

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1987

In the Matter of the amendment )  
of Rule 71.1, Wyoming Rules of )  
Civil Procedure )

ORDER

The following amendments to Rule 71.1, Wyoming Rules of Civil Procedure, as attached, having been found advisable by the court and the recommendations of the Permanent Rules Advisory Committee having been considered, it is

ORDERED that Rule 71.1, Wyoming Rules of Civil Procedure, be, and it is amended to read, as attached hereto; it is further

ORDERED that the amended Rule 71.1, Wyoming Rules of Civil Procedure, as attached, be published in the Advance Sheets of the Pacific Reporter and in the Wyoming Reporter and shall become effective sixty (60) days after publication in the Advance Sheets of the Pacific Reporter and distribution by the publisher, West Publishing Company; and that the amended rule, as attached hereto, shall be spread at length on the journal of this court, but the stricken words of the original rule and the capitalized added words thereof shall not be shown as stricken or capitalized in the publication of the Wyoming Court Rules.

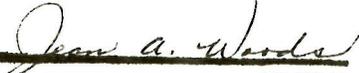
Dated November 24th, 1987.

By the Court

  
C. Stuart Brown  
Chief Justice

IN THE SUPREME COURT  
STATE OF WYOMING  
**FILED**

NOV 25 1987

  
CLERK

W.R.C.P.

Rule 71.1 -- Condemnation of property.

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(c) Complaint.

~~(1) -- Caption. ----- The complaint shall contain a caption as provided in Rule 10(a).~~

(2)(1) Contents. -- The complaint shall contain a short and plain statement of:

(i) the authority for the taking, the use for which the property is to be taken, AND THE NECESSITY FOR THE TAKING, a description of the property sufficient for its identification, the interests to be acquired,

(ii) THE EFFORTS MADE TO COMPLY WITH W.S. 1-26-504, 505, 509 AND 510,

(iii) as to each separate piece of property, a designation of the defendants who have been joined as owners thereof of some interest therein, together with their residences, if known, and whether the plaintiff demands immediate possession or desires to continue in possession,

(iv) IF PLAINTIFF IS A PUBLIC ENTITY, FACTS DEMONSTRATING COMPLIANCE WITH W.S. 1-26-512, AND

(v) IF PLAINTIFF SEEKS A COURT ORDER PERMITTING ENTRY UPON THE PROPERTY FOR ANY OF THE PURPOSES SET OUT IN W.S. 1-

26-506, PLAINTIFF SHALL SET FORTH IN THE COMPLAINT OR IN A SEPARATE APPLICATION TO THE COURT A SHORT AND PLAIN STATEMENT THAT IT HAS MADE REASONABLE EFFORTS TO ENTER THE PROPERTY, THAT SUCH ENTRY HAS BEEN OBSTRUCTED OR DENIED, AND THAT A COURT ORDER PERMITTING ENTRY IS SOUGHT PURSUANT TO W.S. 1-26-507.

(2) JOINDER. -- Upon the commencement of the action the plaintiff shall join as defendants those persons having or claiming an interest in the property as owner, lessee or encumbrancer whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property as owner, lessee or encumbrancer whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. Other defendants, as described in Rule 4(i), shall be made defendants when they are necessary parties. ~~Process shall be served as provided in subdivision (d) of this rule upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added.~~

(3) INFORMAL PROCEDURE. -- IF PLAINTIFF DESIRES THAT THE AMOUNT OF COMPENSATION BE DETERMINED BY INFORMAL PROCEDURE,

PURSUANT TO W.S. 1-26-601, ET SEQ., IT SHALL ALLEGE THAT THE AMOUNT IN DISPUTE IS LESS THAN TWENTY THOUSAND DOLLARS (\$20,000) OR THAT THE DIFFERENCE BETWEEN PLAINTIFF'S LATEST OFFER AND THE TOTAL AMOUNT DEMANDED IS LESS THAN FIVE THOUSAND DOLLARS (\$5,000), AND SHALL REQUEST THAT THE COURT PROCEED INFORMALLY.

(4) DEPOSIT AT COMMENCEMENT OF ACTION. -- CONDEMNOR SHALL MAKE THE DEPOSIT REQUIRED BY W.S. 1-26-513.

(d) Order for hearing; process; answer.

(1) Order for Hearing. -- ~~At the time of filing the complaint, the plaintiff shall apply to the court for an order fixing the time and place for a hearing on the complaint.~~ IF PLAINTIFF SEEKS A COURT ORDER PERMITTING IMMEDIATE ENTRY UPON THE PROPERTY PURSUANT TO W.S. 1-26-507, IT SHALL APPLY TO THE COURT FOR AN ORDER FIXING TIME FOR A HEARING, AND THE COURT SHALL DIRECT DEFENDANT OR DEFENDANTS TO APPEAR AT THE TIME AND PLACE SET FOR THE HEARING TO SHOW CAUSE WHY SUCH AN ORDER SHOULD NOT BE ENTERED. IF PLAINTIFF DOES NOT SEEK SUCH AN ORDER, IT SHALL APPLY TO THE COURT FOR AN ORDER FIXING THE TIME AND PLACE FOR A HEARING UPON THE COMPLAINT.

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(3) Answer. --

(i) No answer is required unless defendant desires to contest the plaintiff's right to take the property or the necessity therefor, in which event the answer shall be filed five (5) days prior to the time set for THE hearing ON THE COMPLAINT.

(ii) If no answer is filed, defendant may file an appearance with the clerk describing the property in which he claims an interest so as to facilitate his prompt receipt of notices.

(iii) IF DEFENDANT DESIRES THAT THE AMOUNT OF COMPENSATION BE DETERMINED BY INFORMAL PROCEDURE, IT SHALL ALLEGE THAT THE AMOUNT IN DISPUTE IS LESS THAN TWENTY THOUSAND DOLLARS (\$20,000) OR THAT THE DIFFERENCE BETWEEN PLAINTIFF'S LATEST OFFER AND THE TOTAL AMOUNT DEMANDED IS LESS THAN FIVE THOUSAND DOLLARS (\$5,000), AND SHALL REQUEST THAT THE COURT PROCEED INFORMALLY.

(e) HearingS. --

(1) SHOW CAUSE HEARING. -- IF PLAINTIFF HAS REQUESTED AN ORDER AUTHORIZING IMMEDIATE ENTRY, A SHOW CAUSE HEARING SHALL BE HELD NOT SOONER THAN FIFTEEN (15) DAYS AFTER SERVICE OF THE ORDER TO SHOW CAUSE UPON THE DEFENDANT OR DEFENDANTS.

(i) AT THE HEARING, THE DISTRICT JUDGE SHALL REQUIRE EVIDENCE THAT NOTICE AND AN ORDER TO SHOW CAUSE HAS BEEN SERVED UPON THE DEFENDANT AS REQUIRED, AND SHALL HEAR AND DETERMINE QUESTIONS OF PLAINTIFF'S RIGHT TO ENTER THE

PROPERTY, THE PURPOSES FOR WHICH ENTRY IS SOUGHT, PLAINTIFF'S EFFORTS TO ENTER UNDER NOTICE TO THE OWNER AND HIS PRIOR AGREEMENT THERETO, IF ANY; AND SHALL REQUIRE DEFENDANT OR DEFENDANTS TO SHOW GOOD CAUSE WHY AN ORDER AUTHORIZING ENTRY SHOULD NOT BE ENTERED.

(ii) IF PLAINTIFF PREVAILS ON THESE POINTS, THE DISTRICT JUDGE SHALL ENTER AN ORDER PERMITTING ENTRY. ANY ORDER PERMITTING IMMEDIATE ENTRY SHALL DESCRIBE THE PURPOSE THEREFOR, SETTING FORTH THE NATURE AND SCOPE OF ACTIVITIES DETERMINED TO BE REASONABLY NECESSARY AND AUTHORIZED BY LAW, AND INCLUDING TERMS AND CONDITIONS RESPECTING TIME, PLACE, AND MANNER OF ENTRY, AND AUTHORIZED ACTIVITIES BY PLAINTIFF, ALL IN ORDER TO FACILITATE THE PURPOSE OF ENTRY AND TO MINIMIZE DAMAGE, HARDSHIP, AND BURDEN UPON THE PARTIES.

(iii) AN ORDER PERMITTING ENTRY WHERE THE PURPOSE DOES NOT CONTEMPLATE CONDEMNATION SHALL INCLUDE A DETERMINATION OF THE AMOUNT, IF ANY, THAT WILL FAIRLY COMPENSATE DEFENDANT OR DEFENDANTS OR ANY OTHER PERSON IN LAWFUL POSSESSION OR PHYSICAL OCCUPANCY FOR DAMAGES FOR PHYSICAL INJURY TO THE PROPERTY OR SUBSTANTIAL INTERFERENCE WITH ITS POSSESSION OR USE, IF SUCH DAMAGE OR INTERFERENCE ARE FOUND LIKELY TO BE CAUSED BY ENTRY. THE DISTRICT JUDGE WILL REQUIRE PLAINTIFF TO DEPOSIT CASH OR OTHER SECURITY WITH THE COURT IN ANY SUCH AMOUNT.

(2) HEARING ON COMPLAINT FOR CONDEMNATION. -- The hearing shall be held not less SOONER than fifteen (15) days after service OF THE COMPLAINT FOR CONDEMNATION upon the defendant, unless the defendant otherwise consents in writing.

(i) At the hearing, which may be adjourned from time to time, the district judge shall require evidence that notice of hearing has been given as provided in this rule, and shall hear and determine the questions of the plaintiff's right to make the appropriation, plaintiff's inability to agree with the owner, the necessity for the appropriation, and shall hear proofs and allegations of all parties interested touching the regularity of the proceedings.

(ii) If the district judge determines these questions in favor of the plaintiff as to any or all of the property and persons interested therein, HE SHALL FIRST DECIDE WHETHER A REQUEST BY ANY PARTY TO PROCEED INFORMALLY SHOULD BE GRANTED.

(iii) IF HE DECIDES TO PROCEED INFORMALLY, HE SHALL DETERMINE COMPENSATION WITHOUT JURY IN AN INFORMAL MANNER ON THE BASIS OF SUCH ORAL AND DOCUMENTARY EVIDENCE AS THE PARTIES SHALL OFFER WHICH THE COURT DEEMS SUFFICIENT.

(iv) IF HE DETERMINES NOT TO PROCEED INFORMALLY, he shall make an order appointing three (3) disinterested appraisers, residents of the county in which the complaint is filed, to ascertain the compensation to be made to the defendant, or defendants, for the taking or injuriously

affecting the property described in the complaint, and specifying a time and place for the first meeting of such appraisers, and the time within which the said appraisers shall make such assessment.

(v) At the hearing, or at any stage of the proceedings under this rule after the questions previously mentioned have been heard and determined the district judge may, by order in that behalf made and if demanded by plaintiff in his complaint or in any amendment thereto, authorize the plaintiff, if already in possession, and if not in possession, to take possession of, and use said property during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against the plaintiff on account thereof; provided,

(vi) unless exempted by statute AND SUBJECT TO THE DEPOSIT PROVISION OF W.S. 1-26-513, plaintiff shall pay a sufficient sum into the court, or give approved security to pay the compensation in that behalf when ascertained; and

(vii) in every case where possession shall be so authorized, it shall be lawful for the defendant, or defendants, to conduct the proceedings to a conclusion if the same shall be delayed by the plaintiff.

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(h) Appraisers; procedure.

(1) The appraisers appointed by the court, before entering upon the duties of their office, shall take an oath to faithfully and impartially discharge their duties as said appraisers.

(2) The court shall instruct them in writing as to their duties and as to the applicable and proper law to be followed by them in making their ascertainment.

(3) They shall carefully inspect and view the property sought to be taken or affected and shall thereupon ascertain and certify the compensation proper to be made to the defendant, or defendants, for the real or personal property to be taken or affected, according to the rule of damages as set forth in the written instructions given by the court.

(4) They shall make, subscribe and file with the clerk of the district court in which the action is pending a certificate of their said ascertainment and assessment in which the real or personal property shall be described with convenience, certainty and accuracy. IN ADDITION, SUPPORTING DATA FOR THE AMOUNTS SET FORTH IN THE CERTIFICATE SHALL BE INCLUDED WITH SAID CERTIFICATE.

(5) Fees allowed the appraisers shall be fixed by the court.

(i) Order of award.--

(1) UPON PROCEEDING INFORMALLY TO A DETERMINATION OF THE AMOUNT OF COMPENSATION TO BE PAID, UNDER SUBDIVISION (e)(2) ABOVE, AND IF NEITHER PARTY REJECTS THE JUDGMENT OF THE DISTRICT COURT, AS AUTHORIZED BY W.S. 1-26-604, OR

(2) upon filing of the certificate of appraisers under subdivision (h) above, or

(3) upon entry of the jury verdict under subdivision (j) below,

(i) and THE DISTRICT JUDGE SHALL upon receiving due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the county treasury, or other place for that purpose approved by the court, shall make and cause to be entered an order describing the real or personal property taken, the compensation ascertained, and the mode of making compensation or deposit thereof as aforesaid; AND

(ii) a certified copy of said order shall be recorded and indexed in the office of the register of deeds of the proper county; AND

(iii) upon the entry of such order, the plaintiff shall have such rights in the condemned property as are granted to him by the statutes of this state authorizing the exercise of the power of eminent domain by plaintiff and which have been the subject matter of his action.

~~(j) -- Jury trial, ----- When an assessment shall have been regularly made by the appraisers, as aforesaid, either party, within thirty (30) days after the filing of the certificate of such assessment, if not satisfied with the award, may demand, and shall be entitled~~

~~to a trial by jury in the district court of the issue of just compensation.~~

~~(1) Demand. --- Either party may demand a trial by jury in such instances by filing with the clerk of court and by serving upon the other parties in accordance with Rule 5(b) a demand therefor, in writing, within thirty (30) days after the filing of the certificate of assessment by the appraisers.~~

~~(2) Procedure in Trial by Jury. --- The said trial by jury shall be conducted in the same manner as trials by jury in civil actions, and the provisions of Rule 59 of these rules relating to new trial shall be applicable.~~

~~(3) Verdict. --- The jury shall determine the compensation proper to be made to the defendant, or defendants, and shall render its verdict, in writing, signed by the foreman, which shall be entered of record.~~

(j) FORMAL TRIAL; JURY TRIAL. -- IF A JUDGMENT HAS BEEN ENTERED ON THE BASIS OF INFORMAL PROCEEDINGS, ANY PARTY MAY FILE, WITHIN THIRTY (30) DAYS AFTER SUCH ENTRY OF JUDGMENT, A WRITTEN DEMAND FOR A FORMAL TRIAL TO THE COURT OR FOR A JURY TRIAL, WHEREUPON THE ACTION SHALL PROCEED AS THOUGH NO INFORMAL PROCEEDINGS HAD OCCURRED. IF AN ASSESSMENT HAS BEEN MADE BY APPRAISERS, ANY PARTY NOT SATISFIED WITH THE AWARD MAY FILE, WITHIN THIRTY (30) DAYS AFTER THE CERTIFICATE OF ASSESSMENT HAS BEEN FILED, A WRITTEN DEMAND FOR A TRIAL BY JURY ON THE ISSUE OF JUST COMPENSATION, WHEREUPON THE ACTION SHALL PROCEED TO A JURY TRIAL ON THAT ISSUE.

(1) DEMAND. -- THE DEMAND, WHETHER FOR A FORMAL TRIAL TO THE COURT OR FOR A JURY TRIAL, SHALL BE FILED WITH THE CLERK AND SERVED UPON THE OTHER PARTIES IN ACCORDANCE WITH RULE 5(b).

(2) PROCEDURE. -- THE FORMAL TRIAL OR TRIAL BY JURY SHALL BE CONDUCTED IN THE SAME MANNER AS OTHER CIVIL ACTIONS.

(3) DECISION; VERDICT. -- IF THE ACTION IS TRIED WITHOUT JURY, THE COURT SHALL DETERMINE THE COMPENSATION TO BE MADE TO THE DEFENDANT OR DEFENDANTS, AND SHALL RENDER ITS DECISION IN WRITING, AND ENTER ITS JUDGMENT ACCORDINGLY. IF THE ACTION IS TRIED WITH JURY, THE JURY SHALL DETERMINE THESE MATTERS, AND SHALL RENDER ITS VERDICT IN WRITING, SIGNED BY THE FOREMAN, AND THE VERDICT SHALL BE ENTERED IN THE RECORD.

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(1) Deposit and its distribution. -- The plaintiff shall deposit with the court any money or bond required by law as a condition to the exercise of the power of eminent domain, or as a condition to the right of continuing or obtaining immediate possession, ~~and~~ although not so required, ~~may make a deposit.~~ In such cases the court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. Interest shall not accrue as to the sum deposited by the plaintiff from and after the time the deposit becomes available for distribution to the defendant or defendants. If the compensation finally awarded to any defendant

exceeds the amount which has been paid to him on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to him, the court shall enter judgment against him and in favor of the plaintiff for the overpayment.

(m) Costs. -- In any proceeding under this rule costs may be allowed and apportioned between the parties on the same or adverse sides in the discretion of the court AS AUTHORIZED BY STATUTE OR BY RULE OF THIS COURT.