

Rule 4.1 SUMMONS

(a) Preparation of Summons. Summons shall be prepared by counsel or pro se parties upon forms supplied by the Clerk of Court and ~~shall~~ **may** be presented for issuance ~~concurrently with~~ **on or after** the filing of a complaint or pleading commencing the action.

(b) Civil Summons - Return of Service. Every party causing a summons or subpoena to be served shall file the return of service with the Clerk of Court immediately following receipt thereof from the process server, and no later than within the time during which the person served must respond to the process. (See Fed. R. Civ. P. 4(g).)

III PLEADINGS AND MOTIONS

Rule 7.1 MOTIONS

(a) Motion Days. Motion days are not regularly scheduled by the Court. Each judge, at the request of counsel or upon the judge's own motion, shall set motions upon which the judge deems oral argument to be helpful. Motions which require written memoranda will be resolved upon the written memoranda unless the Court, in its discretion, orders otherwise. All other motions will, at the judge's discretion, be resolved upon oral argument or written memoranda as required by the Court. However, oral argument upon motions for summary judgment will be allowed upon the request of any party.

(b) Filing of Written Briefs.

(1) Non-Dispositive Motion.

(A) Duty of Counsel to Confer. Except as otherwise ordered, the Court will not entertain any nondispositive motion unless counsel for the moving party has conferred orally, in person or by telephone, and has made reasonable good faith efforts to resolve the dispute with opposing counsel prior to the filing of the motion. Counsel for the moving party shall set forth in writing all good faith efforts undertaken to resolve the dispute and the Court will not consider the motion until said information is provided.

(B) Briefs. A party who files a non-dispositive motion shall include in the motion a short, concise statement of the arguments and authorities in support of the motion. In the alternative, a separate written brief may be filed with the motion, if counsel so desires. Each party opposing the motion shall, within ~~ten (10)~~ **fourteen (14)** days ~~(excluding weekends and holidays)~~ after service of said motion, serve upon all parties a written response containing a short, concise statement of the argument and authorities in opposition to the motion. Failure of a responding party to serve a response within the ten (10) day time limit, or such other time limit as the Court may direct, may be deemed by the Court in its discretion as a confession of the motion.

(C) Page Limitation. Briefs in support of and in opposition to all non-dispositive motions are limited to a maximum of ten (10) pages. Motions seeking permission to file briefs containing more than ten (10) pages will be granted only when complex or numerous legal issues justify such relief. The motion shall state how many pages the brief will contain. A proposed order shall be submitted with the motion.

(2) Dispositive Motion.

(A) Briefs. A party who files a dispositive motion shall serve and file with the motion a written brief containing a short, concise statement of the

arguments and authorities in support of the motion, together with proposed findings of fact and conclusions of law in accordance with United States District Court Local Rule 7.1(b)(2)(D). Affidavits and other supportive papers shall be filed together with the motion and brief. Each party opposing the motion shall, within ~~ten (10)~~ **fourteen (14)** days ~~(excluding weekends and holidays)~~ after service of said motion, serve upon all parties a written brief containing a short, concise statement of the argument and authorities in opposition to the motion, together with proposed findings of fact and conclusions of law in accordance with United States District Court Local Rule 7.1(b)(2)(D). In the event a motion for summary judgment is filed, the parties shall include in their respective briefs a list of all claimed undisputed and disputed facts, together with a short statement of evidence and any other basis which supports a claim that a fact is disputed or undisputed. Failure of a responding party to serve a response within the ten (10) day time limit may be deemed by the Court in its discretion as a confession of the motion.

(B) Page Limitation. Briefs in support of and in opposition to all dispositive motions are limited to a maximum of twenty-five (25) pages. Motions seeking permission to file briefs containing more than twenty-five (25) pages will be granted only when complex or numerous legal issues justify such relief. The motion shall state how many pages the brief will contain.

(C) Reply Briefs. Parties shall not file reply briefs for any motion set for oral hearing. Reply briefs may be filed for motions to be determined without oral argument if the reply brief is filed ~~five (5)~~ **seven (7)** ~~(excluding weekends and holidays)~~ days within service of the response brief.

(D) Proposed Findings and Conclusions. Counsel for the parties shall submit to the Court, together with their briefs, proposed findings of fact and conclusions of law, and orders supported by the record which reflect the positions to be taken by the parties at the hearing. Counsel are required to comply with this Rule although a magistrate judge or bankruptcy judge has submitted proposed findings of fact and recommendations.

The time requirements and sequence of filing by counsel of dispositive motions and briefs may be determined by the magistrate judge at the initial pretrial conference.

(c) Rulings on Dispositive Motions.

(1) Oral Hearings. The Court shall make every reasonable effort to rule on dispositive motions from the bench at the conclusion of the oral hearing. The Court may adopt the prevailing party's proposed order submitted in accordance with (b)(2)(iv) above, or may require the prevailing party to submit a new order, in accordance with the Court's ruling.

(2) Submission on Briefs. The Court will make every reasonable effort to rule on dispositive motions submitted on briefs within fourteen (14) days after

the filing of the last responsive brief.

(d) Motions in Limine. Motions in Limine shall be filed and heard, as provided in Local Rule 43.1 *infra*.

(e) Attendance at Hearings. Any party, either proposing or opposing a motion or other application, who does not intend to actively urge or oppose the same, shall immediately notify all counsel of record, the Clerk of Court and the secretary of the judge in order that the judge and counsel are not required to devote unnecessary attention to the matter. Unless excused by the Court from attendance, failure of counsel to be present at the hearing noticed for any motion, or to attend at the time to which the hearing is continued, shall be deemed either a waiver of the motion or other pleading, if such counsel represents the moving party, or a consent to the sustaining of the motion or objection, or the granting of the motion or other application, if such counsel represents the responding party.

Rule 16.2 FINAL PRETRIAL CONFERENCE

(a) Final Pretrial Conference. A final pretrial conference shall be held when ordered by the Court. Counsel who will try the case shall attend, unless excused by the Court, shall submit a pretrial conference memorandum, as herein required, and shall be prepared on all of the items covered by the pretrial notice and check list approved by the Circuit Committee on Pretrial of the Judicial Conference of the Tenth Circuit. (See Appendix A). The pretrial order shall be prepared by the Court or the Magistrate Judge, except when otherwise directed by the Court (in a form similar to Appendix B).

(b) Final Pretrial Conference Preparation. ~~Five (5)~~ **seven (7)** days prior to the date fixed for the final pretrial conference, counsel for the parties herein shall:

(1) submit to the Court, with a copy to the opposing counsel, a pretrial conference memorandum containing a brief statement of the issues, legal theories and positions of the parties; a list of the names and addresses of the witnesses whom the parties intend to call to testify at the trial, together with a complete and specific statement of the testimony intended to be elicited from each witness in the trial; a list of all the exhibits which that party proposes to use in the trial of the case and further reporting on all other matters referred to in the approved form of pretrial order. (See Appendices A and B) If depositions have been taken of a witness listed, counsel may refer to the deposition rather than to repeat a summary of that witness's testimony.

(2) be prepared to specify which of the listed witnesses may be called, and which of such witness will definitely be present for the trial. The opposing party shall not be required to subpoena witnesses who will be produced by an opponent.

(3) list and mark each exhibit intended to be offered at the pretrial conference. Counsel for the plaintiff(s) shall list and mark each exhibit with numerals and the number of the case, and counsel for the defendant(s) shall list and mark each exhibit intended to be offered at the pretrial conference with letters and the number of the case, e.g., Civil No. _____, Plaintiff's Exhibit 1; Civil No. _____, Defendant's Exhibit A. In the event there are multiple parties, plaintiff or defendant, the surname or abbreviated names of the parties shall precede the word "Exhibit," e.g., Defendant Jones Exhibit A, Defendant Smith Exhibit A, etc. In cases where defendant's exhibits are numerous, the defendant may use a combination of letters and numerals to designate such exhibits. Although exhibits are marked and numbered at a pretrial conference, they shall again be offered in the course of the trial.

If such exhibits have been shown to opposing counsel prior to the pretrial conference and no objection will be made thereto, it shall not be necessary to exhibit such documentary evidence at the pretrial conference.

Absent good cause shown, no exhibit shall be received in evidence at the trial which was not marked and exhibited as required herein, nor shall any witness be

permitted to testify unless his name and address appear on the witness list, together with a complete and specific statement of all of his testimony, as required by *Smith v. Ford Motor Company*, 626 F.2d. 784 (10th Cir. 1980).

(4) notify the court reporter immediately upon receipt of the notice setting the conference, if counsel wish to have the pretrial conference reported. If no such request is received, it will be understood that the parties agree that the pretrial conference will be conducted without the presence of the court reporter.

In all cases to be tried before a jury, the Court, in consultation with counsel during the final pretrial conference, will determine the number of jurors to be empaneled and the number of peremptory challenges the Court will allow. The Court will set forth its determination in its final pretrial order.

(c) Telephone Conference Calls. Out of town counsel may participate in any pretrial conference by telephone conference call, but shall first notify the Court, and shall deliver to the Court and opposing counsel any documents required to be presented at such conference, e.g., the pretrial conference memorandum, photocopies of exhibits, briefs, instructions, etc. It is the responsibility of the attorneys to coordinate with one another and arrange for a telephone conference call to the Court and to place the call at the time set for hearing. (See Local Rule No. 83.5)

V DISCOVERY

Rule 26.1 DISCOVERY

(a) **Applicability.** This Rule is applicable to all cases filed in this District except where modified by Court order.

(b) **Stay of Discovery.** Formal discovery, including oral depositions, service of interrogatories, requests for production of documents and things, and requests for admissions, shall not commence until the parties have complied with Fed. R. Civ. P. 26(a)(1).

(c) **Initial Disclosure (Self-Executing Routine Discovery Exchange).** It is the policy of this District that discovery shall be open, full and complete within the parameters of the Federal Rules of Civil Procedure.

(1) **Initial Disclosures.** [Excerpted from Fed. R. Civ. P. 26(a)(1)(A)-~~(E)~~ **(E)**] Except in categories of proceedings specified in Fed. R. Civ. P. 26(a)(1)~~(E)~~ **(B)**, or to the extent otherwise stipulated or directed by order, a party must, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment. In cases where it is impractical due to the volume or nature of the documents to provide such copies, parties shall provide a complete description by category and location in lieu thereof;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(d) **Rule 26(f) Meeting of Counsel; Initial Disclosure Exchange.** The Court will set an initial pretrial conference no sooner than thirty-five (35) days after the last

pleading pursuant to Fed. R. Civ. P. 7 or a dispositive motion is filed with the Court.

(1) Counsel must meet and confer in person or by telephone in accordance with Fed. R. Civ. P. 26(f) no later than twenty (20) days after the last pleading pursuant to Fed. R. Civ. P. 7 or a dispositive motion is filed with the Court. (See Appendix D)

(2) Counsel on behalf of the parties must exchange the initial disclosures (self-executing routine discovery), pursuant to Local Rule 26.1(c)(1) above, no later than thirty (30) days after the last pleading filed pursuant to Fed. R. Civ. P. 7 or a dispositive motion is filed with the Court.

(3) Counsel may either submit a written report or report orally on their discovery plan at the initial pretrial conference.

(e) Computer-Based Discovery. Prior to a Fed. R. Civ. P. 26(f) conference, counsel should carefully investigate their client's information management system so that they are knowledgeable as to its operation, including how information is stored and how it can be retrieved. Likewise, counsel shall reasonably review the client's computer files to ascertain the contents thereof, including archival and legacy data (outdated formats or media), and disclose in initial discovery (self-executing routine discovery), the computer based evidence which may be used to support claims or defenses.

(1) Duty to Notify. A party seeking discovery of ~~computer based information~~ **electronically stored information** shall notify the opposing party immediately, but no later than the Fed. R. Civ. P. 26(f) conference of that fact and identify as clearly as possible the categories of information which may be sought.

(2) Duty to Meet and Confer. The parties shall meet and confer regarding the following matters during the Fed. R. Civ. P. 26(f) conference:

(A) ~~Computer based information~~ **Electronically stored information** (in general). Counsel shall attempt to agree on steps the parties will take to segregate and preserve ~~computer based information~~ **electronically stored information** in order to avoid accusations of ~~spoliation~~ **spoliation**;

(B) E-mail information. Counsel shall attempt to agree as to the scope of e-mail discovery and attempt to agree upon an e-mail search protocol. This should include an agreement regarding inadvertent production of privileged e-mail messages;

(C) Deleted information. Counsel shall confer and attempt to agree whether or not restoration of deleted information may be necessary, the extent to which restoration of deleted information is needed, and who will bear the costs of restoration; and

(D) Back-up data. Counsel shall attempt to agree whether or not back-up data may be necessary, the extent to which back-up data is needed and who will bear the cost of obtaining back-up data.

(f) Filing of Discovery Pleadings.

(1) Initial disclosures (self-executing routine discovery exchange pursuant to Local Rule 26.1 c), interrogatories under Fed. R. Civ. P. 33, and answers thereto, requests for production or inspection under Fed. R. Civ. P. 34, requests for admissions under Fed. R. Civ. P. 36, and responses thereto shall be served upon other counsel or parties, but shall not be filed with the Court. Certificates or notices of compliance are not required and shall not be filed with the Court. If relief is sought under Fed. R. Civ. P. 26(c) or 37 concerning any interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories or responses to requests for admissions, copies of the portions of the interrogatories, requests, answers or responses in dispute shall be filed with the Court contemporaneously with any motion filed under Fed. R. Civ. P. 26(c) or 37. If interrogatories, requests, answers or responses are to be used at trial, the portions to be used shall be filed with the Clerk of Court at the outset of the trial, insofar as their use reasonably can be anticipated.

(2) Parties may agree to produce any or all documents electronically, rather than by other means.

(g) Discovery of Expert Testimony.

(1) The parties are limited to the designation of one expert witness to testify for each particular field of expertise.

(2) A party may depose any person who has been identified and designated as an expert whose opinions may be presented at trial. An expert witness is one who may be used at trial to present evidence under Fed. R. Evid. 702, 703 or 705 including, but not limited to, expert witnesses who have knowledge of facts and hold opinions which were acquired or developed in anticipation of litigation or for trial.

(3) At the time of the initial pretrial conference, the presiding judicial officer shall, unless good cause appears to the contrary:

(A) establish deadlines by which any party shall designate all of their expert witnesses and provide opposing counsel with a complete written designation of the testimony of each witness;

(B) require the party designating the expert witnesses to indicate in reasonable detail the areas and fields of expertise and the qualifications of the witness as an expert in said areas and fields.

(4) The written designation of expert witness opinions shall include a comprehensive statement of each of the opinions of such witness and the factual basis for each opinion and shall be filed with the Court. See *Smith v. Ford Motor Company*, 626 F.2d. 784 (10th Cir. 1980). The written designation shall include the following:

(A) A written report prepared and signed by the expert witness as set forth in Fed. R. Civ. P. 26(a)(2)(B); or a written report prepared and signed by counsel for the party;

(B) The party designating the expert shall provide a current resume or curriculum vitae including a list of all publications authored by the witness within the preceding ten years and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years; [Fed. R. Civ. P. 26(a)(2)(B)];

(C) require the party designating the expert witness to set forth all special conditions or requirements which the designating party or the expert witnesses will insist upon with respect to the taking of their depositions, including the amount of compensation the expert witness will require and the rate per unit of time at which said compensation will be payable. In the event counsel is unable to obtain such information to include in the designation, the efforts to obtain the same and the inability to obtain such information shall be set forth in the designation.

(5) In the event a designation of an expert witness fails to set forth the compensation to be paid by a party for the deposition of the expert, or fails to set forth the efforts to obtain such information for designation, any adverse party shall be entitled to depose such witness at the fee provided by the Federal Rules of Civil Procedure.

(6) In the event the amount and rate of the compensation is designated for the expert witness, and the deposition of that expert witness is taken without further action, discussion or agreement between counsel, then the amount described in the designation shall be paid by the party or parties taking the deposition.

(7) Nothing herein contained shall prevent the parties involved from agreeing to other terms and conditions and amount of compensation following the designation.

(8) In all cases where there is a dispute as to the proper compensation or other conditions relative to the taking of an expert discovery deposition, or an inability to obtain information concerning compensation, a party may file a motion with the Court pursuant to Fed. R. Civ. P. 26(b)(4) and (c) or Fed. R. Civ. P. 45(c), as the case may be. The Court will, thereafter, issue its order setting forth the terms, conditions, protections, limitations and amounts of compensation to be paid by the party taking the deposition.

(h) Discovery Time Limit. Whenever possible, discovery proceedings in all

civil actions filed in this Court shall be completed within ninety (90) days after joinder of issue or after such issues may have been determined at the initial pretrial conference. Exceptions hereto may be granted, upon good cause shown and upon timely application, and the time for completion of such discovery proceedings therein extended by order of this Court.

(i) Stay of Self-Executing Routine Discovery Exchange. The filing of pretrial dispositive and non-dispositive motions, including motions for protective order, shall not stay the requirement that the parties exchange routine discovery as prescribed by U.S.D.C.L.R. 26.1(c), absent an order of the Court granting a stay of self-executing routine discovery.

Rule 26.2 ELECTRONICALLY STORED INFORMATION (ESI)

(a) Guideline subject matters to be discussed at Rule 26(f) conference

- **the definition of relevant ESI**
- **the scope (both “temporal” and “geographic”) of preservation of relevant ESI**
- **the identification of the custodians of relevant ESI**
- **the manner in which relevant ESI will be collected**
- **the manner in which relevant ESI will be processed**
- **the search methodology to be employed in processing**
- **the form in which relevant ESI is to be produced**
- **the use of so-called “clawback” or “quick peek” agreements**
- **the use of nonwaiver orders under Rule 502 of the Federal Rules of Evidence should the presiding judge entertain such orders in a given litigation**
- **cost sharing**
- **the admissibility of ESI on motions and at trial.**

Rule 30.1 DEPOSITIONS

(a) Reasonable Notice. Unless otherwise ordered by the Court, "reasonable notice" for the taking of depositions under Fed. R. Civ. P. 30(b)(1) shall be not less than ~~five (5)~~ **seven (7)** days. Fed. R. Civ. P. 6 governs the computation of time.

(b) Telephonic Depositions. The motion of a party to take the deposition of an adverse party by telephone will presumptively be granted. Where the opposing party is a corporation, the term "adverse party" means an officer, director, managing agent or corporate designee, pursuant to Fed. R. Civ. P. 30(b)(6).

(c) Depositions of Witnesses Who Have No Knowledge of the Facts. Where an officer, director or managing agent of a corporation or a government official is served with a notice of deposition or subpoena regarding a matter about which he has no knowledge, he shall submit, reasonably before the date noticed for the deposition, an affidavit so stating and identifying a person with the corporation or government entity having knowledge of the subject matter involved in the pending action.

The noticing party may, notwithstanding such affidavit of the noticed witness, proceed with the deposition, subject to the witness's right to seek a protective order.

(d) Directions Not to Answer. Repeated directions to a witness not to answer questions calling for non-privileged answers are symptomatic that the deposition is not proceeding as it should. When direction is given to a witness not to answer, it should be made only on the ground of privilege.

Where a direction not to answer such a question is given and honored by the witness, either party may seek an immediate ruling from the Magistrate Judge as to the validity of such direction. If the witness refuses to answer questions calling for non-privileged answers and the attorney giving such direction does not withdraw such direction, the Court may require the attorney to pay all costs associated with retaking the deposition.

If a prompt ruling cannot be obtained, the direction not to answer made on grounds of privilege may stand pending a ruling and the deposition shall continue until (1) a ruling is obtained or (2) the problem resolves itself. A direction not to answer on any ground except privilege shall not stand and the witness shall answer.

(e) Suggestive Deposition Objections. Objections in the presence of the witness which are used to suggest an answer to the witness are presumptively improper. If the objection to a deposition question is one that can be obviated or removed if presented at the time, the proper objection is "objection to the form of the question," and the problem with the form shall be identified. If the objection is on the ground of privilege, the privilege shall be stated and established.

(f) Conferences Between Non-Party Deponent and Defending Attorney. An attorney defending at a deposition of a non-party deponent shall not engage in a private conference with the deponent during the actual taking of a deposition, except for the purpose of determining whether a privilege should be asserted.

(g) Assertion of a Privilege or Qualified Immunity From Discovery. Where a claim of privilege or qualified immunity from discovery is asserted during a deposition, the attorney asserting the privilege or qualified immunity from discovery shall identify during the deposition the nature of the privilege or qualified immunity from discovery which is being claimed.

(h) Establishment of Privilege or Qualified Immunity From Discovery. After a claim of privilege or qualified immunity from discovery has been asserted, the attorney seeking disclosure shall have reasonable latitude during the deposition to question the witness to establish other relevant information concerning the assertion of the privilege or qualified immunity from discovery, including:

(1) the applicability of the particular privilege or qualified immunity being asserted;

(2) circumstances which may constitute an exception to the assertion of the privilege or qualified immunity;

(3) circumstances which may result in the privilege or qualified immunity having been waived; and

(4) circumstances which may overcome a claim of qualified privilege or qualified immunity from discovery.

(i) Filing of Depositions. Deposition transcripts shall not be filed with the Clerk of Court until such time as they are published during a hearing or trial.

(j) Return of Depositions. At the time that files are retired to the Federal Records Center, the Clerk shall deliver any depositions filed in said case to the counsel representing the party taking said deposition.

Rule 37.2 DISCOVERY MOTIONS

(a) Motion to Quash Deposition Notice and Motion for Protective Order. Pending resolution of any motion under Fed. R. Civ. P. 26(c), 30(d), or 45(c), neither the objecting party, witness nor any attorney is required to appear at the deposition to which a motion to quash is directed until the motion is ruled upon. The filing of a motion under any of these Rules shall stay the discovery to which the motion is directed pending further order of the Court. Any motion for relief under Fed. R. Civ. P. 26(c) directed to a deposition must be filed and served as soon as practicable after receipt of the deposition notice, but in no event less than ~~three (3)~~ **five (5)** days prior to the scheduled depositions. Counsel seeking such relief shall request the Court for a ruling or a hearing thereon promptly after the filing of such motion, so that discovery shall not be unnecessarily delayed in the event the motion is denied.

(b) Motions to Compel. Motions under Fed. R. Civ. P. 26(c) or 37(a), directed at interrogatories or requests under Fed. R. Civ. P. 33 or 34, or at the responses thereto, shall set forth the interrogatory, request or response constituting the subject matter of the motion.

Rule 43.1 MOTIONS IN LIMINE

Motions in Limine or motions relating to the exclusion of evidence shall be filed and brought to the Court's attention for ruling no later than ~~five (5)~~ **seven (7)** working days prior to the commencement of trial, unless otherwise ordered by the Court. Motions in Limine will be considered on the written submissions without oral argument, unless otherwise ordered by the Court.

Rule 48.1 NUMBER OF JURORS

(a) Number of Jurors in Civil Cases. Except as is otherwise expressly provided by law, in all civil cases the jury shall consist of no less than six (6) members unless the parties stipulate to a lesser number.

(b) Impaneling Civil Jury. Unless the Court otherwise specifically directs, jurors in a civil case shall be impaneled in the following manner:

~~(1) a single panel of jurors, numbering fourteen (14) to eighteen (18) jurors, shall be summoned;~~

~~(2) (1)~~ ~~thirteen (13)~~ **fourteen (14)** jurors shall be called to the jury box for voir dire examination;

~~(3) (2)~~ if any juror is excused for cause, another juror will be called;

~~(4) (3)~~ after the panel of ~~thirteen (13)~~ **fourteen (14)** jurors is accepted for cause, counsel for each party shall approach the Clerk of Court's desk and, starting with the Plaintiff, shall alternately write on a form provided by the Clerk of Court their peremptory challenges. Each side shall exercise all of its peremptory challenges and the remaining ~~seven (7)~~ **eight (8)** jurors shall constitute the jury.

Rule 51.1 INSTRUCTIONS

~~The parties shall tender to the Court and exchange with each other proposed jury instructions with citations to authorities in support thereof, together with proposed verdict forms and a 3 ½ inch diskette formatted for WordPerfect, five (5) business days prior to trial in both civil and criminal cases.~~

The parties shall tender to the Court and exchange with each other proposed jury instructions and verdict forms via e-mail seven (7) days prior to trial in both civil and criminal cases. The instructions must be formatted as a single document for WordPerfect or Word and must include citations of authority.

The Court's email addresses are as follows:

wyojudgewfd@wyd.uscourts.gov - Honorable William F. Downes

cabjuryinstructions@wyd.uscourts.gov - Honorable Clarence A. Brimmer

wyojudgeabj@wyd.uscourts.gov - Honorable Alan B. Johnson

wyojudgewcb@wyd.uscourts.gov - Honorable William C. Beaman.

Rule 74.1 REVIEW OF MAGISTRATE JUDGE'S ACTION

(a) Appeal of Non-Dispositive Matters [28 U.S.C. § 636(b)(1)(A)]. Any party may seek reconsideration by a District Judge of a Magistrate Judge's order determining a motion or matter under Rule 72.1(a) of these Local Rules, within ten (10) days after service of the Magistrate Judge's order. Such party shall file a written statement of reconsideration with the Clerk of Court and all parties, which shall specifically designate the order, or part thereof, objected to and the basis for any objection. Any response thereto shall be filed within ~~ten (10)~~ **fourteen (14)** days after service of the written statement of reconsideration. The trial judge assigned to the case shall reconsider the matter and shall set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law.

(b) Review of Case -- Dispositive Motions and Prisoner Litigation [28 U.S.C § 636(b)(1)(B)]. Any party may object to a Magistrate Judge's findings and recommendations under Rule 72.1(b) of these Local Rules, within ~~ten (10)~~ **fourteen (14)** days after being served with a copy thereof. Such party shall file with the Clerk of Court and serve on all parties written objections which shall specifically identify the portions of the proposed findings and recommendations to which objections are made and the basis for such objections. The trial judge assigned to the case shall make a de novo determination of those portions of the findings and recommendations to which objection is made and may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge.

(c) Special Master Reports [28 U.S.C § 636(b)(2)]. Any party may seek review of, or action on, a special master report filed by a Magistrate Judge, in accordance with the provisions of Fed. R. Civ. P. 53(e).

(d) Appeal from Judgments in Misdemeanor Cases [18 U.S.C. § 3402]. A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal to the District Court within ~~ten (10)~~ **fourteen (14)** days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the District Court to the Court of Appeals. When appealing a judgment of conviction, the appellant shall pay a Twenty-Five Dollar (\$25.00) filing fee.

X *DISTRICT COURTS AND CLERKS*

Rule 77.1 BUSINESS HOURS AND DAYS OF BUSINESS

Unless otherwise ordered by the Court, the Office of the Clerk of Court shall be open to the public between the hours of ~~8:00 a.m. and 5:00 p.m.~~ **8:30 a.m. to 12:00 p.m.; and 1:00 p.m. to 5:00 p.m.** on all days except Saturdays, Sundays, and legal holidays. In addition, a slot in the entrance to the Clerk of Court's office shall be open from 7:15 a.m. to 8:00 a.m. and from 5:00 p.m. to 5:30 p.m. on said days for the deposit of pleadings and papers.

Rule 83.12.5 DISCIPLINE IMPOSED BY OTHER COURTS

(a) Subject to Public Discipline. Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other Court of the United States or the District of Columbia, or by a court of any state, territory, commonwealth or possession of the United States, promptly inform the Clerk of this Court of such action.

(b) Filing of Certified or Exemplified Copy of Judgment or Order. Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined by another court, this Court shall forthwith issue a notice directed to the attorney containing:

(1) a copy of the judgment or order from the other court;

(2) an order to show cause directing that the attorney inform this Court within thirty (30) days after service of that order upon the attorney, personally or by mail, of any claims by the attorney predicated upon the grounds set forth in Local Rule ~~204 (d)~~ **83.12.5 (d)** hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.

(c) Discipline in Other Jurisdiction Stayed. In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.

(d) Imposition of Identical Discipline. Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of Local Rule 83.12.5 (b) above, this Court shall impose the identical discipline unless the respondent-attorney demonstrates, or this Court finds upon the face of the record upon which the discipline in another jurisdiction is predicated, that it clearly appears:

(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) there was such an infirmity of proof establishing the misconduct as to give rise to the firm conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject;

(3) the imposition of the same discipline by this Court would result

in grave injustice; or

(4) that the misconduct established is deemed by this Court to warrant substantially different discipline. Where this Court determines that any of said elements exist, it shall enter such order as it deems appropriate.

(e) Final Adjudication in Another Court. In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in the Court of the United States.

(f) Appointment of Counsel to Prosecute. This Court may, at any stage, appoint counsel to prosecute the disciplinary proceedings.

XIII BANKRUPTCY RULES

~~Rule 83.13.1 REFERRAL OF BANKRUPTCY MATTERS TO BANKRUPTCY JUDGES~~

~~(a) Order of Reference. Unless a rule or order of this Court expressly provides otherwise, any and all cases under Title 11 U.S.C., and any and all proceedings arising in or related to a case under Title 11 U.S.C. are referred to the Bankruptcy Judge for the District of Wyoming for consideration and resolution consistent with the law. Motions for changes of venue in cases under Title 11 U.S.C., and in proceedings arising under Title 11 U.S.C. or arising in or related to a case under Title 11 U.S.C. are referred to the Bankruptcy Judge for the District of Wyoming for the limited purpose of hearing the motion in the first instance and submitting to the District Court a report and recommendation containing proposed findings of fact and conclusions of law, in accordance with section (d) of this Rule. This reference applies to all pending bankruptcy cases and proceedings, except those currently before the District Court, and to all bankruptcy cases and proceedings hereafter filed in the District of Wyoming.~~

~~(b) Scope of the Order of Reference. This reference includes, except as limited in section (c) of this Rule:~~

~~(1) Personal injury tort and wrongful death claims or causes of action within the purview of 28 U.S.C. § 157(b)(5);~~

~~(2) State law claims or causes of action of the kind referred to in 28 U.S.C. § 1334(c)(2); and~~

~~(3) Involuntary cases under 11 U.S.C. § 303.~~

~~(c) Right to Jury Trial. Nothing in this Rule shall be construed to impair the right to jury trial whenever it otherwise exists.~~

~~(d) Procedure for Change of Venue Motions. The Bankruptcy Judge shall hear motions for change of venue in cases under Title 11 U.S.C., and in proceedings arising under Title 11 U.S.C. or arising in or related to a case under Title 11 U.S.C., and shall submit to the District Court a report and recommendation containing proposed findings of fact and conclusions of law. The Clerk of Bankruptcy Court shall serve forthwith a copy of the report and recommendation on the parties to the proceeding. Within ten (10) days after being served with a copy of the report and recommendation, a party may serve~~

~~and file with the Clerk of the Bankruptcy Court written objections prepared in the manner provided for in Bankruptcy Rule 9033(b). The Bankruptcy Court may extend the time for filing objections, pursuant to Bankruptcy 9033(c). The District Court shall enter any final order respecting motions to transfer venue, pursuant to Bankruptcy Rule 9033.~~

~~Rule 83.13.2 TRANSFER OF PARTICULAR PROCEEDINGS FOR DISPOSITION BY A DISTRICT JUDGE~~

~~A particular proceeding commenced in or removed to the Bankruptcy Court shall be transferred to the District Court for disposition by a district judge only in accordance with the following procedure:~~

~~(a) Application and Grounds for Transfer. A party seeking such transfer shall file an application therefor in the bankruptcy court certifying one or more of the following grounds:~~

~~(1) The particular proceeding is a personal injury tort or a wrongful death claim within the purview of 28 U.S.C. § 157(b)(5).~~

~~(2) It is in the interest of justice, in the interest of comity with state courts or respect for state law that the District Court should abstain from hearing the particular proceeding, as is contemplated by 28 U.S.C. § 1334(c)(1).~~

~~(3) The particular proceeding is based upon a state law claim or state law cause of action with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under 28 U.S.C. § 1334, that an action on the claim or cause of action is commenced and can be timely adjudicated in a state forum, and that, under 28 U.S.C. § 1334(c)(2), the District Court must abstain from hearing the particular proceeding.~~

~~(4) Resolution of the particular proceeding requires consideration of both Title 11 U.S.C. and other laws of the United States regulating organizations or activities affecting interstate commerce. This must be withdrawn to the District Court under 28 U.S.C. § 157(d).~~

~~(5) Cause exists, within the contemplation of 28 U.S.C. § 157(d), for the withdrawal of the particular proceeding to the District Court (a specification of such alleged cause must be stated).~~

~~(b) Time for Making Motions.~~

~~(1) If movant is an original plaintiff, the motion shall be filed within twenty (20) days after the proceeding is commenced.~~

~~(2) If movant is an original defendant, intervener, or an added party, the motion shall be filed within twenty (20) days after movant has entered~~

~~appearance or has been served with summons or notice.~~

~~(3) In a proceeding that has been removed, under 28 U.S.C. § 1452, the removing party shall file the motion within twenty (20) days after removal; other parties shall file within twenty (20) days after being served with summons or notice.~~

~~(4) In a proceeding of the kind designated in subdivision (a)(1) above, the motion may be filed at any time or the Bankruptcy Judge on the Court's own motion may, at any time, order the matter transferred to the District Court for disposition.~~

~~(c) Transmittal of Motion and Order to District Court. The motion and order of transfer shall be transmitted by the proponent to the Clerk of the District Court. The Clerk of the District Court shall assign the motion to a district judge for disposition.~~

~~(d) Proceedings on District Court Docket. A proceeding retained for hearing and determination by a district judge shall be carried on the civil docket of the Clerk of the District Court. Certified copies of all final orders and judgments entered by a district judge shall be transmitted by the Clerk of the District Court and filed with the Clerk of the Bankruptcy Court.~~

~~Rule 83.13.3 DETERMINATION OF PROCEEDINGS AS 'NON-CORE'~~

~~Subject to the Rule entitled "Transfer of Particular Proceedings for Disposition by a District Judge" (Rule 701 of these Rules), a particular proceeding shall be determined to be 'non-core' under 28 U.S.C. § 157(b) only if the Bankruptcy Judge so determines sua sponte or rules on a motion of a party filed under 28 U.S.C. § 157(b)(3) within the time periods fixed by subsection (b), (c), and (d) of the Local Rule referenced above. A determination that a related proceeding is non-core shall be in accordance with the guidelines of 28 U.S.C. § 157(b).~~

~~Rule 83.13.4 REVIEW OF 'NON-CORE' PROCEEDINGS HEARD BY
BANKRUPTCY JUDGE ABSENT CONSENT OF ALL
PARTIES~~

~~(a) Proposed Judgment or Order. Where all parties to a 'non-core' proceeding have not consented to entry of a final judgment or order by the Bankruptcy Judge, the Bankruptcy Judge shall prepare recommended findings of fact, conclusions of law, and a proposed judgment or order. The Clerk of the Bankruptcy Court shall transmit copies of the same to all of the parties to the proceedings and to the Clerk of the District Court.~~

~~(b) Procedure for Filing Objections. The procedure for filing objections to the bankruptcy court's proposed findings of fact and conclusions of law is governed by Bankruptcy Rule 9033. Objections lacking specificity may be summarily overruled.~~

~~(c) Where No Objections Are Filed. If no objection is timely filed, the recommendations of the Bankruptcy Judge may be accepted by a district judge and appropriate orders may be entered without further notice.~~

~~(d) Where Objections Are Filed. If an objection is timely filed, the objecting party concurrently shall file with the Bankruptcy Court and serve on opposing counsel the party's designation of those items to be included in the record on review. Additional designations may be so filed and served by opposing counsel within ten (10) days after being served with a copy thereof.~~

~~(e) Transfer to District Court. The Clerk of the Bankruptcy Court shall cause all designated portions of the record to be transmitted to the Clerk of the District Court for review by a district judge.~~

~~Rule 83.13.5 POST-JUDGMENT MOTIONS~~

~~(a) Filing in Bankruptcy Court. In both 'core' and 'non-core' proceedings heard and determined by the Bankruptcy Judge, motions under Bankruptcy Rules 9023 and 9024 shall be filed in, and addressed to, the Bankruptcy Court.~~

~~(b) Filing in District Court. In proceedings heard and determined by a district judge, motions under Bankruptcy Rules 9023 and 9024 shall be filed in, and addressed to, the District Court.~~

BANKRUPTCY MATTERS

- A. Automatic Referral.** All cases under Title 11, United States Code, and all proceedings arising under Title 11 or arising in or related to cases under Title 11, shall be automatically referred to the bankruptcy judge of this district pursuant to 28 U.S.C. § 157 without further order. All papers in those cases shall be filed directly in the bankruptcy court, and the bankruptcy judge of this district shall exercise the jurisdiction of this court in bankruptcy matters as provided in 28 U.S.C. § 157(b).
- B. Personal Injury or Wrongful Death Claims.** Any claim arising in or related to a case under Title 11 involving claims of personal injury or wrongful death shall be tried in the district court of the district in which the bankruptcy case is pending, or in the district court of the district in which the claim arose, as may be determined by the district judge assigned pursuant to U.S.D.C.L.R. 40.2.
- C. Withdrawal of Reference.** The automatic referral to bankruptcy judge provided in section A of this rule may be withdrawn by a district judge.
- 1. Motion.** A motion for withdrawal of reference shall be filed with the clerk of the bankruptcy court in accordance with Fed. R. Bankr. P. 5011 and Local Bankruptcy Rule 5011-1.
 - 2. Response.** Within fourteen (14) days after being served with a copy of a motion for withdrawal of reference, a party may file with the clerk of the bankruptcy court and serve on affected parties an objection to the motion and a designation of any additional portions of the record necessary for the district court's determination of the motion.
 - 3. Supplementation of Record.** The record may be supplemented by additional portions of the record as determined by the bankruptcy judge.
 - 4. Order of Referral to District Court.** The bankruptcy judge shall enter an order directing the clerk of the bankruptcy court to refer the motion and/or matter to the district court.
 - 5. Assignment.** The clerk of the district court shall assign the matter to a district court judge pursuant to U.S.D.C.L.R. 40.2

- D. Proceeding Under 28 U.S.C. § 157(c)(1).** When a bankruptcy judge hears a proceeding under 28 U.S.C. § 157(c)(1) that is not a “core proceeding” as defined by 28 U.S.C. § 157(b)(2), the bankruptcy judge shall submit the proposed findings of fact and conclusions of law to the district judge assigned pursuant to U.S.D.C.L.R. 40.2 . Copies of those recommendations shall be mailed by the bankruptcy judge to all parties, who shall have fourteen (14) days after the date of mailing of the recommendations (or such further time not to exceed 30 days as the bankruptcy judge may order) to file written objections. Objections lacking specificity as to factual findings or legal conclusions the objecting party claims to have been erroneously made and objections not timely filed may be summarily overruled. If no objection is filed, or if the parties consent in writing, the recommendations of the bankruptcy judge may be accepted by the district judge, and appropriate orders may be entered without further notice. Procedure for determining objections shall be as set forth in 28 U.S.C. § 157, the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules for the District of Wyoming.
- E. Filings.** The clerk of the bankruptcy court shall take in all pleadings in bankruptcy cases and related proceedings. Bankruptcy papers shall be filed with the bankruptcy court in accordance with the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules for the District of Wyoming. Any bankruptcy papers filed with the clerk of the district court shall be transferred to the bankruptcy court.
- F. Post-judgment Matters.** The bankruptcy judge shall exercise jurisdiction over all post-judgment matters arising from a judgment or order entered by bankruptcy judge.

~~Rule 83.13.6 — APPEALS~~

~~(a) Appeals in Bankruptcy Proceedings to the District Court. The District Court shall have jurisdiction to hear an appeal from a final or interlocutory order of a bankruptcy judge in a core proceeding or a non-core proceeding, under 28 U.S.C. § 157(c)(2). Such appeals are governed by 28 U.S.C. § 158(a) and the procedure shall be according to Part VIII of the Bankruptcy Rules with the following modifications:~~

~~(1) Notice of Appeal, Filing and Service. The filing of the notice of appeal and other papers with the Bankruptcy Judge, as required by Rules 8001, 8002, 8006, and 8008 of the Federal Rules of Bankruptcy Procedure, shall be made by filing them with the Clerk of the Bankruptcy Court. In lieu of the provision in Bankruptcy Rule 8004 for service of a notice of the filing of a notice of appeal, it shall be the duty of the appellant to serve a copy of the notice of appeal, with a notation of the time of the filing thereof upon all other parties to the appeal at their addresses of record and to file a certificate of such service.~~

~~(2) Application for Leave to Appeal Interlocutory Order. Leave to appeal, under 28 U.S.C. § 1334(b), shall be sought by filing an application for leave with the clerk of the court to which the appeal is addressed within the time provided by Bankruptcy Rule 8002 for filing a notice of appeal, with proof of service by the applicant, in accordance with Bankruptcy Rule 8004. A notice of appeal need not be filed. The application shall contain a statement of the facts necessary to an understanding of the questions to be presented by the appeal a statement of those questions and of the relief sought a statement of the reasons why, in the opinion of the applicant, leave to appeal should be granted, and a copy of the order, decree, or judgment complained of and of any opinion or memorandum relating thereto. Within ten (10) days after service of the application, an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument, unless otherwise ordered.~~

~~(3) Leave to Appeal Granted; Filing of Record. If leave to appeal is granted, the record shall be designated and transmitted and the appeal docketed, in accordance with Bankruptcy Rules 8006 and 8007 and this Rule. The time fixed by those rules for designating and transmitting the record and docketing the appeal shall run from the date of the order granting leave to appeal. A notice of appeal need not be filed.~~

~~(4) Appeal Improperly Taken Regarded as an Application for Leave to Appeal. If a timely notice of appeal is filed where the proper mode of proceeding is by an application for leave to appeal under this Rule, the notice of appeal shall be deemed a timely and proper application for leave to appeal. The District Court may enter an order either granting or denying leave to appeal or directing that an application for leave to appeal be filed. Unless the District Court fixes another time in its order directing that an application for leave to appeal be filed, the application shall be filed within ten (10) days of entry of the District Court's order.~~

~~(5) Preparation and Transmission of Record. The record shall be designated and prepared according to Bankruptcy Rule 8006, but the record transmitted by the Clerk of the Bankruptcy Court shall be copies of the pleadings and papers designated, and the record shall be transmitted forthwith upon the filing of the transcript. If no transcript is designated, the record shall be transmitted forthwith. Notice of the transmission of the record to the Clerk of the District Court shall be given to all parties to the appeal.~~

~~(6) Filing and Service of Briefs.~~

~~(i) Appellant Brief. The appellant shall serve and file his brief within fifteen (15) days after the transmission of the record to the Clerk of the District Court.~~

~~(ii) Appellee Brief. The appellee shall serve and file his brief within fifteen (15) days after service of the brief of the appellant.~~

~~(iii) Reply Brief. The appellant may serve and file a reply or brief of the appellee.~~

~~(7) Oral Argument Excused. Oral argument, as required by Bankruptcy Rule 8012, is excused for all appeals in this District unless the district judge to whom the appeal is assigned shall otherwise order.~~

~~(8) Motion for Rehearing Eliminated. Bankruptcy Rule 8015 shall not be applicable in this District unless a district judge shall grant leave to file a motion for rehearing in the order entered on the appeal.~~

~~(b) Appeals in Bankruptcy Proceedings to the Bankruptcy Appellate Panel. Pursuant to the authorization of the District Judges of this District, the~~

~~Bankruptcy Appellate Panel shall have jurisdiction to hear a final or interlocutory order of a bankruptcy judge with the consent of all parties. Said appeals are governed by 28 U.S.C. 158(b).~~

~~(c) Appeal From Final Order in Bankruptcy Court Proceedings. An appeal from a final judgment order or decree of the District Court or the Bankruptcy Appellate Panel shall be taken to the Court of Appeals and governed by the Federal Rules of Appellate Procedure in the same manner as appeals in civil proceedings generally.~~

(CRIMINAL) RULE 30.1 INSTRUCTIONS

~~The parties shall tender to the Court and exchange with each other proposed jury instructions with citations to authorities in support thereof, together with proposed verdict forms and a 3 ½ inch diskette formatted for WordPerfect, five (5) business days prior to trial.~~

The parties shall tender to the Court and exchange with each other proposed jury instructions and verdict forms via e-mail seven (7) days prior to trial in both civil and criminal cases. The instructions must be formatted as a single document for WordPerfect or Word and must include citations of authority.

The Court's email addresses are as follows:

wyojudgewfd@wyd.uscourts.gov - Honorable William F. Downes

cabjuryinstructions@wyd.uscourts.gov - Honorable Clarence A. Brimmer

wyojudgeabj@wyd.uscourts.gov - Honorable Alan B. Johnson

wyojudgewcb@wyd.uscourts.gov - Honorable William C. Beaman.