presented to the court at arraignment, or other time prior to trial as set by the court, except for good cause shown. The court may order a pre-sentence investigation prior to accepting or rejecting the agreement.

Generally, evidence (statements or pleas) related to a withdrawn guilty plea or a plea of no lo contendere made during a plea agreement process may not be used against a defendant.

The court should find that a basis in fact has been established to accept a plea agreement. (Rule 11. (f))

#### **1.4 PRETRIAL RELEASE (Rule 46.1 and 3.1, Wyoming Constitution Art. 1. 14)**

A. All persons charged in municipal courts shall be bailable by sufficient sureties. Excessive bail shall not be required. When a person charged with a crime is brought before the judge or has made a written request for bail, the judge shall set bail and terms and conditions of release.

B. All persons arrested and taken into custody for a forfeitable offense shall be brought before a judge within 12 hours. If not brought before a judge within 12 hours, then a citation must be issued, and the defendant released upon a signed promise to appear.

B. ***Request for release.*** Within four hours after a person is confined to jail, a custodial officer shall inform the person of the right to file a written request to the court to be granted a pretrial release. The officer shall endorse with date and time any such request and deliver it to the court, immediately if during court hours and if after hours, no more than in 72 hours.

C. All persons in custody who have made a request for pretrial release shall have the request considered by a judge without unnecessary delay, but not more than 72 hours. If the judge's decision does not result in the person's release, then the judge must hold a hearing to reconsider the release decision with the defendant or the defendant's attorney without unnecessary delay, but no more than 72 hours.

D. This does not apply to persons in custody upon a petition to revoke probation.

E. At the initial appearance before the court, upon good cause the court may grant a continuance for setting bail for not more than 24 hours to either party.

**F. *Conditions of Release.*** At the initial appearance or upon filing a request to be released the defendant shall be released on personal recognizance (O.R.), or upon execution of an unsecured appearance bond; and released on a condition or conditions as follows: commit no federal, state or local crime during the period of release.

If a judge determines that the release on O.R., or Unsecured Bond will not reasonably insure the appearance of the defendant, or will endanger the safety of any other person or the community, then the conditions of release shall order the least restrictive conditions to insure the defendant's appearance and safety of other persons and the community which may include: remain in custody of a designated person; maintain employment, or if unemployed actively seek employment; maintain commerce or education program; abide by personal association, place of abode, or travel restrictions; avoid all contact with alleged victim or potential witnesses; report on a regular basis to a designated law enforcement or other agency, comply with curfew; do not possess a firearm or other dangerous weapon; refrain from use of alcohol or controlled substance without a prescription by a licensed medical practitioner; undergo available medical, psychological or psychiatric treatment, and remain in a specified institution if required; execute an agreement to forfeit property, including money of a reasonable amount to assure appearance if the defendant fails to appear; execute a bail bond; return to custody if released for work, school, or other limited activities; execute a waiver of extradition; satisfy any other condition that is reasonably necessary to assure appearance, or the safety of other persons and the community. The judge may amend the at any time additional or different conditions of release.

**G. *Factors to be Considered.***

When determining whether there are terms of release, the judge shall consider the conditions which will reasonably assure (A) the defendant's appearance, (B) the safety of others and the community, (C) with respect to the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug; the weight of the evidence against the person; the history of the defendant including character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, drug and alcohol history, court records, status with regard to probation, parole, or other unrelated pending charges, and the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.

The written *Release Order* shall state clear and specific conditions and advising the defendant of the consequences of violation including the

immediate issuance of a warrant for arrest and possible charge of contempt of court, with appropriate penalties described.

### **1.5 Payment of Fines, Costs or Forfeitures of Bail in Lieu of Appearance (Rule 3.1)**

Rule 3.1 W.R. Cr. P., applies to circuit and district courts, and does not specifically address issues from municipal courts. Municipal courts are encouraged, but not ordered to follow the Uniform Bond Schedule. Therefore, it is recommended that municipal courts adopt those portions of the Wyoming Supreme Court's Uniform Bond Schedule where they may apply, unless local circumstances justify variance. Also, each municipal court should adopt its own bond schedule for the ordinances which differ from the state statutes.

The citing office may require any person to appear in court on a set date and time to answer to a charge by checking the "MUST APPEAR" box on a citation. If the officer checks the "MAY FORFEIT BOND IN LIEU OF APPEARANCE" box on the citation the defendant may pay to the court directly or to another authorized by the court, the fine and court costs as set by the municipal court. By paying the fine and costs, by mail or otherwise, and then failing to appear the person waives the rights to a court appearance and to trial, and does not contest the charge (nolo contendere plea). The Wyoming Uniform Bond Schedule lists the "must appear offenses," and an officer may not check the "may forfeit bond in lieu of appearance" box for a "must appear" offense. If a defendant fails to appear for a "Must Appear" citation a warrant may be issued even if a bond has been posted.

Every citation and information filed with the court must be accounted for and disposed of by that court. Disposition may include forfeiture of bail.

### **1.6 Speedy Trial (Rule 48 (b))**

Time computed for speedy trial shall not include time for all proceeding related to mental illness or deficiency of the defendant; proceeding on other charges; time between the dismissal and refile of the same charge; and delay of proceedings by the defendant's application for or change of counsel.

All charges shall be tried within 180 days of arraignment except (a) by motion with supporting affidavit by the defendant, or (b) by motion of the municipal attorney with the defendant's express consent; or if the prosecution's evidence is unavailable and the prosecution has exercised due diligence; or if the defendant will not be substantially prejudiced, and it is required for the due administration of justice. If a continuance is requested by the prosecution, the defendant shall be

notified, and if the defendant objects the defendant must show in writing how the delay will prejudice the defense.

Any case not tried or continued after 180 shall be dismissed. The prosecution is not barred from refileing a dismissed case unless the defendant made a written demand for a speedy trial or can demonstrated prejudice from the delay.

## **1.7 Pretrial Pleadings, Motions; Defenses and Objections (Rule 12)**

Pleadings are by Information or Citation, and Pleas entered pursuant to Rule 11, and the only other defenses and objection motions are motions to dismiss or grant appropriate relief.

Any defense, objection or request which is capable of determination without a trial of the general issue may be raised by motion before trial. Motions may be written or oral, at the discretion of the judge.

### **The following motions must be pre-trial motions:**

(1) defenses and objections based upon defects in the institution of the citation or information, (2) defects in the information or citation, (other than it fails to show jurisdiction or to charge an offense which can be any anytime during the proceedings), (3) motions to suppress evidence, (4) motions for discovery under Rule 16, and (5) request for severance of defendant, or charges.

### **Motion to Suppress Evidence (Rule 12)**

At the arraignment or as soon thereafter as is practicable, the court may set a date for the making of pre-trial motions and a subsequent date for answers to those motions. At the discretion of the prosecution, they may give notice to the defendant of their intention use specific evidence, so that the defense may make a motion to suppress that evidence. At the request of the defendant, they may move to suppress the prosecution's evidence (in chief at the trial). The motion to suppress or in limine must be made before trial, although the court may consider relief from this rule for good cause. The suppression hearing is governed by the Wyoming Rules of Civil Procedure. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

### **Joinder of Offenses and of Defendants (Rule 8, Rule 13)**

Two or more offenses may be charged on the same citation or information in a separate count for each offense if they are the same or similar in nature, or based on the same act or transaction, or connected together, or constituting parts of a common scheme or plan. Co-defendants may be also charged together on the same

citation or information. The court may order Co-defendants to be tried together.

**Notice of Alibi** (Rule 12.1)

If the municipal attorney demands in writing stating the time, date and place where the alleged crime was committed, the defendant shall reply in writing within 10 days, unless extended by the court, if the defendant intends to offer an alibi for a defense. The reply shall contain the specific place(s), times, and names and address of all witnesses.

**Mental illness or deficiency** (Rule 12.2) (WSS 7-11-301)

Upon the motion of the court or other, if it appears there is reasonable cause to believe that the defendant has a mental illness or deficiency making the defendant unfit to proceed, all proceedings shall be suspended, and an examination ordered as required by WSS 7-11-301. NOTE! THE STATE DOES NOT PAY FOR THIS. YOUR COURT OR MUNICIPALITY WILL HAVE TO PAY FOR THIS EVALUATION. The evaluation will provide the court with a recommendation as to whether or not the defendant is competent to stand trial. (see *Mental Evaluation*).

**Notice of Defense of Unconsciousness, Automatism, or Traumatic Automatism** (Rule 12.3)

If the municipal attorney demands in writing stating the time, date and place where the alleged crime was committed, the defendant shall reply in writing within 10 days if the defendant intends to offer a defense of unconsciousness, automatism, or traumatic automatism. The reply shall contain with particularity the facts to justify this defense, and the names and address of all witnesses intended to testify in this defense. The court shall order an examination for findings and opinion to justify this defense by a *designated examiner* to be filed with the court. The court shall provide copies to both parties. The municipal attorney shall provide the defendant with names and addresses of all witnesses intended to be used to rebut the defendant's defense of unconsciousness, automatism, or traumatic automatism. Any party learning of additional witness must promptly disclose that information to the other party. Failure to comply with these rules may preclude any undisclosed witness's testimony, other than the defendant. For good cause the court may extend time limits. If this defense is withdrawn, its existence and any related statements cannot be used in any other criminal or civil proceeding.

**Relief from Prejudicial Joinder** (Rule 14)

If it appears that a defendant, or the state, is prejudiced by a joinder of defendants or charges, the court may grant a severance of counts or defendants, or any other relief justice requires. In ruling on a defendant's motion for severance, the court may order the prosecution

to produce *in camera* any statements and confessions they intend to use as evidence at trial.

**Depositions** (Rule 15)

No exceptional circumstances are required if the parties agree to a deposition and the court consents. The court may also order a witness to be deposed due to exceptional circumstances of the case. At the same time, the production of a designated book, paper, document, record, recording or other non-privileged record may be also be ordered. If a witness is detained pursuant to statute or rule, the court on written motion and notice to the parties, may direct a deposition to be taken. The party requesting the deposition must give every party written notice of the time and place, and the names and addresses of all witnesses to be deposed. The court for cause shown may change the time and location of the scheduled deposition. If the defendant is in custody, the officer holding the defendant shall be notified, and unless the defendant waives in writing, the defendant shall be present during the examination. A defendant not in custody has the right to be present, but absence after notification of the deposition shall constitute a waiver of that right. After considering the convenience to the witness and parties, the court may issue an order to take deposition at a time and place which authorizes the court clerk to issue a witness *subpoena*. If the deposition is requested by the municipal attorney or if the defendant is indigent, the municipality may be directed by the court to pay for the expense of travel and subsistence of the defendant and the defendant's attorney for the examination, and the cost of the transcript. Objections to the testimony or evidence at a deposition must be made at the time of the deposition. No party defendant's deposition may be taken without the consent of the defendant. Depositions may be used at trial if the witness is unavailable (Rule 804 a W.R.E.), or for impeachment purposes.

**Discovery and Inspections** (Rule 16)

Upon the defendant's written demand the prosecution shall allow inspection, copying, or photographing of any relevant (1) written or recorded defendant's statement, (2) a copy of the defendant's prior criminal history, (3) documents or tangible objects material to the defendant's case, or intended to be used as evidence in chief by the prosecution, belong to or were obtained from the defendant, and, (4) reports of examinations and tests, material to the defendant's case or intended to be used as evidence in chief by the prosecution, the prosecution has, or knows of, or should know, or which may become known. **EXCEPTIONS:** (Rule 26.2) The prosecution is not required to provide internal reports made in connection of the case investigation or prosecution by officers or attorneys.

**Production of Witnesses Statements** (Rule 26.2)

This rule allows judges discretion in handling requests, including but not limited to, viewing privately, *in camera*, to determine what should or should not be produced. The judge may allow all or only portions of a statement to be produced.

**Motions** (Rule 46)

All applications for a court order are written motions, unless made during a hearing or trial, unless the court permits an oral motion. All motions shall state the grounds for the motion and the relief order sought. Motions may be supported by affidavit.

**Dismissal and Continuances** (Rule 48 )

Any criminal case not brought to trial or continued on 180 days from arraignment must be dismissed. The following exceptions are excluded when computing the time for trial:

- (A) All proceedings related to mental illness;
- (B) Proceedings on another charge;
- (C) The time between the dismissal and refile of the same charge;
- (D) Delay caused by the defendant's application for, or change of counsel.

Continuances exceeding 180 days may be granted for:

- (A) Defendant's motion supported by affidavit
- (B) Prosecutor's motion if:
  - (i) The defendant expressly consents; or
  - (ii) If the prosecution has exercised due diligence and evidence is unavailable, or;
  - (iii) Required in the due administration of justice and the defendant will not be substantially prejudiced.

When a continuance past the 180 days is proposed by the court or prosecution, the defendant must be notified. If the defendant objects, the defendant must, in writing, show how the delay may prejudice the defense. If the defendant is unavailable for any proceeding for which the defendant's presence is required, the case may be continued for a reasonable time not to exceed 180 days. A dismissal for lack of speedy trial is without prejudice unless the defendant has made a written demand for speedy trial or can demonstrate prejudice caused by the delay.

**Change of Judge** (Rule 21.1)

Motions by the prosecutor or defendant for change of a municipal court judge may only be made for cause, based on the ground that the presiding judge is prejudiced or biased against either party's attorney, or the defendant. The motion must be supported by affidavits giving sufficient facts to demonstrate the prejudice or bias. Supplemental affidavits may be filed before a hearing. The motion must be referred to another municipal, or alternate municipal judge, and if the motion is granted, who then assigns the case to another judge. The ruling on

this motion is not an appealable order, but may be assigned error in an appeal of the case, or on a bill of exceptions.

### **1.8 RIGHT TO COMPETENT COUNSEL Rule 44. WRCrP**

All defendants have the right to legal counsel they obtain. If there is a possibility of a jail sentence, then indigent defendants have the right to a court appointed attorney. For requesting appointed counsel, the defendant must submit a financial affidavit or provide sworn testimony on the record detailing income, expenses, assets and liabilities. If the court appoints counsel, the judge shall advise the defendant the defendant will have to contribute for their attorney to the extent of their ability on a scheduled basis, and make the payments to the court as a condition of appointment. Separate orders of appointment shall be made for each defendant. Appointed counsel shall represent the defendant from the initial appearance through appeal.

Defendants have the right to represent themselves if their decision is voluntary and intelligent *Faretta v. California*, 422 US 806 (1975). The court may appoint standby counsel if there is doubt the defendant can defend himself. *Mayberry v. Pennsylvania*, 400 U.S. 455 (1971). If standby counsel is appointed over objection, a jury must have the perception that the defendant is representing himself. *McKaskle v. Wiggins*, 465 U.S. 168 (1984).

### **1.9 PRESENCE OF THE DEFENDANT Rule 43**

The defendant shall be present at the initial appearance, arraignment, the time of plea, every stage of the trial including impaneling of the jury and return of verdict, sentencing except for:

**(A) Continued presence not required:**

1. If the defendant is voluntarily absent after the trial has begun; or
2. If after being warned by the court that disruptive conduct that persists which justifies exclusion from the courtroom will cause the removal of the defendant from the courtroom.

**(B) Presence not required:**

1. A corporation may appear by counsel in all cases.
2. Prosecutions in municipal courts, with the written consent of the defendant the court may permit arraignment, plea, trial, and imposition of sentence in the defendant's absence.
3. The defendant's presence is not required, unless ordered by the court, at a conference or argument upon a question of law.

### **1.10 SUBPOENA Rule 17**

**Subpoena** for witness shall be issued by the court at the request of a party and the filing of a **precipe**. Subpoenas may compel a witness to attend a hearing, the production of documentary evidence or objects,

or both. Service may be by either the sheriff or any other person over 19, not a party to the action, appointed for such purpose by the court clerk, or judge if there is no court clerk.

Current witness fees are listed in rule 17 WRCrP. A subpoena requiring witness attendance may be served at any place in Wyoming. If after being served a witness fails to obey without adequate excuse that person may be deemed to be in contempt.

### **1.11 PRETRIAL CONFERENCE      RULE 17.1**

Pretrial conferences shall not be invoked in *pro se* cases. However, the prosecution and a pro se defendant may engage in negotiations regarding a plea agreement. (Rule 11.e.1.)

Any time after a charge is filed with the court, the court may order a pretrial conference to consider matters that will promote a fair and expeditious trial. The court shall prepare and file a memorandum on all matters agreed to. No admissions made at a pretrial conference may be used against the defendant unless the admissions are written and the defendant and the defendant's counsel sign the written admission.

### **1.12 DEFERRED PROSECUTION    W.S. 7-13-302, and 35-7-1037**

After conviction of plea of guilty for any municipal ordinance offense, and following entry of judgment of conviction, the court may: suspend the imposition or execution of sentence and place the defendant on probation; or impose a fine applicable to the offense and place the defendant on probation.

Generally the probation may be no longer than the maximum sentence.

If the charge is DUI, WS 31-5-233 adopted by ordinance, or an ordinance which substantially conforms to the statute, then probation shall not exceed 3 years under WS 7-13-302 .

This law or a similar provision of any law from any jurisdiction may only be used once in a lifetime by any defendant.

If the defendant violates probation, the court may accept the plea and enter a judgment of guilt or conviction. If the court finds the defendant has fulfilled the terms of probation and rehabilitation is achieved to the satisfaction of the court, the court discharges the defendant from probation and dismiss the proceedings against him.

W.S. 35-7-1037 is a similar law and that applies to federal and state laws regarding possession controlled substances. If your municipal

ordinances adopt W.S. 35-7-1031 (c), then possibly it might apply to a municipal court.

W.S. 7-13-301 is another similar law, which in many respects has been superseded by W.S. 7-13-302.

## CHAPTER 2

### TRIAL

- 2.5 Non-Jury Trial Outline---No Attorneys Present
- 2.6 Non-Jury Trial Outline—Attorneys Present
- 2.7 Jury Trial Checklist
- 2.8 Jury Trial Procedure Outline

#### 2.1 Non-Jury Trial Outline—No Attorneys Present

*The municipal court is now in session. The matter before the Court is a citation (information) charging Private R. Citizen with (violation described—including (town/city) Municipal Ordinance, Section #).*

**Mr. Citizen**, *is your name as shown on the citation (information) your full and correct name?*

**Mr. Citizen**, *I show you a document headed statement of rights. Have you previously read this document and signed both a statement that you have read and understood it and a waiver of your right to have an attorney represent you in this matter? (Refer to criminal forms) Were those signatures made of your own free will and without any pressure or promises by any other person?*

**Mr. Citizen**, *I will now read the ordinance (statute; if adopted) which you are charged with violating. Mr. Citizen, do you understand the wording of the ordinance (statute) and the possible penalties set forth for this type of violation?*

Read citation (information) to defendant and inquire whether defendant is ready to proceed.

*Will the complaining witness step forward to be placed under oath. (If the witness is a Police Officer the format is the same.)*

*Please raise your right hand and state your full name for the record. Do you, \_\_\_\_\_, solemnly swear or affirm to tell the truth, the whole truth and nothing but the truth in the testimony you are about to give in the matter before this Court? Please be seated in the witness chair.*

*Will you tell the Court, in your own words, the events leading up to and culminating in the issuance of this citation (information)?*

**Mr. Citizen**, do you have any questions you would like to ask this witness?

Allow the defendant to question the witness. At conclusion of questioning, ask the complaining witness if there is any further testimony. If none, tell the witness to step down. A request may be made for any other witness(s) for the plaintiff to be allowed to testify. If there are any, swear them in and receive their testimony into the record. Defendant has the right and is allowed to question each witness. \*The Court can question each witness.

Upon completion of the plaintiff's case, the defendant's case may be heard in the same manner. If the defendant elects to testify, remind him(her) of the right to remain silent. Each witness who testifies may be questioned by the complaining witness (exception---police officers-- cannot ask questions as they are not prosecutors), following which the witness may clarify the testimony.

The complaining witness may offer rebuttal testimony—that is, the complaining witness may, by oneself, or through other witnesses called, present testimony to refute defense testimony, again following the same procedure. The trial concludes at the close of the plaintiff's rebuttal.

The Court should consider the evidence presented and announce its finding. **"The Court must find that each and every element of the criminal charge has been proved beyond a reasonable doubt".**

If the finding is guilty, ask for a record of prior convictions. Further ask the Defendant if there is anything the defendant would like to say prior to sentencing. **Advise the defendant of their right to appeal and that said notice of appeal must be filed within 30 days of filing of the judgment.** *The notice of Appeal must be in writing and comply with the requirements of W.R.A.P.,(Wyoming Rules of Appellate Procedure) Rule 2.07.* Upon a finding of guilt, findings of fact and adjudication terms must be set forth in writing and a copy is to be provided to the defendant.

*There being nothing further to be brought before this Court, the Court will now stand adjourned.*

## 2.2 Non-Jury Trial Outline—Attorneys Present

*Municipal Court for the Town(City) of \_\_\_\_\_ is now in session. The matter before the Court is an information(citation) charging the Defendant with a violation of \_\_\_\_\_, town/city name Municipal Ordinance, Section No. \_\_\_\_\_.*

*Is the Defendant correctly named in the information(citation)?*

*Has the defendant previously been arraigned and entered a plea to the charge(s)?* If not, refer to Section 1.3 and proceed with arraignment. If defendant has been arraigned, proceed with the following outline.

*Is the Defense ready for trial? Is the Prosecution ready?*

*Are there any preliminary matters? i.e. sequestration of witnesses, W.R.E. (Wyoming Rules of Evidence) Rule 615; amendments to pleadings; etc.*

*Will the Prosecution(Town/City) make its opening statement?*

*Will the Defense make its opening statement?*

Defense may waive its opening statement or reserve it until close of the prosecution's case-in-chief.

*Will the Town/City call its first witness?*

Direct examination, cross-examination, redirect examination and re-cross exam of each witness for the Town/City follows. Each witness must be sworn. Upon conclusion of each witness' testimony, ask both counsel if they plan to recall the witness. If not, excuse the witness and thank them for testifying.

*Will the Defense now make its opening statement?*

(Only if it was deferred!)

*Will Defense call its first witness?*

(Follow same procedure as stated earlier for the prosecution)

*Does the Town/City have rebuttal testimony?*

*Does the Defense have surrebuttal testimony?*

(Both rebuttal and surrebuttal testimony may be allowed or not in the discretion of the Court)

*Will the Town/City proceed with final argument?*

*Will the Defense proceed with final argument?*

*Does the Town/City have closing argument?*

*This Court, having carefully considered the testimony of the witnesses, the exhibits entered into evidence as well as the arguments of counsel, hereby finds the Defendant, Private R. Citizen, guilty/not guilty of \_\_\_\_\_.*

*(If finding is guilty, ask the Town/City Prosecutor if he/she has a record of prior convictions.)*

*Does either counsel have anything to say before the Court proceeds with sentencing? Does the Defendant wish to make a statement?*

*Defendant having been found guilty of \_\_\_\_\_, this Court sentences the defendant to \_\_\_\_\_.*

*(For example: serve \_\_\_\_\_ days in the (local) Detention Facility, pay a fine of \$\_\_\_\_\_ and court costs of \$\_\_\_\_\_. The Court however, upon further consideration hereby suspends all (or part of) the sentenced confinement and fine provided the defendant is not found guilty of any further criminal offenses during the next six (6) months following the date of this hearing. (Refer to Criminal Forms; and/or Section 3.2, Sentencing)*

*The Defendant is herewith advised that he/she has thirty (30) days from the date the judgment is filed to file his/her written notice of appeal of the finding and sentence of this Court. Said appeal to be filed with this Court with the appropriate filing fee.*

*Counsel for the prevailing party will prepare judgment and submit it to the Court. (The judgment must comply with the requirements of W.R.Cr.P. (Wyoming Rules of Criminal Procedure), Rule 32(b)(c).*

## **2.3 Jury Trial Checklist (Sample)**

### ***Preliminary Matters***

- \_\_\_\_\_ Pre-trial conference held (at the discretion of the Court)
- \_\_\_\_\_ Instructions prepared and exchanged by counsel and provided to Court in advance
- \_\_\_\_\_ Jurors summoned
- \_\_\_\_\_ Courtroom, facilities for jurors as well as recording equipment prepared and ready
- \_\_\_\_\_ Determine whether sequestration of jury will be required and make necessary arrangements

### ***Time of Trial***

- \_\_\_\_\_ Open Court
- \_\_\_\_\_ Juror panel roll call
- \_\_\_\_\_ Swear in panel
- \_\_\_\_\_ Qualify panel
- \_\_\_\_\_ Ask for and review any valid excuse from service
- \_\_\_\_\_ Administer oath to entire panel
- \_\_\_\_\_ Voir Dire
- \_\_\_\_\_ Challenges for cause, if any, replace for cause
- \_\_\_\_\_ Pass for cause
- \_\_\_\_\_ Peremptory challenges
- \_\_\_\_\_ Select Jury
- \_\_\_\_\_ Swear in Jury; then Bailiff
- \_\_\_\_\_ Excuse and thank remainder of panel
- \_\_\_\_\_ Inquire whether either counsel want prospective witnesses sequestered
- \_\_\_\_\_ Give instructions 1, 2 &3 (Refer to Appendix – Jury Instructions)
- \_\_\_\_\_ Opening arguments by counsel (Defense may reserve until close of Town/City’s case)
- \_\_\_\_\_ Presentation of Town/City’s case-in-chief
- \_\_\_\_\_ Defense opening argument (if reserved)
- \_\_\_\_\_ Defense case presentation
- \_\_\_\_\_ Rebuttal
- \_\_\_\_\_ Read any additional instructions to jury (Refer to Appendix B)
- \_\_\_\_\_ Closing arguments
- \_\_\_\_\_ Jury retires to deliberate (instructions, verdict form & exhibits provided)
- \_\_\_\_\_ Receive jury verdict and announce judgment
- \_\_\_\_\_ Impose or defer sentence (In those cases in which a public defender was provided, determine whether the defendant is capable of paying any part or all the costs of such court-appointed counsel and make specific findings upon the record)
- \_\_\_\_\_ Advise defendant of right to appeal upon finding of guilt and establish time frame to file
- \_\_\_\_\_ Thank and excuse Jury
- \_\_\_\_\_ Preserve the record (i.e. tapes pending potential appeal)

## **2.4 Jury Trial Procedure Outline**

Sample Dialogue and Jury Procedure—Jury Trial

*Judge and bailiff enter courtroom. Bailiff announces: All rise; the Municipal Court for the Town/City of \_\_\_\_\_ is now in session; the Honorable \_\_\_\_\_, presiding.*

Judge goes on the bench whereupon bailiff says:

*Be seated.*

Judge:

*Good morning ladies & gentlemen. The matter before the Court this morning involves a criminal information(citation) charging name of defendant with a violation of Section \_\_\_\_\_, of the Town/City Municipal Code, entitled name of offense. Defendant was earlier arraigned on the charge(s) and entered his(her) plea of not guilty.*

Judge reads charging document(s) to the Jury and parties.

*Is the Defendant ready for trial?*

*Is the Town/City ready for trial?*

*The Town/City in this matter is represented by name & title of prosecuting attorney. The Defendant is represented by name & title of defense counsel.*

*Mr./Ms. (prosecuting attorney), will you stand and introduce your witnesses to the ladies and gentlemen of the Jury?*

*Mr./Ms. (defense counsel), will you stand and introduce your client to the ladies and gentlemen of the jury as well as any witnesses you intend to call in the trial at this point?*

*Will the clerk now call the role of the jury panel?*

The clerk or judge calls the names of all the jurors summoned in the case; this could be accomplished prior to the judge entering the courtroom. The clerk would provide the judge the list of names of those jurors actually present. (Jury trials are governed by W.R.Cr.P. Rules 23 & 24) For those absent jurors, the judge may issue an arrest warrant if a juror has been properly served and willfully and without reasonable excuse fails to attend. The judge may exercise the option of having the police chief try to contact the absent juror by phone and get him/her to the courthouse as soon as possible. (W.S.S. 1-11-115, as amended)

Upon completion of the roll call, the clerk or judge gives the jurors the oath for general qualifications as a juror. The jurors stand and raise their right hands.

*Do you and each of you solemnly swear or affirm that you will well and truly answer all questions put to you touching your general qualifications to serve as jurors in this Court, so help you God?*

*The Court will now qualify the jury. Ladies and gentlemen, it is necessary for the Court to ask certain questions to determine whether each of you is qualified to serve as a juror under Wyoming law. While these questions will be directed to you as a group, each of you must answer each question audibly.*

*Is each of you over 19 years of age?*

*Is each of you a citizen of the United States?*

*Has each of you been a resident of the State and the county for 90 days?*

*Is each of you in possession of your natural faculties, of ordinary intelligence, and without mental or physical infirmity?*

*Does each of you possess a sufficient knowledge of the English language?*

*Has any one of you been convicted of a felony? (These questions are asked pursuant to W.S.S. 1-11-101 & 102 (felon).*

*Ladies and Gentlemen, of the jury, it is now my duty to inquire as to whether any of you is exempt from service or has just cause to be excused from service today.*

*Is anyone a salaried and active member of an organized fire department or police or law enforcement agency or an elected public official? Does anyone claim exemption pursuant to this section? (W.S.S. 1-11-103) A juror may not be excused for a trivial cause or hardship[ or for inconvenience to his/her business, but only when material injury or destruction to his/her property or property entrusted to him/her is threatened, or when health, sickness or death of a member of his/her family requires his/her absence from jury service. A person may be excused at his/her request if he/she is over 72 years of age. A person may be excused from jury duty when the care of that person's young children requires his/her absence from jury service. Any person who has served on a jury during this term shall, upon request, be excused from further jury service for the remainder of that jury term and in the discretion of the Court may be excused from jury service for the following jury term. (W.S.S. 1-11-104) Does anyone request to be excused?*

If a person exempt from jury duty is summoned as a juror, the person may file an affidavit with the clerk stating the person's office, occupation, or employment. The affidavit must be delivered by the clerk to the judge and if sufficient in substance, must be received as evidence of the right to exemption and as an excuse for non-attendance in person. The affidavit must then be filed by the clerk. Failure of any person who is exempt to file an affidavit is a waiver of the person's exemption, and that person is required to appear on the day for which the jury is summoned and serve as a juror the same as if the person were not entitled to exemption. (W.S.S. 1-11-105).

The judge then reads the oath to serve as a trial juror:

*Ladies and gentlemen, before we begin with the actual selection of the jury that will try this particular case, it is necessary for me to administer another oath to you, for that purpose I request that you now stand and each of you raise your right hand. "Do you and each of you solemnly swear or affirm that you will well and truly answer all questions put to you touching your competency as trial jurors in the case now pending before this Court, wherein The Town/City is the plaintiff and Mr. Citizen is the defendant?"*

The judge now instructs the entire jury panel to be seated and proceeds with the selection of the jury as instructed in the paragraphs that follow. Understand that this is not the only way to select a jury but merely provided as an example.

All of the names of the jurors who are present should be in the jury selection box. The clerk draws twelve names, calling each, one by one. Those drawn should then be seated in the jury box in the order drawn. The jury box is composed of twelve chairs arranged into two rows of six chairs each and numerical order, starting from right to left. Numbers one through six make up the first row with numbers seven through twelve completing the second or back row.

*As your name is called, please enter the jury box and be seated.*

The bailiff may direct the jurors to their respective seats. When all twelve have been seated:

*Ladies and Gentlemen, the attorneys will now voir dire you on your qualifications to serve as jurors. You are to be truthful with the attorneys because both them have a heavy duty to try to select a panel of jurors that they feel will give their client a fair trial.*

*Counsel may now voir dire the jury.*

The prosecutor is allowed to ask the jury questions in regard to challenging them for cause as well as intelligently to exercise preemptory challenges. When the prosecutor is finished, he/she is asked if the jury passes for cause. The defense is then allowed to question the jury for the same reasons. If any juror is challenged for cause and the challenge is upheld, another juror must be selected and placed in that seat. The reasons for challenging a juror for cause are:

1. Want of any of the qualifications prescribed by statute.
  2. Consanguinity (blood relationship) or affinity within the third degree to either party.
  3. Standing in the relation of debtor or creditor, guardian or ward, employer or employee, or principal or agent to either party.
  4. Being a partner united in business or being security on any obligation for either party.
  5. Being the member of the family of either party.
  6. Having served as juror or witness in a previous trial between the same parties or for the same cause of action.
  7. Interest in the event or question involved in the action.
  8. Having formed or expressed an unqualified opinion on the merits of the action. The reading of newspaper accounts shall not disqualify a juror for bias or opinion.
  9. The existence of a state of mind in the juror evincing enmity or bias regarding either party.
  10. That juror has formed an opinion on the guilt or innocence of the accused or is biased, or prejudiced for or against the accused.
  11. That juror is related within the fifth degree, i.e., first cousin once removed, or second cousin to the injured party, the complainant or the defendant.
  12. That juror served on an earlier petit jury which heard the same case and was then discharged or rendered a verdict which was set aside.
  13. That juror has previously served as a juror in a civil case against the defendant for the same act.
  14. That juror has been subpoenaed as a witness in this case.
- (W.S.S. 1-11-203 & 7-11-105)

*We are now ready to proceed with preemptory challenges. Will the prosecution please present its first preemptory challenge? Will the defendant present its first preemptory challenge? Prosecution's second preemptory? Defendant's second preemptory? (And so forth until all four preemptory challenges have been received from both parties)*

The prosecution and defense are each allowed four preemptory challenges, starting with the prosecution and followed by the defense. The prosecutor and defense each separately write the names of the juror that they wish to challenge on three (3) pieces of paper. One is retained by the parties

themselves, the other two are provided the judge and opposite party. This is performed four (4) separate times, starting with the prosecution and followed by the defense, until the judge has on the bench eight (8) challenges.

After all challenges have been made or passed, the judge then excuses the jurors challenged by saying:

*The following jurors are excused, as are those prospective jurors who were not seated. (Read the names of those excused). The Court desires to thank you for performing your civic duty in answering the jury call. Any of you who desire may remain as spectators. If you do not desire to remain, you may now leave the courtroom.*

A recess at this point is appropriate. Admonish the jurors at this point that they are not to discuss the matter among themselves or with anyone else or to allow it to be discussed with them until they have heard all the evidence, the arguments of counsel and the instructions of the Court. Further admonish them to refrain from having any conversations with the lawyers in the case or the witnesses or anyone connected with the case. Finally advise that if they were to engage in such conversations there is always the appearance and thought that they are discussing the case even if they are not. Have the bailiff conduct the jurors to the jury room.

After the recess, when the jury returns, they should be seated in the jury box. They do not have to be placed within the box in any prearranged order. They are then sworn in as jurors for the case at trial.

*Ladies and Gentlemen, will you please rise? This is the final oath for this particular case. Will you and each of you well and truly try the matter in issue between the Town/City, Plaintiff and (Defendant) and a true verdict render according to the evidence?*

The Judge now swears in the bailiff.

*Will you stand and raise your right hand? Do you solemnly swear or affirm that you will take charge of this jury during the trial of this case, that you will not communicate with them in any way about this case, nor allow them to communicate among themselves about this case until the case is finally submitted to them and when so directed, return them into this Court?*

*The Court will now instruct the jury on the duties of the Court and the jury in a criminal trial.*

(Opening instructions that are to be read to the jury: 1) general instruction on how the jury is to treat the evidence; 2) the elements of the case; and, 3) the presumption of

innocence. Refer to **Appendix – Jury Instructions** for examples of said instructions.

(Point of emphasis): At each adjournment or recess the jury is to be admonished in the following language:

*You are admonished that it is your duty not to converse among yourselves or with anyone else on the subject connected with the trial or to form or express an opinion thereon until the case is finally submitted to you.*

*Does either counsel wish to have prospective witnesses excluded from the courtroom?*

The motion to exclude witnesses is discretionary with the Court. Even if granted, the prosecutor retains the right to have any witness he/she chooses to sit with the prosecutor. If witnesses are excluded, the Judge advises:

*All witnesses in this matter are ordered to vacate the courtroom. You are admonished not to discuss your testimony with other witnesses. Counsel are instructed to enforce this order on penalty of not allowing the witness to testify who has violated this order. The witness(es) may however discuss this matter with the attorneys in this case, but they do not have to do so.*

*Does the prosecutor wish to give an opening statement?*

*Does the defense wish to give an opening statement now or to reserve it until the start of its case?*

*Will the prosecutor call its first witness?*

Each witness is sworn in prior to testifying with the following oath:

*Will you please stand, face the Court and raise your right hand? Do you solemnly swear or affirm that the testimony you are about to give in this matter before the Court to be the truth, the whole truth and nothing but the truth?*

After each witness is examined and cross-examined, both counsel are asked if they intend to recall the witness. If they do not, excuse the witness and thank them for testifying.

After all the prosecution witnesses have testified.

*Does the prosecution rest?*

If the defendant's opening statement was deferred, the Judges inquires:

*Will the defense now present its opening argument?*

The defense now calls its witnesses, who are sworn and testify in the same manner as in the prosecution's case.

The Court is required to advise the Defendant regarding his/her decision to testify or not. Should the Defendant testify, before the Defendant's testimony and outside the presence of the jury, the Defendant shall be advised as follows:

*The Court advises you that you have the absolute right not to testify in your case and that if you do not testify no inference of guilt may be drawn from your silence. Anything you say during your testimony which incriminates you will be used against you in determining you innocence or guilt in this case.*

*Do you understand your right to remain silent and not testify?*

*Do you waive your right to remain silent?*

*Have you conferred with your attorney about your decision?*

If the defendant does **not** testify, the defendant shall be advised **outside of the presence of the jury,** at the close of the defendant's case, as follows to assure that the defendant's failure to testify in his/her own defense is the result of a knowing and voluntary decision made by the defendant.

*The Court has been advised that the defendant has concluded presentation of witnesses and evidence in this case and that Defendant does not intend to testify.*

*Do you (name of defendant) understand that you have a right to testify in your own defense on all claims and the charge(s) asserted against you in this case?*

*Do you knowingly and voluntarily waive your right to testify in your own defense in this case?*

*Do you understand that now is the last opportunity you will have to testify about the evidence and testimony presented by the town/city in this case?*

*Have you conferred with your attorney about your decision not to testify?*

After all of the defense witnesses have testified:

*Does the Defense rest?*

The prosecution may now put on rebuttal testimony and if so, the defense may put on surrebuttal testimony. Rebuttal and surrebuttal testimony are in the discretion of the Court.

The Court instructs the jury on the law applicable to the case. (Refer to **Appendix - Jury Instructions**).

The prosecutor now provides its closing argument followed by defenses' closing argument. The prosecutor then finishes with its closing, rebutting the arguments made by the defense.

*The bailiff is sworn at this time; Do you solemnly swear or affirm that you will keep this jury together in some quiet place for their deliberations. That you will not suffer any communication to be made to them, nor make any yourself, except to ask them if they have agreed upon their verdict. That you will not, before the verdict is rendered, communicate to any person the state of their deliberations, or the verdict agreed upon. That you will return them into this court when they have so agreed, so help you God?*

The jury prior to being escorted to the jury room is instructed that they are not to deliver the verdict to the bailiff. They are however to inform the bailiff that they have reached a verdict.

The bailiff escorts the jury to the jury room. They may take with them the jury instructions, verdict form(s) and those exhibits which the Court allows. After the jury leaves, the judge says to the trial participants:

*Ladies and Gentlemen, the Court will be in recess until the jury returns. I ask each of you to remain within five minutes of the courthouse and keep my clerk informed at all times of your whereabouts.*

Should the jury have a question during its deliberations, it is to be instructed to write out the question and deliver it to the bailiff. The bailiff will then deliver it to the Judge, who will call in the attorneys and read them the jury's question. If the attorneys agree on the answer, the written answer should be delivered to the bailiff for delivery to the jury. Should the attorneys not agree on an answer, the Judge will decide whether to answer it or not and if answered, what the answer will be.

Upon the bailiff's report that the jury has reached a verdict, Court is reconvened. The bailiff then escorts the jury back to the jury box. The Court inquires:

*Has the jury reached a verdict?*

If the jury indicates in the affirmative.

*Will the foreperson give the verdict form to the bailiff? Will the bailiff present the verdict form to the Judge?*

The Judge checks the verdict to see that it is consistent and that it is filled out in the proper form. If the verdict is in the proper form, return the verdict to the foreperson and have the foreperson read the verdict aloud. If the verdict is not in the proper form, have the jury returned to the jury room to make it in the proper form. Should the jury notify the

Court that it is **deadlocked, recall the jury to the jury box**. Ask who the foreperson is and ask the foreperson whether there is any possibility that the jury can reach a verdict. If indicated that it might not be possible, ask the rest of the jurors if they agree with the foreperson's opinion. Have them individually answer yes or no. **If they all agree that no verdict can be reached, declare a mistrial and dismiss the jury. The case may be retried!** However, if they do not agree that a verdict cannot be reached, return them to the jury room to further deliberate.

If the defendant is found **not guilty**, the Judge may inquire of the prosecuting attorney if the jury should be polled. Ask each juror as to each count whether it is the respective juror's verdict. If all six jurors answer in the affirmative, then have the verdict enter on the court record, and say:

*The Defendant is hereby discharged from custody. The Court thanks the jurors for performing their important duty as a key part of the Wyoming Court system.*

The jurors are then to be advised of whether and where they may pick up their jury fees or that such fees will be mailed to them.

Should the defendant be found **guilty**, the defense attorney may ask the jury be polled. Ask each juror as to each count whether it is the respective juror's verdict. If all six jurors answer in the affirmative, the guilty plea is then entered on the court record.

The jury is discharged with the following:

*The Court thanks the jurors for performing their important duty as a key part of the Wyoming Court system.*

The jurors are then to be advised of whether and where they may pick up their jury fees or that such fees will be mailed to them. In the event the Court will immediately sentence the Defendant, the jurors should be given the opportunity to remain for sentencing.

Inquire of the defense attorney whether the Defendant wishes sentence to be pronounced at this time. It is generally sensible to grant a short continuance if the Defendant does not wish to be sentenced immediately. Should Defendant desire to be immediately sentenced, ask defense counsel if there is any legal cause why sentence should not be now pronounced. Specifically ask Defendant if he/she has anything to say to the Court before sentence is pronounced.

Before determining sentence, the Court in every case in which the defendant is represented by court-appointed counsel shall determine whether the defendant is able to pay all or part of the costs of such court-appointed counsel. The Court shall **enter a specific finding on the record** if the Court determines that the defendant is **not able to pay** for any of the costs thereof. However, if the Court determines that the defendant is able to pay for any or all of the costs of court-appointed counsel, the Court shall order the defendant to reimburse the town/city for such costs of services provided, or a portion thereof as determined by the Court. Should the Court not order such payment, the Court shall state upon the record the reason(s) payment for court-appointed counsel was not ordered.

Sentencing may be delivered using the following format (as an example):

*The defendant has been found guilty of violating Town/City Ordinance, Section No. \_\_\_\_\_, entitled \_\_\_\_\_.  
Conviction for the same is herewith entered upon the record.  
Defendant is therefore sentenced to serve \_\_\_\_\_ days in the (local Detention Facility (name of establishment) and fined in the sum of \$ \_\_\_\_\_, together with \$10.00 in court costs.*

The Court may utilize its discretion in sentencing and suspend all or any portion of the incarceration and fine. Further, depending upon the nature of the case, the Court can consider restitution and /or probation for up to six months as part of its sentence.

*There being nothing further to come before this Court, the Court is hereby adjourned.*



## **Chapter 3**

### **AFTER TRIAL**

- 3.1 Acquittal
- 3.2 Motion for Acquittal After Jury Trial
- 3.3 Judgment and Sentence; – Rule 32, W.R.Cr.P.
- 3.4 New Trial - Rule 33, W.R.Cr.P.
- 3.5 Arrest of Judgment – Rule 34, W.R.Cr.P.
- 3.6 Correction or Reduction of Sentence – Rule 35, W.R.Cr.P.
- 3.7 Clerical Mistakes – Rule 36, W.R.Cr.P.
- 3.8 Stay of Execution of Sentence – Rule 38, W.R.Cr.P.
- 3.9 Criminal Appeals
- 3.10 Enforcement of Penalty

#### **3.1 Acquittal**

If the defendant is found not guilty by either the jury or the judge, the defendant should be immediately released from jail, if incarcerated. Any bail posted for the defendant should immediately be returned to the party posting bail.

#### **3.2 Motion for Acquittal After Jury Trial**

A motion for judgment of acquittal (motions for directed verdict have been abolished) may be made for one or more of the offenses charged. The motion may be made by one of the parties, or by the court on its own motion at the close of evidence of either the prosecution or defense.

The court may reserve decision on a motion for judgment of acquittal, 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.

After a return of a verdict of guilty by a jury, or if the jury is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within ten (10) days after the jury is discharged. The court may set aside the verdict within such ten (10) day period. If the court does not enter a judgment of acquittal within the ten (10) day period, it is deemed denied, unless within such ten (10) days the determination is continued by order of the court. Such continuance shall not extend the time to a day more than thirty (30) days from the date the verdict is returned. If no verdict is returned, the court may enter judgment of acquittal. It is not necessary that a motion for judgment of acquittal be presented prior to submission of the case to the jury.

If a motion for judgment of acquittal is granted after the return of a verdict of guilty, the court must also determine whether any motion for a new trial should be granted in the event the judgment of acquittal is thereafter vacated or reversed. The court must specify the grounds for the conditional ruling for new trial. The conditional grant of a motion for new trial does not affect the finality of the judgment. If the judgment of acquittal is reversed on appeal and a motion for new trial has been granted conditionally, the new trial shall proceed unless the appellate court has otherwise ordered. The denial of a motion for conditional grant of new trial may be asserted on appeal, and if the judgment of acquittal is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

### **3.3 Judgment and Sentence – Rule 32, W. R. Cr. P.**

#### **A. Judgment.**

In cases involving a judgment of conviction based on a defendant's plea of guilty or nolo contendere, judgments shall include:

1. The plea, including the name and statute (ordinance) number of each offense to which the defendant pleaded;
2. Findings that:
  - a. The defendant was competent to enter a plea;
  - b. The defendant was represented by competent counsel with whom the defendant was satisfied, including the name of the attorney (or that the defendant knowingly waived such right);

- c. The defendant was advised as required by Rule 11 and understood those advisements; and
  - d. The plea was voluntary, and not the result of force or threats or of promises apart from a plea agreement;
3. A statement as to whether the plea was the product of a plea agreement and, if so, that the plea agreement was fully disclosed and accepted by the court as required by Rule 11(d);
  4. An adjudication as to each offense; and
  5. Any other advisements required by law or that the court deems appropriate.

Exceptions:

- Forfeit offenses for which citations have been issued (Rule 3.1);
- Other misdemeanors where the penalty imposed does not exceed a fine of \$200.00;
- And pleas entered under Rule 43(c)(2).

In cases involving a judgment of guilty after a trial, judgments shall include:

1. The plea and the verdict for each offense for which the defendant was tried;
2. A statement as to whether the defendant testified and whether or not the defendant was advised by the court with respect to the defendant's right to testify or not to testify;
3. An adjudication as to each offense including the name and statute (ordinance) number for each convicted offense;
4. The name of the defendant's attorney or a statement that the defendant appeared pro se.

Exceptions:

- Forfeit offenses for which citation have issued;
- Other misdemeanors where the penalty imposed does not exceed a fine of \$200.00;
- And pleas entered under Rule 43(c)(2).

**B. Sentence.**

1. Imposition. Sentence shall be imposed without unnecessary delay. The court may, when there is a factor important to the sentencing determination that is not then capable of being resolved, postpone the imposition

of sentence for a reasonable time until the factor is capable of being resolved.

a. The court shall also address the defendant personally and determine if the defendant wishes to make a statement and to present any information in mitigation of the sentence. The attorney for the state shall have an equivalent opportunity to speak to the court. Upon a motion that is jointly filed by the defendant and by the attorney for the state, the court may hear in camera such a statement by the defendant, counsel for the defendant, or the attorney for the state.

2. Contents. A written sentence shall be signed by the judge and entered by the clerk of court without delay. The sentence may be included in the judgment or separately entered. The sentence shall:

a. State each offense for which sentence is imposed, including the statute (ordinance) number;

b. State the sentence imposed for each convicted offense;

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

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

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

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

b. The right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis... and to have the clerk of the court file a notice of appeal.

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

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

**C. Plea Withdrawal.**

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

**D. Sentencing – Municipal Courts.**

1. Fines and/or imprisonment:

W.S. 5-6-201 and 5-6-301 state that municipal court fines shall not exceed seven hundred fifty dollars \$750.00, and no imprisonment shall exceed six (6) months.

Penalties for violations of municipal ordinance(s) are set forth within the ordinances of individual municipalities.

(Note: Some municipalities have removed jail time from the sentencing portion of their ordinances. Under Wyoming Rules of Criminal Procedure a defendant is not entitled to an attorney at the city/town's expense, nor is he entitled to a jury trial, unless the ordinance alleged to have been violated provides for incarceration as a possible punishment. See W.R.Cr.P Rule 23 (a), and W.R.Cr.P. Rule 44 (a) (1).)

If your municipal ordinances do not set specific fines for violations, the bench book committee recommends that you consider using the *UNIFORM BAIL AND FORFEITURE SCHEDULE*, APPENDIX TO RULE 3.1, Wyo. R. Cr. P. as a sentencing guideline. Doing so will promote consistency of your sentencing, and consistency with sentencing of other courts within the State.

2. Court Costs:

Municipal court costs are limited to a maximum of ten dollars (\$10.00) by W.S. 5-6-108. The same statute also allows municipalities to impose a court automation fee of

ten dollars (\$10.00), for those courts that are connected to the state's court computer system.

3. Sample Sentencing Dialogue:

*Does the defense attorney wish to make a statement before sentencing?*

*Does the prosecuting attorney wish to make a statement before sentencing?*

*Does the defendant wish to make a statement in his own behalf in mitigation of punishment?*

*This court imposes a sentence of \$ \_\_\_\_\_, to be paid within ninety (90) days, and/or \_\_\_\_\_ days to be served in jail.*

4. Surcharge Required for Certain Offenses.

W.S. 1-40-119 requires the assessment of a surcharge of not less than \$100.00 nor more than \$300.00 in addition to any fine or other penalty prescribed by law if a defendant pleads guilty or nolo contendere to, or is convicted of a violation of any municipal ordinance which has substantially similar elements to the criminal offenses specified below, or any other violation of a municipal ordinance which causes actual damage to persons or property:

- Any crime enumerated in W.S. 6-1-101 through 6-10-203;
- Any violation of W.S. 31-5-225 (eluding officer), 31-5-229 (reckless driving), or 31-5-233 (DWUI);
- Any violation of W.S. 35-7-1001 through 35-7-1057 (Controlled Substances Act);
- Any violation of W.S. 14-3-104 or 14-3-105 (soliciting to engage in illicit sexual relations; immoral or indecent acts).

The surcharge is required even though prosecution, trial, or sentence may be deferred under W.S. 7-13-301 and 7-13-302, or if participation in any other diversion agreement is allowed.

Under no circumstances shall a court fail to impose the surcharge...if the court determines the defendant has an

ability to pay or that a reasonable probability exists that the defendant will have an ability to pay.

The surcharge shall be paid within ten (10) days of imposition unless the court determines that it shall be paid in installments over a reasonable period of time. Failure to comply with provision for payment of the surcharge is punishable as contempt of court. Contempt proceedings or other proceedings to collect the surcharge may be initiated by the prosecuting attorney, by the court on its own motion, or by the victim services division of the office of attorney general.

Monies paid to the court by a defendant shall be applied to the surcharge before being applied to any fine, penalty, cost or assessment, imposed upon the defendant. The proceeds from the surcharge...shall be remitted promptly by the clerk of the court to the victim services division.

NOTE: Failure to advise a defendant of assessments (the surcharge described above, or restitution as described immediately below) does not invalidate a guilty plea, but such assessments may not be imposed unless the defendant is afforded an opportunity to withdraw the guilty plea. (Rule 11(b)(1), W.R.Cr.P.)

If assessments are imposed without proper disclosure, a request for relief shall be addressed to the court under Rule 35, W.R.Cr.P, (Correction or reduction of sentence) before an appeal may be taken on the issue.

5. Restitution.

*W.S. 7-9-102. Order to pay upon conviction.* Authorizes courts, in addition to any other punishment, to order a defendant to pay restitution to victims, unless the court specifically finds that the defendant has no ability to pay and that no reasonable probability exists that the defendant will have an ability to pay.

*W.S. 7-9-103. Determination of amount owed; execution.* If a claim for restitution is submitted, the court shall fix a reasonable amount of restitution based on actual pecuniary damage resulting from the defendant's criminal activity, and include the determination of pecuniary damage as a special finding in the judgment of conviction.

“Pecuniary damage” means all damages which a victim could recover against the defendant in a civil action arising out of the same facts or event. It does not include punitive damages, damages for pain, suffering, mental anguish, or loss of consortium.

The court shall order the defendant to pay all or part of the restitution claimed, or shall state on the record specific reasons why an order for restitution was not entered. If the court determines that the defendant has no ability to pay and that no reasonable probability exists that the defendant will have an ability to pay in the future, the court shall enter specific findings in the record supporting its determination.

Any order for restitution constitutes a judgment by operation of law on the date it is entered. To satisfy the judgment, the clerk, upon request of the victim or the prosecuting attorney, may issue execution in the same manner as in a civil action.

The court’s determination of the amount of restitution owed is not admissible as evidence in any civil action.

The defendant shall be given credit against his restitution obligation for payments made to the victim by the defendant’s insurer for injuries arising out of the same facts or event.

*W.S. 7-9-112. Check fraud.* The court may require a defendant convicted of check fraud to make restitution in an amount not to exceed twice the amount of the dishonored check in addition to any other punishment.

#### **E. Sentencing Statutes.**

If your municipality has adopted state traffic statutes, the following may be helpful.

1. Traffic – W.S. 31-5-1201(b)(i)(ii)(iii):

General penalties. Unless another penalty is provided, a person convicted for a violation of an offense under Title 31 shall be sentenced as follows:

- First conviction – a fine of not more than two hundred dollars (\$200) and/or not more than twenty (20) days imprisonment;
- Second conviction of same offense within one (1) year – a fine of not more than three hundred dollars (\$300) and/or not more than thirty (30) days imprisonment;
- Third or subsequent conviction or convictions of same offense within one (1) year – a fine of not more than five hundred dollars (\$500) and/or not more than six (6) months imprisonment.

School zones. W.S. 31-5-1201(e): A person convicted of a violation of passing a school bus with red lights flashing (W.S. 31-5-507(a), or of exceeding the posted speed limit in a school zone (W.S. 31-5-301(b)(i) by more than ten (10) miles per hour shall be fined not less than two hundred dollars (\$200) nor more than seven hundred fifty dollars (\$750).

2. Reporting Convictions and Failure to Appear by Courts – W.S. 31-7-126.

Every court having jurisdiction under any statute of this state or a municipal ordinance adopted by local authority regulating the driving of motor vehicles, shall forward to the division within ten (10) working days from the date of conviction a record of the conviction of any person in the court for a violation of any of those laws or ordinances, other than those regulating standing or parking of a motor vehicle. The court shall also forward to the division a report of any violation by any person of a written promise to appear in court as given to the arresting officer upon the issuance of traffic citation and any failure to appear in court at the time specified by the court. Failure of a court to forward a record of conviction or violation under this section within the time specified in this section from the date of conviction or violation shall not affect the division's authority under this act.

3. Violation of Promise to Appear; Appearance by Counsel.

W.S. 31-5-1206 establishes "failure to appear" on traffic citations as a misdemeanor punishable by a fine of not less than twenty-five dollars (\$25) nor more than seven hundred fifty dollars (\$750) and/or imprisonment of not more than six (6) months.

A written promise to appear in court (the defendant's signing of the citation) may be complied with by an appearance by counsel.

### **3.4 New Trial – Rule 33, W.R.Cr.P.**

- A. *In general.* On motion of a defendant the court may grant a new trial if required in the interest of justice. If the trial was a bench trial (without jury) the court may vacate the judgment if entered, hear additional testimony, and direct the entry of a new judgment.
- B. *Any ground except newly discovered evidence.* A motion for a new trial based on any grounds, except newly discovered evidence, shall be made within fifteen (15) days after verdict or finding of guilty, or within such further time as the court may fix during the fifteen (15) day period; but the time for filing of the motion may not be extended to a day more than thirty (30) days from the date the verdict or finding of guilty is returned. The motion shall be determined and a dispositive order entered within fifteen (15) days after the motion is filed, and if not so entered shall be deemed denied, unless within that period the determination shall be continued by order of the court, but no continuance shall extend the time to a day more than sixty (60) days from the date the verdict or finding of guilty is returned.
- C. *Newly discovered evidence.* A motion for a 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 new trial based on the ground of newly discovered evidence shall be heard and determined and a dispositive order entered within thirty (30) days after the motion is filed unless, within that time, the determination is continued by order of the court, but no continuance shall extend the time to a day more than sixty (60) days from the date that the original motion was filed. When disposition of a motion for new trial based on newly discovered evidence is made without hearing, the order shall include a statement of the reason for determination without hearing.

### **3.5 Arrest of Judgment – Rule 34, W.R.Cr. P.**

On motion of a defendant, the court shall arrest judgment if the indictment, information or citation does not charge an offense, or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within ten (10) days after verdict or finding of guilty, or after the plea of guilty or nolo contendere, or within such further time as the court may fix during the ten (10) day period. The motion shall be determined and an order entered with ten

(10) days after such motion is filed and if not so entered it shall be deemed denied, unless within such ten (10) days the determination shall be continued by order of the court, but a continuance shall not extend the time to a day more than thirty (30) days from the date the motion is filed.

### **3.6 Correction or Reduction of Sentence – Rule 35, W.R.Cr.P.**

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

B. *Reduction.* A motion to reduce a sentence may be made, or the court may reduce a sentence without motion, within one year after the sentence is imposed or probation is revoked; or within one year after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within one year after entry of an order or judgment of the Wyoming Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. The court shall determine the motion within a reasonable time. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision. The court may determine the motion with or without a hearing.

### **3.7 Clerical Mistakes – Rule 36, W.R.Cr.P.**

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.

### **3.8 Stay of execution of sentence – Rule 38 W.R.Cr.P.**

A. *Imprisonment.* A sentence of imprisonment shall be stayed if an appeal is taken from the conviction or sentence and the defendant is released pending disposition of appeal. If not stayed, the court may require of the state penal authorities that the defendant be retained at or transferred to, a place of confinement near the place of trial or the place where an appeal is to be heard, for a period reasonably necessary to permit the defendant to assist in the preparation of an appeal.

- B. *Fine.* A sentence to pay a fine or a fine, costs and other assessments, if an appeal is taken, may be stayed by the sentencing court or by an appellate court upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating such defendant's assets.
- C. *Probation.* A sentence of probation may be stayed if an appeal from the conviction or sentence is taken. If the sentence is stayed, the court shall fix the terms of the stay.
- D. *Restitution.* A sanction imposed as part of the sentence pursuant to W.S. 1-40-119 (victim's fund) or W.S. 7-9-101 et sec. (restitution) may, if an appeal of the conviction or sentence is taken, be stayed by the sentencing court or by the appellate court upon such terms as the court finds appropriate. The court may issue such orders as may be reasonably necessary to insure compliance with the sanction upon disposition of the appeal, including the entering of a restraining order or an injunction or requiring a deposit in whole or in part of the monetary amount involved into the registry of the sentencing court or execution of a performance bond.
- E. *Civil or employment disability.* A civil or employment disability arising under a statute by reason of the defendant's conviction or sentence, may, if an appeal is taken, be stayed by the sentencing court or by the appellate court upon such terms as the court finds appropriate. The court may enter a restraining order or an injunction, or take any other action that may be reasonably necessary to protect the interest represented by the disability pending disposition of the appeal.

### **3.9 Criminal Appeals**

- A. The judge shall inform the defendant of the right to an appeal after conviction and sentencing. (Rule 32(c)(3), W.R.Cr.P.)
- B. A district court shall have jurisdiction of appeals from municipal courts, and questions certified pursuant to Rule 11, and petitions pursuant to Rule 13. (Rule 6.01(c), W.R.A.P.)

The appellate court shall acquire jurisdiction over matters appealed when the case is docketed. In all cases, the trial court retains jurisdiction over all matters and proceedings not the subject of the appeal...unless otherwise ordered by the appellate court. (Rule 6.01(b), W.R.A.P.)

(See also W.S. §5-6-106, and 5-6-107.)

- C. An appeal from a trial court to an appellate court shall be taken by filing the notice of appeal with the clerk of the trial court within thirty (30) days from entry of the appealable order, and concurrently serving the same in accordance with the provisions of Rule 32(c)(4), W.R.Cr.P. Simultaneously, a copy of the notice of appeal shall be mailed to the clerk of the appellate court. At the time of filing the notice of appeal, appellant shall deliver to the clerk of the trial court the filing fee for docketing the case in the appellate court or an order permitting the appellant to proceed in forma pauperis. (See Rules 1.5, 2.01(a), and 2.09, W.R.A.P.)
- D. One original and two copies of all briefs, petitions, motions and other documents shall be filed in the district court, and where appropriate, a proposed order shall accompany all filings. (Rule 1.01(a)(2) & (3), W.R.A.P.)
- E. All briefs, petitions, motions and other documents shall be filed on 8 ½ X 11 inch paper. Any attachments or appendices, which in their original form are on larger or smaller paper, should be reduced or enlarged to 8 ½ X 11 inch paper. (Rule 1.01(b), W.R.A.P.)
- F. If a brief or petition has been prepared in electronic format, an electronic copy shall also be provided to the court by means of a 3.5 inch disk in a Word-readable form. (Rule 1.01(c), W.R.A.P.)
- G. Upon a showing of excusable neglect, the trial court in any action may extend the time for filing the notice of appeal not to exceed 15 days from the expiration of the original time prescribed, provided the application for the extension of time is filed and the order entered prior to the expiration of 45 days from the entry of the appealable order; appellant shall promptly serve the appellee a copy of the order extending the time. If such an order is issued, it shall be appended to the notice of the appeal. (Rule 2.01(a)(1), W.R.A.P.)
- H. The running of the time for appeal in a criminal case is terminated by the timely filing of a motion for judgment of acquittal made pursuant to Rule 29(c), W.R.Cr.P.; a motion for

a new trial made pursuant to Rule 33, W.R.Cr.P.; or a motion in arrest of judgment made pursuant to Rule 34, W.R.Cr.P. (Rule 2.03, W.R.A.P.)

- I. The time of appeal commences to run and is to be computed from the latest of the following dates; entry of an order denying any such motion; the time any such motion is deemed denied; or entry of judgment. (Rule 2.03(b), W.R.A.P.)
- J. A notice of appeal filed prematurely shall be treated as though filed on the same day as entry of the appealable order, provided it complies with Rule 2.07(a), W.R.A.P. (Rule 2.04, W.R.A.P.)
- K. Concurrently with filing the notice of appeal, appellant must order and either make arrangement satisfactory to the court reporter for the payment for a transcript of the portions of the evidence deemed necessary for the appeal, or make application for in forma pauperis status as provided in Rule 10.07, W.R.A.P. A certificate of compliance with this rule shall be endorsed upon or filed with the notice of appeal. If appellant does not intend to order a transcript, the certificate of compliance shall include a statement indicating whether appellant intends to procure a statement of evidence pursuant to Rule 3.03, W.R.A.P., or an agreed statement pursuant to Rule 3.08, W.R.A.P. (Rule 2.05, W.R.A.P.)
- L. The notice of appeal shall:
- Specify the party or parties taking the appeal;
  - Identify the judgment or appealable order, or designated portion appealed; and
  - Name the court to which the appeal is taken.
  - Be accompanied by the certificate or endorsement required by Rule 2.05, W.R.A.P.
  - Have as an appendix the sentence or other dispositive order.
- (Rule 2.07, W.R.A.P.)
- M. The record shall consist of:
- The original papers and exhibits filed in the trial court;
  - The transcript of proceedings or any designated portion (if the proceedings were not stenographically recorded or transcribed in accordance with the W.R.A.P., the electronic audio recording of the proceedings, or any designated portion); and
  - A certified copy of the docket entries prepared by the clerk of the trial court.

- The transmitted record shall consist of all portions of the record designated by the parties to the appeal for transmission to the appellate court, as described in Rule 3.05(b),(c) and (d). (Rule 3.01(a) and (b), W.R.A.P.)
- In lieu of designations of the record, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the trial court, and may set forth those facts averred and proved, or sought to be proved, which are essential for review. The parties shall notify the trial court clerk in writing at the time the notice of appeal is filed that an agreed statement will be used as the record. The statement shall include:
  - A concise statement of the points upon which appellant relies;
  - A copy of the judgment or appealable order; and
  - A copy of the notice of appeal with its filing date.
 (Rule 3.08(a), (b))

N. When an appeal is filed, the following time line shall be followed

- Within 30 days of judgment/final order: Defendant (appellant) files notice of appeal/docket fees: (Rule 2.01, W.R.A.P.)
- Within 45 days of filing notice of appeal: Agreed statement (if one is used instead of a transcript of the record) shall be filed with the trial court. (Rule 3.08(b))

Within 15 days of filing of agreed statement: Trial court shall enter its order adopting agreed statement, or promptly set it for hearing to resolve any disputes. The order and statement shall be included by the trial court clerk in the record on appeal. (Rule 3.08(b))

- Within 60 days after notice of appeal is filed: Transcript filed with trial court and written certification made to appellate court and all parties that transcript has been filed in trial court. (Rules 2.01 and 2.06, W.R.A.P.)
- Within 3 working days after the record has been completed (or as otherwise arranged with appellate court clerk): Trial court clerk advises appellate court clerk in writing the record has been completed, reciting that the record, including the transcript or parts ordered for inclusion (or that no transcript

was created and/or ordered) and necessary exhibits is complete for purposes of the appeal and certified in accordance with W.R.A.P. The trial court clerk's advisement shall also include a statement indicating whether the trial court has approved a statement of evidence pursuant to Rule 3.03 (W.R.A.P.), or an agreed statement pursuant to Rule 3.08 (W.R.A.P.). The trial court clerk also forwards the appellate court's filing fee at the same time. (Rules 2.09 and 3.05(a), W.R.A.P.)

- Within 5 working days after the record has been completed: the trial court clerk shall number each page in the record, prepare an index, and provide copies of the index to the appellate court clerk and to the parties. (Rule 3.05(a), W.R.A.P.)
- Within 5 working days after the request of the appellate court clerk (which notes the reply brief has been filed, or the time for filing the reply has expired): the trial court clerk shall transmit the record to the appellate court clerk. (Rule 3.05(a), W.R.A.P.)

The record papers transmitted to the appellate court by the trial court clerk shall be securely fastened, in an orderly manner, in one or more volumes consisting of no more than 250 pages per volume, with pages numbered and with a cover page bearing the title of the case and containing the designation "Transmitted Record," followed by a complete index of all papers. The trial court clerk shall append a certificate identifying the papers with reasonable definiteness. Document of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless so directed by the appellate court clerk. A party must make advance arrangements with the clerks of both courts for the transportation and receipt of exhibits of unusual bulk or weight. (Rule 3.05(f), W.R.A.P.)

If the appellate court enters an order that the record not be retained by the trial court clerk, the trial court clerk shall transmit that record to the appellate court in accordance with the W.R.A.P. (Rule 3.05(g), W.R.A.P.)

- Clerk of appellate court notifies parties the appeal has been docketed and forthwith sets forth briefing schedule. (Rule 6.01, W.R.A.P.)

- Within 45 days after service of notice that case is docketed in the appellate court: Appellant shall file brief. (Rule 7.06(a)(1), W.R.A.P.)
  - Within 45 days after service of appellant's brief: Appellee files brief. (Rule 7.06(b)(1), W.R.A.P.)
  - Within 15 days after service of appellee's brief: Appellant files reply brief. (Rule 7.06(c)(1), W.R.A.P.)
  - THE APPELLATE COURT MAY ORDER A SHORTER TIME TO FILE AND SERVE BRIEFS. (Rule 7.06(d)(1), W.R.A.P.)
- O. When an appeal is disposed of, the original papers comprising the record on appeal are returned to the lower court. The district court may affirm, affirm in part, reverse, or reverse in part. In case of reversal, the district court may enter the judgment the lower court should have rendered, or may remand the case to the lower court to proceed as the district court directs. (Rules 9.02 and 9.03, W.R.A.P.)

### **3.10 Enforcement of Penalty**

- A. Any fine imposed in municipal court may be entered as judgment. If it is not paid within ninety (90) days from the date of judgment, it may be collected by execution in circuit court in the manner provided by law. All amounts recovered following this procedure are to be deposited with the treasurer of the municipality, to be used for the benefit of the municipality and credited against the fine and reasonable costs of collection. (W.S. 5-6-111)
- B. Imprisonment for refusal to pay fine and costs pursuant to W.S. 6-10-105:

A person committed to jail for refusing to pay or costs may be imprisoned until the imprisonment, at the rate of fifteen dollars (\$15.00) per day, equals the amount of the fine or costs, or the amount shall be paid or secured to be paid when he is discharged.



## CHAPTER 4

# SEARCH WARRANTS

- 4.1 Authoritative Basis
- 4.2 Who May Issue Search Warrants
- 4.3 Grounds for Issuance
- 4.4 Issuance of a Warrant
- 4.5 Confidentiality of Information
- 4.6 Execution and Return with Inventory
- 4.7 Suppression Hearings

**4.1** Search warrants are authorized by **5-6-106 WSS** (all municipal courts in general), and 5-6-202 WSS (which applies to cities of the first class), and governed by Rule 41 W.R.Cr.P. Case law includes *Ehrenborg v. State*, 639 P. 2d 886 (Wyo. 1982) that applied Rule 41 to justice of the peace courts, which by inference may also be applied to municipal courts for the purpose of these statutes. (See special drug warrant note at end of section.)

**4.2** Search warrants may be issued by municipal and alternate municipal judges upon the request of the municipal attorney or a federal, state, or local peace officer, for a location within the jurisdiction of the municipal court. This means within the corporate limits of an incorporated town, or first class city and also within ½ mile from the city limits for a first class city, if jurisdiction is provided by ordinance. Municipal/County airports have concurrent municipal/state jurisdiction by state statute (10-5-101 (b) WSS).

**4.3** A warrant may be issued to seize any (1) property that is evidence of the commission of a criminal offense, (2) contraband, the fruits of a crime, or things criminally possessed, (3) property which is designed or intended for use, or which is or has been used as the means of committing a criminal offense, or (4) a person for whose arrest there is probable cause, or who is unlawfully restrained. Arrest warrants may be issued under other laws with less required conditions to the warrant.

**4.4** When an applicant brings an affidavit before a judge, it is prudent to inquire if the application has been made previously to any other judge, and if so, what judges(s), and the details of that request process.

A warrant shall only be issued upon a sworn affidavit establishing the

grounds before a person authorized by law to administer oaths. If the judge is satisfied that the grounds for the application exist, or that there is probable cause to believe that they exist, the judge shall issue a warrant particularly identifying the property or person to be seized, and naming or describing the person or place to be searched. Before ruling on a request for a warrant the judge may require the affiant, or any witnesses the affiant may produce, to appear and may examine them under oath on the record to make a statement which becomes part of the affidavit. The warrant shall direct any officer authorized by state law to serve the warrant. It shall include the grounds, or probable cause, for the warrant and the name of the person who filed for the warrant. The information to form the basis for establishing probable cause must be in the warrant. This may be an exhibit attached to and by reference in the warrant made a part of the warrant, such as a police report. The warrant shall command the officer to search within a specified period of time, not to exceed 10 days, the person or place named, or the person to be arrested, or property to be seized. The warrant shall state it must be served between 6 a.m. and 10:00 p.m., unless another time is specified, but only upon reasonable cause shown. It shall also designate the judge to whom it shall be returned.

**4.5 All information concerning a warrant shall be sealed** by the judge and confidential except to law enforcement officers, judges, and court personnel in the course of official duties, until the warrant is returned.

**4.6 Execution of warrant and Return with Inventory.** A warrant issued under this rule must be executed within 10 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property, or shall leave the copy and receipt at the place from where the property was taken. The return of the warrant to the court shall be made within 5 days with an inventory of property seized, unless the time is extended for good cause, in writing, by the judge who issued the warrant.

The warrant return must be accompanied with the inventory of any property taken. The inventory shall be made in the presence of the warrant applicant and the person from whose possession or premises the property was taken, if they are present. If the applicant or the person is not present, then the inventory shall be made in the presence of at least one other credible witness and verified by the officer. The judge shall file the returned search warrant with attached inventory to the court clerk.

Special note regarding **35-7-1045 wss.** (day and night drug warrants) The special warrant provisions involving controlled substances under this law **would not seem to be extended to municipal courts.**

**4.7 A motion to suppress** evidence may be made in the court where the case is to be tried as provided in Rule 12, W.R.Cr.P. A party moving to suppress evidence must file a written motion that states in detail the specific

factual and legal grounds for the motion. The motion shall be supported by affidavit or declaration under penalty of perjury of a person with testimonial knowledge, setting forth the facts to be elicited at an evidentiary hearing.

The court may require that the motion be filed at least seven days prior to the pretrial hearing. A suppression hearing is only set if the judge at the pretrial hearing finds that there are facts in dispute. A copy of the motion and supporting documents must be served on the opposing party at least five court days prior to the date set for the evidentiary or suppression hearing.

W.R.Cr.P., Rule 12. (j) Production of statements at suppression hearing. - Except as herein provided, Rule 26.2 shall apply at a hearing on a motion to suppress evidence under subdivision (b)(3). For purposes of this subdivision, a law enforcement officer shall be deemed a witness called by the state, and upon a claim of privilege the court shall excise the portion of the statement containing privileged matter.

The burden of proof at a suppression hearing has two components: the burden of going forward (by calling witnesses) and the ultimate burden of persuasion. The prosecution has the burden of going forward, to present sufficient evidence to avoid an adverse ruling. The general rule for the burden of persuasion is the defendant must show law enforcement unreasonableness by a preponderance of the evidence. Traditionally the defendant presents the evidence to establish that the events fall under the exclusionary rule, and then the prosecution rebuts the issue. In Wyoming it is in the sound discretion of the court to decide which party goes first. (Glen Eddie Garcia v. The State of Wyoming, 1989 WY 159, 777 T.2d 603).



## CHAPTER 5

# CONTEMPT OF COURT

- 5.1 Nature and Definition
- 5.2 Direct Contempt
- 5.3 Indirect contempt
- 5.4 Procedure
- 5.5 Penalty
- 5.6 Remedial Sanctions

**5.1** There are two types of criminal contempt: direct which occurs in the presence of the court, and indirect (also called constructive) which is not committed in the immediate presence of the court, and of which the court has no personal knowledge. Civil contempt may also be charged in a criminal case.

### **CRIMINAL CONTEMPT, Rule 42, W.R.Cr.P.**

#### **5.2 Direct Contempt, Rule 42 (a) (1) (A, B, and C)**

Direct Contempt occurs in the immediate view and presence of the court and includes, but is not limited to:

- (A) Disorderly, contemptuous or insolent behavior, tending to interrupt a judicial proceeding.
- (B) A breach of the peace, boisterous conduct, or violent conduct tending to interrupt court business.
- (C) Refusing to be sworn as a witness.

Direct Contempt may be punished summarily without the necessity of a hearing if the judge saw or heard the conduct which occurred in the immediate view and presence of the court. It may be dealt with immediately or postponed to a more convenient time, without unnecessary delay, to prevent further disruption of ongoing proceedings.

Before adjudication of guilt the judge shall inform the accused of the facts for a finding of guilt, and give the accused the opportunity to show cause why the defendant should not be found guilty of contempt and sentenced. The accused shall be given the opportunity to present excusing or mitigating evidence. Judgment shall be signed by the judge and entered on

the record. The sentence shall be pronounced in open court, reduced to writing, and signed by the judge. Rule 32 (Judgment and Sentence) does not apply to direct contempt.

**5.3 Indirect Contempt**, Rule 42 (a)(2)(A, B, C, D, E, F, G, H, I, J, and K), and Rule 3.1(e), 1-12-106 and 107 W.S.S.

The most common forms of indirect contempt in municipal courts are: failure to appear after signing a promise to appear on a citation; failure to appear for a subpoena; failure to appear for a summons, and; disobedience of any lawful judgment, order, or process of the court, may often include failure to comply terms of release, or comply with the terms of a sentence. Special applications may apply to jurors and witnesses. For specifics refer to Rule 42, and the Wyoming State Statutes.

**5.4 Procedure** for Indirect contempt is started with an **Order to Show Cause (OTSC)**, why the defendant should not be held in contempt of court. The OTSC can be made upon the court's own motion, or affidavit of any person having knowledge of the facts, and; shall state the essential facts constituting the criminal contempt, and order the place, date and time for the accused to appear, and allow reasonable time for the preparation of a defense.

The accused may answer the OTSC with a motion to dismiss. All motions are in writing unless otherwise specified by the judge.

If there is good cause to believe that the accused will not respond to the order, the judge may issue an arrest warrant with bail.

Arraignment: at the initial appearance, or before at the accused's request, the defendant shall be given the opportunity to plead to the allegation. The accused should be advised of the right to a hearing, the right to an attorney, and that if the court finds the defendant cannot afford an attorney, one may be appointed, the right to have witnesses subpoenaed, and the right to testify in his own defense. If the accused pleads not guilty, and if the defendant waives the right to an attorney and for witnesses, the hearing can be done at that time, it may be set for a later date. The court can proceed with or without a prosecutor. There is no right to a jury trial.

If the contempt involves disrespect for the judge, then that judge is disqualified and another judge must hear the matter.

The verdict shall be recorded as guilty or not guilty and signed, and entered of the record.

**5.5 Maximum punishment** for a court in a city of the first class is \$750 fine, 6 months jail, or both. (5-6-202 (b) wss) For an incorporated town the maximum is \$20.00 fine, 2 days jail, or both (5-6-301 (b). wss). The city or

town should have an enabling ordinance identifying contempt by ordinance as a misdemeanor with maximum penalties, and not rely upon it being an inherent power of the court.

**Contempt by witness:** (1-12-108 wss) maximum fine of \$50.00 for failure to appear for subpoena, and not less than \$5.00 nor more than \$50.00 for other cases, or may imprison him until he submits to be sworn, testifies or gives his deposition.

**Contempt by juror:** (1-11-115 wss) for willfully and without reasonable excuse fails to attend may be arrested, compelled to attend, and subject to contempt.

**Which jurisdiction limitation applies?** Some judges believe that the state statutes are substantive in nature and cannot be superseded or amended by rule. Other judges believe the limitations of the statutes are procedural in nature and that Rule 42.1(d) W.R.Cr.P. sets jurisdictional limits in contempt matters, notwithstanding the other statutes referenced.

## **5.6 CIVIL CONTEMPT – REMEDIAL SANCTIONS:** Rule 42.1

In a criminal proceeding upon the motion of any aggrieved party, or the court's own motion contempt seeking remedial sanctions may be initiated. Wyoming Rules of Civil Procedure apply.

After notice is given and a hearing, if the court finds that a person has failed or refused to perform an act required by the court, that the person has the ability to perform, the court may find the person in civil contempt of court.

Coercive remedies for civil contempt include

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

(b) an order designed to ensure compliance with a prior court order; or if the court expressly finds that (a) and (b) above would be ineffective to stop a continuing contempt, then (c) any other remedial sanction.

In addition to the coercive remedies, the court may order the person found in contempt to pay a party for any losses caused by the contempt, including reasonable attorney's fees.



# Chapter 6

## RECORDS MANAGEMENT

### 6.1 Records Management Instructions and Information for Municipal Courts

*Legal Authority: Section 9-2-410, W.S.S. 1982*

***"All public records are the property of the State. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored transferred, destroyed, or disposed of and otherwise managed, only in accordance with W.S.S. 9-2-405 thru 9-2-413."*** (Laws 1982, ch.62 S 3)

---

#### HOW TO USE THE RETENTION SCHEDULES

1. *These retention schedules give the court the authority to destroy records, if the court chooses, after the records have been retained the prescribed time. If there is a reason to keep a records series longer, by all means keep them.*
2. *Records scheduled as **PERMANENT** should not be destroyed or removed from the court's custody. Contact the State Archives concerning any plan which would affect those permanent records. If storage conditions or space is a problem, records can be transferred to the State Archives; and the legal chain of custody will not be broken.*
3. *To destroy records listed in this manual, be certain that dates of the records are in line with the retention schedules. Even though the records are scheduled for destruction, "records dated prior to 1920 **should not** be destroyed until they have been thoroughly appraised for historical significance by Archives Staff." In the case of those "municipalities organized after 1920, all records created during the first ten years of the town's existence should be retained permanently or until they have been appraised for historical value." Though the earliest records of all municipalities are of greatest importance, later records should also be screened when they are considered for destruction. Age is not the sole criteria for permanent retention. The elected or appointed officials of each municipality are responsible for working with the State Archivist to preserve all historical government records. The State Archivist*

*Historians can assist with the historical appraisal of those records. To arrange for on-site assistance or for any discussion about the records, call the State at 777-7826.*

- 4. All records which may be used in a financial audit-examination must be kept until after such audit/examination is completed and all litigations, claims or audit findings are resolved. Further, all records which may be used in pending or current litigation should be kept until settlement.*
- 5. Records containing confidential information should be shredded or burned. If this is not possible, records officers should witness the burying of those records*
- 6. Administrative reorganization or changes in record systems may alter the time period records need to be kept. The Court may also possess records not listed in this manual. Contact the State and they will initiate the process to establish a new retention schedule or change an existing one.*
- 7. By law, any political subdivision adopting a microfilm system shall consult with the State. Approval of the process must be obtained if permanent records are being filmed. Agencies are required by law to comply with micrographic standards established by the State Archives. (Sections 9-2-406(Director; management of public records) & 9-2-413(Reproduction of public records of political subdivisions), W.S. 2001, ch. 177, S 1).*
- 8. To obtain a more comprehensive Records Management Manual or a copy of the State's Micrographic Standards, contact the State at:*

*Department of Commerce  
Wyoming State Archives Division  
Cheyenne, Wyoming 82002-0013  
Telephone: 307-777-7826*

## **MUNICIPAL COURTS**

<b><u>AR#</u></b>	<b><u>TITLE OF RECORDS</u></b>	<b><u>RETENTION SCHEDULE</u></b>
8649	Court order & Expungement Record	<u>PERMANENT</u>
05-235	Parking Ticket Envelope (Non-citation destroy parking ticket)	Retain 1 year, then (supersedes AR1# 8667)
05-241	Criminal Case Files- Jailable Offenses	<u>PERMANENT</u> or
transfer to State	Adult & Juvenile (Includes cases relating to drug possession & driving while under the influence. Various records including warrants, complaint, subpoena, summons, sentence & appeal information. Refer to Court jail authorization, defendant rights, complete, retain judgments, appeal, request for continuance, criminal case file 10 years, then destroy. bond, surety bond and counseling case report. (Note: if any case file (supersedes AR1 # 13123) records are filed separately by record name, the same retention schedule applies.)	Archives if Court docket does complete information about defendant, judge, Docket) If docket is cash <b><u>Do not destroy docket.</u></b>
05-242	Court Dockets	<u>PERMANENT</u> or retain 10
years, then.	(the following is docket information that	transfer to State
Archives.	the State Archives recommends be kept	permanent: Name of
(supersedes AR1# 13122)	Defendant, Defendant's address, date of birth, charge indicating a misdemeanor; date of violation; dates and types of court actions; name of attorney, if represented; plea, finding indicating misdemeanor; sentencing; fine/jail time & date satisfied)	
05-243	Index to Dockets (Cases)	<u>PERMANENT</u> or retain 15 years,
then		transfer to State Archives. (supersedes AR1# 13121)
13126	Juror Form	Destroy at discretion.

13128	<i>Juror Summons destroy.</i>	<i>Retain 6 months, then</i>
13129	<i>Local/Area Arrest Warrant Listing</i>	<i>Destroy at discretion.</i>
05-240	<i>Traffic Citations, Ordinance Violations of filing &amp; Minor Offenses which are non-jailable case files, Dockets/Abstracts 13125)</i>	<i>Retain 5 years from date then destroy (supersedes AR1#</i>
05-239	<i>Arrest Warrants; Unexecuted into respective  prejudice,</i>	<i>Retain 2 years, then file case file, or if dismissed without destroy. (supersedes AR1# 13124)</i>
05-244 destroy	<i>Sound and/or Electronic Records</i>	<i>Retain 2 months, then if no further appeals are pending. (supersedes AR1# 93-185)</i>
05-234 destroy within	<i>Court Calendar</i>	<i>Retain 3 months, then 1 year.</i>
05-237 year.	<i>Jail Roster Lists/Reports</i>	<i>Destroy at discretion within 1</i>
05-238 impanelment,	<i>Juror Questionnaire</i>	<i>Retain for duration of then destroy. (supersedes AR1# 13127)</i>
05-236 impanelment,	<i>Jury Lists</i>	<i>Retain for duration of then destroy.</i>

***MUNICIPAL COURTS: Administrative and Financial Records***

<b><u>AR#</u></b>	<b><u>TITLE OF RECORDS</u></b>	<b><u>RETENTION SCHEDULE</u></b>
05-227 destroy.	<i>Bank records for Ordinance, Criminal and Bond Accounts (includes bank 13111) statements, deposit slips, cancelled checks and book stubs, registers)</i>	<i>Retain 3 years, then (supersedes AR1# 13110 &amp;</i>

05-228	Cash books and Bond Ledgers	Retain 3 years, then destroy.
		(supersedes AR1# 13118)
05-229 for	General correspondence	Retain 3 years, then review
		administrative & historical value and
		retain <u>PERMANENTLY</u> or transfer
		to State Archives. Destroy
	remaining	correspondence.
		(supersedes AR1# 13119)
05-230 date, then	Inventory Records	Retain 1 year from document
		destroy.
05-231 destroy.	Inventory Reports	Retain until superseded, then
05-232 document date, then	Payroll Data Input Records and	Retain 1 year from
is	Output Reports-originals & duplicates.	destroy if summary information
	(includes time sheets, annual or sick	retained by the Town(city)
Clerk/Treasurer.	leave records, tax forms, etc.)	If not, retain 4 years, then
destroy.		
05-233 destroy.	Witness, Interpreter, Juror's Fee Records	Retain 3 years, then
		(supersedes AR1# 13124)
05-245 destroy.	Vouchers/Purchase Orders-Town/City	Retain 3 years, then
	(Duplicates)	
05-246 destroy.	Reports of Examination or Audit	Retain 3 years, then
05-247 destroy. (supersedes	Reports to the Supreme Court, Town/City,	Retain 3 years, then
	County or other agencies.	AR1# 13114 & 13116)
05-248 destroy.	Receipts from Town/City Treasurer for	Retain 3 years, then
	fees collected.	(supersedes AR1# 13112)
05-249 destroy.	Receipt Books or Duplicate Receipts	Retain 3 years, then
		(supersedes AR1# 13113)
05-244 destroy if no further	Sound Recordings/Electronic Records	Retain 2 months, then
		appeals are pending.
		(supersedes AR1# 93-185)

13120 Personnel Records  
town/city  
discretion.

*After separation, transfer records to  
clerk. Destroy duplicate records at*

## Chapter 7

# CLERK OF COURT

- 7.1 Duties of the Clerk
- 7.2 Wyoming State Statutes
- 7.3 Wyoming Court Rules

### **7.1 Duties of the Clerk of Court**

The duties of the clerk of court for municipal courts will differ in various jurisdictions. Each court should develop its own written duties for the clerk based on the needs and resources available. In the smaller courts the judge may have to assume most, or even all of the duties of the clerk. Many of the municipalities may have the court's computer system combined with the municipality's accounting program administered by finance officer. Another variable is the clerk may be a town or city clerk, and only assigned part-time to assist the judge. Whatever system is used the clerk and the judge should review the relevant Wyoming State Statutes and the relevant Wyoming Court Rules. To add to the confusion for municipal courts, the rules and statutes do not always agree. The state court computer system is the standard referred to in the statutes and rules. Few municipalities are on that system. A request for approval from the Department of Audit is advised for any other computer or manual system for handling any money.

Judges should be aware that they are ultimately responsible for the actions of the court staff in the day to day operation of the court. This especially applies to oversight of all monies, and to compliance with the canons of ethics.

As the clerk not only keeps the records of the court, but also tracks the cases and coordinates the day to day operations of the court, the sources for guidelines for clerks below is not exhaustive. When in doubt about a procedure, the municipal courts are now usually, but not always, intended to follow the circuit court's procedure.

There are two primary sources of guidelines for the duties of the clerk of court: first, the *Wyoming State Statutes* 5-6-106, and 5-7-101 through 5-7-107, and second, the *Wyoming Court Rules* Rule 23 W.R.Cr.P, Jury Trial; Rule 36 W.R.Cr.P, Clerical Mistakes; Rule 56 W.R.Cr.P, Court and Clerks; Processing Appeal, Rule 2., 3. and 4. W.R.A.P.; Rules for Municipal Courts – Administrative Rules 1-6; and the Code of Judicial Conduct, Canon 3 (b) (7) and (9).

## **7.2 Wyoming State Statutes**

### **5-7-101. General duties of clerk; under direction of court.**

The clerk of each of the courts shall exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law; and in the performance of his duties he shall be under the direction of his court.

### **5-7-103. Filing, preserving and use of papers; microfilming permitted.**

The clerk shall file together and carefully preserve in his office, all papers delivered to him for that purpose in every action or proceeding. He shall not permit the papers to be taken from his office except to be used at a session of the court or upon legal process, and he shall be liable upon his official bond to the party suffering injury on account of any violation of this section. This section shall not apply to matters in probate. Upon the order of the judge of the district, the clerk may transmit by express or registered mail to an attorney of the state appearing in the action or proceeding, who resides in a different county or away from the county seat, such original files as are not represented by copies in the clerk's office, and the clerk shall take the attorney's receipt for each paper in each case. Nothing in this section shall limit or prohibit the clerk from microfilming papers in his office, disposing of the originals in accordance with W.S. 9-2-411 and retaining the official microfilm in lieu of the original papers pursuant to W.S. 9-2-413.

### **5-7-104. Clerk's endorsement of papers.**

The clerk shall endorse upon every paper filed with him the date of the filing thereof, and upon every order for a provisional remedy, and upon every undertaking given under the same, the date of its return to his office.

### **5-7-105. Clerk to keep books and make records.**

The clerk shall keep the journals, records, books and papers appertaining to the court, and record its proceedings.

### **5-7-106. Record of orders out of court.**

Orders made out of court shall be forthwith entered by the clerk in the journal of the court, in the same manner as orders made in term.

### **5-7-107. Duties prescribed for clerks of district court applicable to all clerks.**

The provisions prescribing the duties of clerks of the district court shall, so far as they are applicable, apply to the clerks of other courts of record.

### **7.3 Wyoming Court Rules**

When developing the Duties of the Clerk for municipal courts, Rule 2, W.R.Cr.P. is necessary.

Rule 2. 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.

#### **Rules for Municipal Courts – Administrative Rules**

Rule 1. The Department of Audit shall establish, supervise, and may modify a system of accounting and auditing for municipal courts, (5-4-216, 5-4-219 and 9-2-410 wss).

Rule 2. (a) Docket book and records shall be uniform in format as established by the computer system approved by the Director of the Department of Audit and the Wyoming Supreme Court, (except as provided in paragraph (i)).

Cash Receipts: A cash receipt shall be made for all monies deposited with the court. Each receipt shall be in triplicate and pre-numbered in numerical sequence by the computer software used for receipt generation. The original copy shall be issued to the payer of money received by the court in payment of fines, fee, costs, bail forfeitures, bail bonds, garnishments, attachments, judgments, and other official business. The duplicate copy goes to the city treasure and the third copy is retained by the court. The docket number must be shown on each copy. The cash receipt number will be entered in the docket. If the computer is not working a hand receipt is issued, and then later entered into the computer system.

Deposits: Special Criminal Account. All money received by the judge is to be deposited daily into an account labeled "special criminal account," in an officially designated bank. The cash receipt numbers must be entered on the deposit slips and the daily cash receipts and the total deposits must balance. In the event the justice remits such money to the city treasure on a daily basis, such sums need not be deposited in a bank, but the cash receipt numbers shall be shown on the treasure's receipt which the justice obtains. The treasure's receipt number shall be entered into the respective docket.

SPECIAL CIVIL ACCOUNT: All money received in a civil matter shall be deposited in an account labeled "special civil account," used only for that purpose. (5-4-218, wss).

CIVIL TRUST ACCOUNT: All money received by each court for third party civil judgments must be deposited into an account labeled "civil trust account," and payments to third parties are made are on checks from this account. The balance of this account shall be balanced and reconciled each month and at the end of the year.

BANK STATEMENTS, REPORTING AND PENALTIES see rule 2. (E), (g), AND (H). Rules for Municipal Courts.

**Rule 2 (i) MUNICIPAL COURTS NOT ON STATE COMPUTER SYSTEM**

(i) If the court is not on the State of Wyoming's court computer system all applicable rules, regulations and directives of the Department of Audit shall be fully utilized for all funds received.

**WYOMING COURT RULES, CODE OF JUDICIAL CONDUCT**

CANON 3. B. (5) prohibits any words or conduct, in the performance of judicial duties, which express bias or prejudice by the judge, staff, court personnel, or others subject to the judge's direction and control.

## **CHAPTER 8 JUVENILES**

Historically Wyoming municipal courts have been considered “courts of adult jurisdiction,” meaning that juveniles have the same rights and responsibilities as adults. Some laws now provide minors in municipal courts special protection. Emancipated minors are subject to jurisdiction of adult courts and the special protections do not apply. (W.S. 14-1-206)

Status offenses are those acts which are prohibited for those persons younger than 18 years of age, and would not be crimes if committed by those persons over 18 years of age. No minor (under 18) convicted of a status offense shall be sentenced to a term of imprisonment. A minor convicted of a municipal ordinance other than a status offense shall only be imprisoned in a juvenile detention facility. (W.S.7-1-108)

It is the responsibility of one or both parents and the guardian or custodian of a minor, if applicable, to appear with the minor before any court. It is the responsibility of the court to allow any such person appearing with the minor to address the court. The presiding judge may order such person appear with the minor in the manner provided by W.S.14-6-214. Sanctions are available if a parent ordered to appear, fails to appear. **(W.S. 14-2-205)**

Care should be taken in addressing juveniles that they do understand the proceeding. Any waiver of right, voluntariness of the plea or Rule 11 requirements may not be understood by a young minor. If the child cannot comprehend his position, or understand the nature and object of the proceedings, or conduct his defense in a rational manner, or cooperate with those helping him, the judge shall suspend the proceedings. (W.S. 7-11-302)

A municipal court judge, with the consent of the municipality may establish and supervise a teen court. A defendant may enter the teen court program which if a defendant successfully completes the judge may discharge the defendant and dismiss the proceeding against him. (W.S. 7-13-1202)

Municipal courts often lack probation services, and other services to truly meet the needs of a juvenile offender. In such cases the Juvenile Court may be the best option. Municipal court cases may be referred to the county attorney for review for possible filing in the state juvenile court. (W. S. 14-6-211)

## CHAPTER 8 SUPPLEMENT

Effective July 1, 2009.

### **14-6-203. Jurisdiction; confidentiality of records.**

**(f) The district attorney shall establish objective criteria, screening and assessment procedures for determining the court for appropriate disposition in cooperation and coordination with each municipality in the jurisdiction of the district court. The district attorney shall serve as the single point of entry for all minors alleged to have committed a crime. Except as otherwise provided in this section, copies of all charging documents, reports or citations for cases provided in this subsection shall be forwarded to the district attorney prior to the filing of the charge, report or citation in municipal or city court.**

This law has not been implemented state wide at the time of publishing. It would appear that the county attorneys will in each county devise procedures for that county.

Each county attorney will be responsible to develop a county wide plan to review all cases in which juveniles are charged with municipal ordinance violations. Plans may include provisions for certain types of cases to be directly filed into municipal court without a review by the county attorney, such as traffic and parking citations.

The records of juveniles in municipal courts are still public record under paragraph (j).

For now, it is suggested that each municipal judge work with their municipal attorney, county attorney and police chief to be involved with the development of your local procedure. Also it is advisable to keep your elected officials informed.

## CHAPTER 9

# MEDIA & COURT REPORTERS

### 9.1 Media access to Courts—Rule 53, W.R.Cr.P

### 9.2 Court Reporters---Rule 55(b), W.R.Cr.P.

#### 9.1 Media Access to Courts—Rule 53, W.R.Cr.P.

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

- A.** *The media shall apply for approval of media coverage to the judge presiding over the proceedings to be covered. This application must be made at least 24 hours prior to the proceedings unless good cause is shown for a later application. Only the equipment approved by the presiding judge in advance of the court proceedings may be used during the proceedings;*
- B.** *In a trial of major importance, the presiding judge may appoint a media coordinator and may require that photographic, television or radio broadcast coverage of the trial be pooled;*
- C.** *No photographic, radio or television broadcast equipment shall be used which produces any distracting sound or light. Audio pickup should be made through any existing audio system in the court facility if practical. If no suitable audio system exists in the court facility, microphones and related wiring shall be as unobtrusive as possible. Artificial lighting devices (including flashbulbs) shall **not** be used;*
- D.** *There shall be no movement of equipment during court proceedings (it has been construed that this rule means that even a photographer using only a still camera may **not** move about the courtroom);*
- E.** *There shall be **no** audio broadcast of conferences between attorney and client or between counsel, or between counsel and the presiding judge;*
- F.** *There shall be **no** close-up photography or visual recording of members of the jury;*

- G.** *The privilege to photograph, televise or record court proceedings may be exercised only by persons or organizations which are part of the accredited news media. Film, videotape, photographic and audio reproduction shall **not** be used for unrelated advertising purposes;*
- H.** *The presiding judge may for cause prohibit the photographing, radio or television broadcast of a participant in a court proceeding on the judge's own motion or on the request of a participant in a court proceeding. In cases involving the victims of crimes, confidential informants, undercover agents and in evidentiary suppression hearings, a presumption of validity attends such requests. The trial judge shall exercise broad discretion in deciding whether there is cause for prohibition. This list of requests which enjoy the presumption of validity is not inclusive; the Court may, in its discretion, find cause for prohibition in comparable situations.*

**9.2 Court Reporters---Rule 55(b), W.R.CR.P.**

*In municipal court, all testimony as well as all proceedings held in open court including, but not limited to, voir dire, opening statements, motions and final arguments, conferences with the presiding judge both in open court or in chambers, shall be recorded by electronic means. Informal discussions, informal instruction conferences and pre-trial conferences shall be recorded when requested by a party. At their own expense, any party may have proceedings recorded by a court reporter.*

## Appendix

### GLOSSARY OF LEGAL TERMS

**ACQUITTAL** – a legal and formal certification of the innocence of a person charged with a crime.

**ACTUS REUS** – the criminal act; the act of a person committing a crime.

**ADJUDICATE** – to determine finally; to adjudge

**ADOPTION**- The effect of this act terminates a former parent or guardian's rights to the control or custody of the child. The adopting person shall have all of those rights and obligations respecting the child as if they were natural parents. The adopting parents will not need to annually report to the courts as a guardianship requires. The key determining factor in an adoption is addressing the permanency of the placement. □□ Stat. 1-22-114

**ADVERSARY** – an opponent. The opposite part in a writ or action.

**ADVOCATE** – one who assists, defends, or pleads for another; must be licensed to practice law.

**AFFIDAVIT** – a statement of facts made with personal knowledge and subscribed and sworn to before a person authorized to take oaths.

**AGGRAVATED ASSAULT** – assault with intent to kill or for the purpose of inflicting severe bodily injury; assault with the use of a deadly weapon.

**AMICUS CURIAE** – a friend of the court. Also, a persons who has no right to appear in a suit but is allowed to introduce argument, authority or evident to protect his interest.

**ANSWER** – a pleading by which defendant endeavors to resist the plaintiff's allegation of facts.

**APPEAL** – the removal of a cause from a court of inferior to one of superior jurisdiction for the purpose of obtaining a review on questions of law.

**APPELLATE COURT**- A court that hears appeals from a lower court

**ARRAIGN** – to bring a prisoner before the court to answer the complaint. In practice, used to refer to any appearance of the accused before a magistrate, or before the trial court to enter his plea. Rule 5(c) W.R.Cr.P.

**ASSAULT** – the unlawful attempt to commit a violent injury upon the person of another, with the present ability to do so. If severe bodily harm is inflicted or a weapon is used, the offense is aggravated assault. W.W. 6-2-501

**ASSAULT AND BATTERY** – an unlawful touching of the person of another in a rude, insolent or angry manner.

**BAIL** – to procure the release of a person from the legal custody by undertaking that defendant shall appear at the time and place designated and submit oneself to the jurisdiction and judgment of the court.

**BALIFF** – a court attendant whose duties are to keep order in the courtroom and to have custody of the jury.

**BENCH WARRANT** – process issued by the court itself or “from the bench” for the attachment or arrest of a person; either in case of contempt or whether an indictment has been found, or to bring in a witness who does not obey a subpoena. The function a bench warrant is to achieve the court appearance of a defendant in a pending criminal action for a purpose other than defendant’s initial arrangement in the action.

**BENCH TRIAL** - Trial without a jury in which the judge decides the case.

**CAPIAS** – “that you take.” The general name for several species of writs, the common characteristic of which is that they require the officer to take the body of the defendant into custody.

**CERTIORARI** – to be informed of, to be made certain in regard to. The name of a writ of review or inquiry; a writ directed by a superior court to an inferior court asking that the record of a case be sent up for review; a method of obtaining a review of a case by the United States Supreme Court.

**CHANGE OF VENUE** – the removal of an action begun in one county or district to another court or district for trial.

**CIRCUMSTANCES** – attendant facts. Any facts may be a circumstance with reference to another fact.

**CIRCUMSTANTIAL EVIDENCE** – all evidence of an indirect nature; the existence of a principle fact is inferred from circumstances.

**CITATION** – a document charging a defendant with an offense and requiring the defendant to appear in court and answer to the charge. Rule 1(b) W.R.Cr.P.

**COERCION** – compulsion, constraint, compelling by force.

**COMPLAINT** - civil – the first or initiatory pleading on the part of the plaintiff in a court action. Criminal – a charge, preferred before a magistrate having jurisdiction, that a person has committed a specified offense. A copy of the complaint and the summons must be served on a defendant before a response is required.

**CONCURRENT** – running together; contemporaneous. Concurrent sentences run at the same time and each day served by the prisoner is credited on each of the concurrent sentences.

**CONSECUTIVE SENTENCES** – sentences which are served one after the other; inmates refer to such sentences as “stacked”.

**CONTEMPT** – a willful disregard or disobedience of a public authority. W.S. 1-21-901 et seq.

**CONTEMPT OF COURT** – any act which is calculated to embarrass, hinder or obstruct the court in the administration of justice or which is calculated to lessen its authority or dignity. Direct contempt (also called criminal contempt) are those committed in the immediate view of the court (such as insulting language or acts of violence) and are punishable summarily. Constructive (or indirect) contempt are those which arise from matters not occurring in or near the presence of the court, but with reference to the failure or refusal of a party to obey a lawful order or decree of the court. W.S. 1-21-901 et seq.

**CONVICTION** – in a general sense, the result of a criminal trial which ends in a judgment or sentence that the person is guilty as charged.

**CORPUS DELICTI** – the body of the crime; the essential elements of the crime, the substantial fact that a crime has been committed. The actual commission by someone of the offense charged.

**CROSS-EXAMINATION** – the questioning of a witness in a trial, or in the taking of a deposition, by the party opposed to the one who produced the witness.

**CUSTODIAL OFFICER** – the sheriff, chief of police or the officer in charge of a facility in which a defendant is being held on criminal charges. Rule 1(b 7)W.R.Cr.P.

**DECREE**- A decision or order of the court. A final decree is one, which fully and finally disposes of the litigation. An interlocutory decree is a preliminary decree, which is not final.

**DEFAMATION** -The making of false, derogatory statements about a person's character, morals, abilities, business practices or financial status. (Includes libel, which is written, and slander, which is spoken).

**DEFAULT** – a “default” in an action of law occurs when a defendant omits to plead within the time allowed or fails to appear at the trial.

**DELIBERATION** - The jury's decision-making process after hearing the evidence and closing arguments and being given the court's instructions.

**DETAINER** – a type of hold order filed against an incarcerated person by another state or jurisdiction which seeks to take the person into custody to answer to another criminal charge whenever the person is released from the current imprisonment.

**DIRECT EXAMINATION** – the first interrogation of a witness by the party on whose behalf the witness is called.

**DISCOVERY** – a proceeding whereby one party to an action maybe informed as to facts know by other parties or witnesses.

**DISMISSAL** – the act of voluntarily terminating a criminal prosecution or a lawsuit or one of its causes of action by one of the parties. A judge’s ruling that a lawsuit or criminal charge is terminated. An appeals court’s act of dismissing an appeal, letting the lower court decision stand. Dismissal with prejudice means it can never be filed again. Dismissal without prejudice leaves open the possibility of bringing suit again.

**DUE PROCESS OF LAW** – the fundamental rights of the accused to a fair trial; the prescribed forms for conducting a criminal prosecution; the safeguards and protections of the law given to one accused of a crime.

**ET AL** – and another; and others.

**EXHIBIT**- A paper, document or other article presented and offered into evidence in court during a trial or hearing to prove the facts of a case.

**ET SEQ.** – An abbreviation for et sequentes, or et sequentia, "and the following," ordinarily used in referring to a section of statutes.

**EX PARTE** – on one side only; by or for one party; done for, in behalf of, or on the application, of one party only.

**EX POST FACTO** – after the fact.

**EX POST FACTO LAW** – a law passed after the occurrence of a fact or commission of an act which retrospectively changes the legal consequences

or relations of such fact, or deed. Forbidden to both the states and the federal government by the United States Constitution.

**EX REL** – by or on the information of. Used in case title to designate the person at whose instance the government or public official is acting.

**EXCLUSIONARY RULE** – the rule which excludes from the trial of an accused evidence illegally seized or obtained.

**EXECUTION** – the putting into effect of the final judgment; statutory means provided for enforcement of judgment. W.S. 1-21-501 et seq

**EXHIBIT** – a paper, document or other article produced and exhibited to a court during a trial or hearing.

**EXPERT EVIDENCE** – testimony given in relation to some scientific, technical or professional matter by an expert witness Rule 702 W.R.E.

**EXPERT WITNESS** – persons qualified to speak authoritatively by reason of their special training, skill or familiarity with the subject.

**FELONY** – a crime sufficiently serious to be punishable by death or a term in state or federal prison, as distinguished from a misdemeanor which is only punishable by confinement to county or local jail and/or a fine. Or a crime carrying a minimum term of one year or more in state prison, since a year or less can be served in county jail. However, a sentence upon conviction for a felony may sometimes be less than one year at the discretion of the judge and within limits set by statute. Felonies are sometimes referred to as "high crimes" as described in the U.S. Constitution.

**FORCIBLE ENTRY AND DETAINER** – a summary proceeding for restoring possession of land to one who has been wrongfully deprived of possession. W.S. 1-21-1001 et seq.

**GUARDIAN**- The person appointed by the court to have custody of the minor, or ward; also known as fiduciary. Differs from "conservator" in that a conservator also has custody and control of the ward's property, can be called the guardian of the estate or property. W.S. 3-2-201

**GUARDIAN, TEMPORARY OR EMERGENCY** -An appointment of guardianship with the same duties and powers as full guardianship that is initiated by petition and determined by court hearing that usually lasts up to 90 days but may be extended for up to one (1) year. W.S. 3-2-106

**GUARDIAN, TEMPORARY FOR MEDICAL, DENTAL AND EDUCATIONAL CONSENT** - As of July 1, 2005, Wyoming grandparents and other family caregivers who are taking care of most of the basic needs for their grandchildren, now have the opportunity to petition the court to provide

medical, dental and educational consent for their grandchildren without changing the legal custody status of the parents. This allows the family caregiver to work directly with the child's school, doctors and dentists. It is temporary and only valid for one year, but the grandparent or family caregiver can petition for an annual renewal with the court after one year. W.S. 3-2-301

**GUARDIAN, STAND-BY** - A guardian designated by petition and authorized by court order prior to, and whose authority is activated upon, the occurrence of a specified event or the origination of a described mental or physical health condition of the petitioner, or current custodian. Once designated, this person can step in without requiring further attorney services or court orders as guardian in temporary or emergency situations until final decisions are made. This option is applicable to situations in which the acting parent (a) is seriously but temporarily ill, or (b) has a terminal and/or debilitating condition that prevents them from providing primary care, or (c) is deployed or otherwise absent.. W.S. 3-2-108. Stand-by conservator W.S. 3-3-101

**GARNISHMENT** – a proceeding whereby property, money or credits of a debtor, in possession of another (the garnishee) are applied to the debts of the debtor.

**HADEAS CORPUS** – a protection against illegal confinement, such as holding a person without charges, when due process obviously has been denied, bail is excessive, parole has been granted, an accused has been improperly surrendered.

**HEARSAY** – verbal or written evidence not proceedings from the personal knowledge of the witness, but from the mere repetition of what the witness has heard others say. Rule 801, W.R.E, et seq

**HIGH MISDEMEANOR** – a misdemeanor, the maximum penalty for which is beyond the jurisdiction of the justice.

**HUNG JURY** – a jury so irreconcilably divided in opinion that it cannot agree upon any verdict.

**INDICTMENT** – an accusation in writing found and presented by a grand jury charging that a person therein named has done some act which, by law, is a crime.

**IN FORMA PAUPERIS** – in the form of a pauper; as a poor person or indigent. Permission to bring legal action without payment of required fees for counsel, writs, transcripts and the like.

**INFORMER** – a person who informs or proffers an accusation against another whom the person suspects of the violation of some penal statute.

**INSTRUCTION** – a direction given by the judge to the jury concerning the law of the case.

**INTERROGATORIES** - a formal or written question that must be answered under the direction of the court.

**JURISPRUDENCE**- Formal study of the principles on which legal rules are based and the means by which judges guide their decision making.

**JURY PANEL** - a list of jurors returned by a sheriff to serve at a particular court or for the trial of a particular case. The work may be used to denote either the whole body of the persons summoned as jurors for a particular term of court or those selected by the clerk by lot.

**LEADING QUESTION** – one which instructs a witness how to answer or puts into witness's mouth words to be echoed back; one which suggests to the witness the answer desired. Prohibited on direct examination.

**LEGAL** – conforming to the law; according to a law; required or permitted by law; not forbidden or discountenanced by law; good and effectual law.

**LEGAL DUTY** – that which the law requires to be done or forborne.

**LEGAL ETHICS** – usages and customs among members of the legal profession involving their moral and professional duties toward one another, toward clients and toward the courts.

**MALA IN SE** – wrong in themselves; acts immoral or wrong in themselves.

**MALA PROHIBITA** – crimes mala prohibita embrace things prohibited by statute as infringing on other's rights, though no moral turpitude may be attached and constituting crimes only because they are prohibited.

**MATERIAL FACT** – one which is essential to the case, defense, application, etc., and without which it count not be supported.

**MENS REA** – a guilty mind, a guilty or wrongful purpose, a criminal intent. Guilty knowledge and willfulness.

**MIRANDA WARNING** – the warning which must be given to the suspect whenever suspicion focuses upon the suspect. The officer must warn the suspect of 1.-the right to remain silent; 2- that if the suspect talks, anything suspect says may be used against suspect; 3- that the suspect has a right to be represented by counsel and the right to have counsel present at all questioning and 4- that if suspect is too poor to afford counsel, counsel will be provided at state expense.

**MOTION** – an application made to a court or judge for purpose of obtaining a rule or order directing some act to be done in favor of the applicant. It is usually made within the framework of an existing action or proceeding and is ordinarily made on notice, but some motions may be made without notice. One without notice is called an ex parte motion. Written or oral application to court for ruling or order, made before (e.g. motion to dismiss) during (e.g. motion for directed verdict) or after (e.g. motion for new trial) trial.

**MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT** – a motion that judgment be entered in accordance with the movant's earlier motion for a directed verdict and notwithstanding the contrary verdict actually returned by the jury.

**MOTION FOR JUDGMENT ON PLEADINGS** – any party may move after the pleadings are closed for judgment thereon. It is a device for disposing of cases when the material facts are not in dispute and only question of law remain. Rule 12(c) W.R.C.P.

**MOTION FOR MORE DEFINITE STATEMENT** – if a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement.

**MOTION FOR NEW TRIAL** – a request that the judge set aside the judgment and order a new trial on the basis that the trial was improper or unfair due to specified prejudicial errors that occurred.

**MOTION IN LIMINE** – a written motion which is usually made before or after the beginning of a jury trial for a protective order against prejudicial questions and statements. Purpose of such motion is inadmissible and prejudicial and granting of motion is not a ruling on evidence.

**MOTION TO DISMISS** – one which is generally interposed before trial to attack the action on the basis in insufficiency of the pleading, of process, venue, joinder, etc. Rule 12(b), W.R.C.P.

**MOTION TO STRIKE** - on motion of either party, the court may order stricken from any pleading any insufficient defense or an redundant, immaterial, impertinent or scandalous matter Rule 12(f), W.R.C.P.

**MOTION TO SUPPRESS** – device used to eliminate from the trial of a criminal case evidence which has been secured illegally, generally in violation of the Fourth Amendment (search and seizure), the Fifth Amendment (privilege against self-incrimination) or the Sixth Amendment (right to assistance of counsel, right of confrontation, etc.) of U.S. Constitution.

**MOVANT** - the party in a lawsuit or other legal proceeding who makes a motion (application for a court order or judgment).

**NOLO CONTENDERE** – the act of taking exception to some statement or procedure in trial. Used to call the court’s attention to improper evidence or procedure.

**OBJECTION** – the act of taking exception to some statement or procedure in trial. Used to call the court’s attention to improper evidence or procedure.

**OVERRULE** – deny, as to deny an objection. The witness may answer the question. Also see SUSTAIN.

**P.; Pac.** – Pacific Reporter, a law report containing decisions of the Wyoming Supreme Court and several other state supreme courts.

**P.2d** – Pacific Reporter, Second Series; a continuation of Pacific Digest.

**PER CURIAM** – by the court. An opinion of the court which is authored by the justices collectively.

**PER SE** – by oneself or itself; in itself; taken alone.

**PEREMPTORY CHALLENGE** – self determined, arbitrary, requiring no cause to be show. As applied to selection of jurors, challenges allowed by the law to both the state and defense to remove a prospective juror without cause from the panel of jurors.

**PETIT LARCENY** – larceny of the grade of misdemeanor.

**PLEA AT BAR** - one which, if allowed, will absolutely bar the action; e.g., plea of double jeopardy.

**PRECEDENT** – an adjudged case or decision of a court of justice considered as furnishing an example or authority for an identical or similar case afterwards arising on a similar question of law.

**PRELIMINARY HEARING** – the examination of a person charged with a crime before a magistrate to determine whether there is probably cause to believe the alleged offense was committed and (2) committed by the accused

**PREPONDERANCE OF EVIDENCE** □-□□Evidence that is (even minimally) of greater weight or more convincing than the evidence, which is offered in opposition to it. This is the standard by which a plaintiff must prove his/her case in a civil suit.

**PRIMA FACIE EVIDENCE** – evidence good and sufficient on its face; such evidence as in the judgment of the law, is sufficient to establish a given fact or the group or chain of facts constituting the party’s claim or defense and which if not rebutted or contradicted will remain sufficient.

**PRO SE** – appearing on one’s own behalf; without a lawyer.

**PROBABLE CAUSE** – reasonable cause. Having more evidence for than against. An apparent state of facts which would induce a reasonable intelligent and prudent person to believe, in a criminal case, that the accused person had committed the crime charge. More than suspicion, less than certainty.

**PROBATION** – the release of a convicted defendant by a court under conditions imposed by the court for specified period during which the imposition of sentence is suspended. Probation is in lieu of incarceration and is a judicial act.

**REAL EVIDENCE** – evidence furnished by things themselves on view or inspection, as distinguished from a description of them given by a witness.

**REASONABLE DOUBT** – an accused person is entitled to acquittal if, in the minds of the jury, guilt has not been proved beyond a “reasonable doubt”; that state of minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

**REBUTTAL** – the introduction of rebutting evidence; the showing that a statement of a witness as to what occurred is not true; the state of a trial at which such evidence may be introduced; also the rebutting evidence itself.

**REBUTTING EVIDENCE** – evidence given to explain, repel, counteract, or disprove facts given in evidence by the adverse party.

**RECIDIVISM** -□Evidence given to explain, contradict, or disprove facts offered by the adverse party. In criminal cases, the state has the opportunity to rebut the defendant's case because it has the burden of proof.

**RELEASE ON OWN RECOGNIZANCE** – the court releases a person on the person’s own recognizance when, having acquired control over the person, it permits the person to be at liberty during the pendency of the action upon the person’s own agreement and without furnishing sureties for own appearance.

**RELEVANT** – applying to the matter in question. A fact is relevant to another fact when, according to common course of events, existence of one taken alone or in connection with the other facts renders existence of the other certain or more probable.

**REPLEVIN** – an action brought to recover possession of goods unlawfully taken.

**RES GESTAE** – things done. The whole of the transaction under investigation and every part of it. Res gestae is considered an exception to the hearsay rule, and is extended to include not only declarations of the

parties to the suit, but includes statements made by bystanders and strangers under certain circumstances.

**REUS** – a person judicially accused of a crime; a person criminally proceeded against.

**SCIENTER** – knowingly, with guilty knowledge.

**SEARCH WARRANT** - an order in writing, issued by a justice, judge or magistrate, in the name of the state or municipality, directing an officer to search a specified house or other premises for stolen property. Usually required as a condition precedent to a legal search and seizure.

**SEQUESTER** – to keep a jury together and in isolation from other persons under charge of the bailiff during the pendency of a trial, sometimes called "separation of the jury." To keep witnesses apart from other witnesses and unable to hear their testimony. In the case of witnesses sometimes called "putting the witness under rule."

**SERVICE** - The act of serving the respondent with legal papers, such as the Notice of Petition for Dissolution.

**SERVING** - These papers are usually presented to the respondent either by mail, or in person by a County Sheriff's Deputy or Process Server.

**SHOW CAUSE** – an order to appear as directed and present to the court reasons and considerations as to why certain circumstances should be continued, permitted or prohibited as the case may be.

**SHERIFF** – a county sheriff except for prosecutions in municipal court in which it shall include the chief of police for the municipality. Rule 1(b 6) WRCrP

**SIMPLE ASSAULT** – assault which is not of an aggravated nature. W.S. 6-2-501

**STARE DECISIS** – to abide by or adhere to decided cases; doctrine that, when a court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where facts are substantially the same, regardless of whether the person and property are the same.

**STATE** - State of Wyoming except in prosecutions in municipal court in which it shall mean the municipality. Rule 1(b 5)WRCrP

**STATUS OFFENSE** - An offense which, if committed by an adult, would not constitute an act punishable as a criminal offense by the laws of this state or a violation of a municipal ordinance, but does not include a violation of W.S. 12-6-101(b) or any similar municipal ordinance.

**STIPULATIONS** – an agreement by attorneys on opposite sides of a case as to any matter pertaining to the proceedings or trial. It is not binding unless assented to by the parties, and most stipulations must be in writing.

**SUBPOENA** - A legal summons requiring that one appear in court as a witness to give testimony.

**SUBPOENA DUCES TECUM** – a process by which the court commands a witness to produce certain documents or records in a trial.

**SUMMONS** – a writ, directed to the Sheriff or other proper officer requiring notification to the person named that an action has been commenced against the person and that the person is required to appear on a day named and answer the complaint in such action.

**SURREBUTTAL** – evidence that tends to disprove rebuttal evidence.

**SUSTAIN** – allow, uphold as to sustain an objection. The witness may not answer the question. Also see OVERRULE.

**TRIAL** - The formal legal process in which the court (judge) receives evidence and testimony to enable him or her to decide in a dispute between two parties

**VENIRE** – to come to appear. The name given to the writ for summoning the jury and also the body of jurors summoned.

**VENUE** – the neighborhood, place or county in which an injury is declared to have been done, or fact declared to have happened. “jurisdiction” of the court means the inherent power to decide a case, whereas “venue” designates the particular county or city in which a court with jurisdiction may hear and determine the case.

**VOIR DIRE** – the preliminary examination of a witness or juror as to his competency, interest, etc.

**WAIVER** - The legal document with which one relinquishes a known right, claim, or privilege.

**WARRANT OF ARREST** – a written order issued and signed by a magistrate directed to a peace officer or some other person specifically named, and commanding that officer or other person to arrest the body of a person named in it, who is accused of an offense.

**WAIVE** - to abandon or throw away; in modern law, to abandon, throw away, renounce, repudiate or surrender a claim, a privilege, a right or the opportunity to take advantage to some defect, irregularity or wrong.

**WRIT OF HABEAS CORPUS** – a writ directed to a person detaining another and commanding the person to produce the body of the prisoner or person detained.

**W.R.A.P.C.L.J.** – Wyoming Rules of Appellate Procedure for Courts of Limited Jurisdiction.

**W.R.C.P.** – Wyoming Rules of Civil Procedure.

**W.R.C.P.C.C.** – Wyoming Rules of Civil Procedure for County Courts.

**W.R.Cr.P.** – Wyoming Rules of Criminal Procedure

**W.R.Cr.P.C.C.** – Wyoming Rules of Criminal Procedure for County Courts

**W.R.C.P.J.C.** – Wyoming Rules of Civil Procedure for Justice Courts.

**W.R.Cr.P.J.C.** – Wyoming Rules of Criminal Procedure for Justice Courts.

**W.R.E.** – Wyoming Rules of Evidence

**W.S.** – Wyoming Statutes



## **APPENDIX**

### **WYOMING CODE OF JUDICIAL CONDUCT**

This section is just highlights of the Code. It is recommended that an annotated publication of the Code be referred to for more details. The Supreme Court's link gives a non-annotated set of the Code:

<http://courts.state.wy.us/CourtRules.aspx>

The Wyoming Code of Judicial Conduct (WCJC) is found in the Wyoming Court Rules. It is intended to be binding upon judges as basic standards of judicial and personal conduct. The canons apply somewhat differently depending upon whether a judge is full-time, continuing part-time, or periodic part-time. Full-time judges have more restrictions and should refer to the WCJC for those prohibitions. For definitions of these terms see the Application of the Code of Judicial Conduct at the end of the WCJC. Examples of each canon and how they may apply to other court personnel are detailed in the WCJC. Article 5 Section 2 of the Constitution of the State of Wyoming states, in part, "The supreme court shall have...a general superintending control over all inferior courts, under such rules and regulations as may be prescribed by law."

#### **Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary**

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards so the integrity and independence of the judiciary will be preserved.

Municipal courts are often subject to attempted improper control by the administrative and legislative elements of municipal governments. Judges and court personnel come under the supervision of the Supreme Court, and not the municipality. Should a potential conflict arise, care and tact are recommended when educating elected officials that municipal judges are bound by this law.

## Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

## Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

**A.** The judicial duties as prescribed by law, take precedence over all the judge's other activities.

### **B. Adjudicative Responsibilities**

A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

A judge shall be faithful to the law and maintain professional competence in it.

A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

A judge shall require order and decorum in proceedings before the judge.

A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and other with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, staff, court officials and other subject to the judge's direction and control.

A judge shall perform judicial duties without bias or prejudice, nor permit others under the judge's direction and control to exhibit bias or

prejudice. This applies to lawyers, except when such a factor is a legitimate issue in the proceeding.

A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

A judge should not initiate, permit, or consider ***ex parte communications*** with few exceptions. See the WCJC, Canon 3 (7) for these exceptions and procedures.

A judge shall dispose of all judicial matters promptly, efficiently and fairly.

A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar compliance to this rule from all court personnel subject to the judge's direction and control.

A judge shall not commend or criticize jurors for their verdict other than court order or opinion in a proceeding, but may express appreciation to the jurors for their service to the judicial system and the community.

A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

### C. Administrative Responsibilities

A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

A judge shall require staff, court officials and other subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their duties.

A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond their fair value of service rendered.

### D. Disciplinary Responsibilities

A judge who receives information indicating a substantial likelihood that another judge has violated this Code should take appropriate action. If that violation raises a substantial question as to the other judge's fitness for office, the appropriate authority shall be informed.

A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. If that violation raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, the judge shall inform the appropriate authority.

Acts of a judge under these Disciplinary Responsibilities are duties and absolutely privileged and no civil action may be instituted based on the performance of these duties.

#### E. Disqualification

A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, in instances including but not limited to:

1. the judge has personal bias or prejudice concerning a party or party's lawyer, or knowledge of relevant, disputed evidentiary facts;
2. the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge had been a material witness concerning it;
3. the judge knows that the judge or the judge's spouse, parent or child, or relative living in the judge's household has anything more than a de minimis interest that could be affected by the outcome of the case;
4. the judge or the judge's spouse, or a person within a third degree relationship to either of them, or the spouse of such person:
  - a. is a party to the proceeding, or an officer, director or trustee of a party;
  - b. is acting as a lawyer in the proceeding;
  - c. is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;
  - d. is to the judge's knowledge likely to be a material witness in the proceeding.

## F. Remittal of Disqualification

A judge may state on the record the basis for the judge's disqualification and ask the parties and their lawyers, out of the judge's presence, to consider waiving the disqualification. If the judge's reason for disqualification is other than personal bias or prejudice, and all parties agree that the judge should hear the matter, and the judge agrees participate, the judge may proceed. The agreement shall be incorporated in the record.

# **CANON 4. A Judge Shall So Conduct the Judge's Extra-Judicial Activities as to Minimize the Risk of Conflict With Judicial Obligations**

## **A. Extra-Judicial Activities in General.**

Extra-judicial activities should not cast reasonable doubt on the judge's ability to act impartially as a judge; demean the judicial office; or interfere with the performance of judicial duties.

## **B. Avocational Activities.**

A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, legal system, the administration of justice and non-legal subjects, subject to the requirements of the Code of Judicial Conduct.

## **C. Governmental, Civic or Charitable Activities**

A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

A judge shall not accept an appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the

improvements of the law, the legal system, of the administration of justice.

A judge may represent the government on ceremonial occasions, or in connection with historical, educational or cultural activities.

A judge may serve as an officer or non-legal advisor with a non-profit organization or governmental agency devoted to the law, the legal system, the administration of justice, or a charitable, educational, religious, fraternal or civic, subject to the limitations of the Code of Judicial Conduct. A judge shall not serve as an officer, director, trustee or non-legal advisor if that organization will be engaged in proceedings before the judge, or will be frequently in adversary proceedings in the judge's court, or appellate court.

A judge shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

#### **D. Financial Activities.**

A judge shall not engage in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position, or be in a continuing business relationship with lawyers or others likely to come before the judge.

### **Canon 5. A Judge of Judicial Candidate Shall Refrain From Inappropriate Political Activity**

A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or general election, except that the judge may continue to hold judicial office while being a candidate for election or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law.

# Appendix

## OATHS

### 1. OATH OF OFFICE

Municipal Judges under § 5-6-106 may administer the Oath of Office.

§ 5-6-106 Procedure generally; additional rules may be provided by ordinance; appeals.

The procedure of municipal courts shall conform to the procedure provided by law and rules of procedure for courts of limited jurisdiction. The incorporated city or town may by ordinance provide any additional rules of procedure found necessary for the proper conduct of municipal courts, provided these rules do not conflict with the general laws of the state.

Oath of office is authorized by 1-2-101 W.S.S. As follows:  
A person may be sworn by any form he deems binding on his conscience.

1-2-102. Officers authorized to administer.

(a)The following officers are authorized to administer oaths:

(i) Justices of the Wyoming supreme court;

(ii) Judges of the Wyoming district courts;

(iii) Judge of the United States district court for the district of Wyoming;

(iv) Clerks of the Wyoming Supreme Court, Wyoming district courts and Wyoming county courts;

(v) Clerk of the United States district court for the district of Wyoming;

(vi) Commissioners and magistrates appointed by authority of the laws of the United States or of Wyoming;

(vii) Notaries public;

(viii) County clerks;

(ix) County treasurers;

- (x) Clerks of school districts in Wyoming;
- (xi) Clerks of any incorporated city or town in Wyoming;
- (xii) County commissioners within their respective counties;
- (xiii) Justices of the peace within their respective counties;
- (xiv) Judges of the Wyoming county courts.

(b) Officers listed in this section are authorized to administer oaths, but are not authorized to perform other notarial acts as defined in W.S. 34-26-101(b) (iii), unless specified otherwise in W.S. 32-1-105(c) or 34-26-103(a).

#### 1-2-103. Affirmation in lieu of oath; manner of administering.

Persons conscientiously opposed to swearing or to taking any oath may affirm, and are subject to the penalties of perjury as in the case of swearing an oath. Whenever any person is required to take an oath in any court, or before any person or officer authorized by law to administer oaths, it is lawful for the court, officer or person administering the same, to administer it in the following manner: the person taking the oath or swearing shall, with his or her right hand uplifted, swear or take the oath, concluding with the words "so help me God".

#### 1-2-104. Certification of documents.

(a) matter required or authorized to be supported, evidenced, established or proven by the sworn statement, declaration, verification, certificate, oath or affidavit, in writing of the person making it, other than a deposition, an acknowledgment, an oath of office or an oath required to be taken before a specified official other than a notary public, may be supported, evidenced, established or proven by the person certifying in writing "under penalty of false swearing" that the matter is true. The certification shall state the date and place of execution and the following:

"I certify under penalty of false swearing that the foregoing is true".

(b) A person who knowingly makes a false certification under subsection (a) of this section is guilty of false swearing in violation of W.S. 6-5-303(c).

**OATH OF OFFICE** - This Oath must be signed and filed with the County Clerk or City Clerk of jurisdiction. As follows:



**IN THE MUNICIPAL COURT**  
\_\_\_\_\_, **WYOMING**

STATE OF WYOMING            )  
  ) ss.     Before: \_\_\_\_\_  
\_\_\_\_\_                            )     Municipal Judge

**ORDER OF APPOINTMENT AND QUALIFICATION  
OF  
INTERPRETER**

(Rule 43. Wyoming Rules of Civil Procedure)

On this date, \_\_\_\_\_, appeared before the open court and established qualifications as a Spanish/English translator, and declared under oath that he/she will make true translations for this court;

Therefore, \_\_\_\_\_ is found to be qualified as an interpreter for this court.

**IT IS SO OREDED**, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Municipal Judge