

IN THE SUPREME COURT, STATE OF WYOMING

APRIL TERM, A.D. 1978

April 14, 1978

In the Matter of Amending)
Certain Sections in the Rules)
of Civil Procedure and Rules)
of Criminal Procedure)

O R D E R

For the purpose of conformity to the Wyoming Rules of Appellate Procedure, and as recommended by the Advisory Committees, it is deemed advisable to amend the following rules: Rules 50(b), 52(b) and 59(f) Wyoming Rules of Civil Procedure and Rules 30(c), 34 and 35 Wyoming Rules of Criminal Procedure, and to amend Rule 59(a)(5) Wyoming Rules of Civil Procedure.

IT IS THEREFORE ORDERED:

(1) That Rule 50(b) W.R.C.P. be and is hereby amended to read as follows:

"(b) Motion for Judgment Notwithstanding the Verdict. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the moving party may move not later than ten days after the entry of judgment to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within ten days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative; and a motion to set aside or otherwise nullify a verdict or for a new trial shall be deemed to include a motion for judgment notwithstanding the verdict as an alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial. Motions for judgment notwithstanding the verdict shall be determined and entered within 60 days after the entry of judgment, and if not so determined shall be deemed denied, unless within such 60 days the determination is continued by order of the court, but a continuance shall not extend the time to a day more than 90 days from the date of entry of judgment."

(2) That Rule 52(b) W.R.C.P. be and is hereby amended to read as follows:

"(b) Amendment. Upon motion of a party made not later than ten days after entry of judgment the court may amend special findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When special findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment. Such motions to amend shall be determined within 60 days after the entry of the judgment, and if not so determined shall be deemed denied, unless within such 60 days the determination is continued by order of the court, but a continuance shall not extend the time to a day more than 90 days from the date of entry of judgment."

(3) That Rule 59(f) W.R.C.P. be and is hereby amended to read as follows:

"(f) Motions for New Trial or to Alter or Amend a Judgment; Time Limit. Motions for new trial and motions to alter or amend a judgment shall be determined within 60 days after the entry of the judgment, and if not so determined shall be deemed denied, unless within such 60 days the determination is continued by order of the court, but a continuance shall not extend the time to a day more than 90 days from the date of entry of judgment."

(4) That Rule 59(a)(5) W.R.C.P. be and is hereby amended to read as follows:

"Error in the assessment of the amount of recovery, whether too large or too small."

(5) That Rule 30(c) W.R.Cr.P. be and is hereby amended to read as follows:

"(c) Motion After Discharge of Jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within ten days after the jury is discharged or within such further time as the court may fix during the ten-day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal within ten days after such motion is filed, and if not so entered shall be deemed denied, unless within such ten days the determination shall be continued by order of the court, but a continuance shall not extend the time to a day more than 30 days from the date the verdict is returned. If no verdict is returned, the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury."

(6) That Rule 34 W.R.Cr.P. be and is hereby amended to

read as follows:

"The court on motion of defendant may grant a new trial to him if required in the interests of justice. If trial was by the court without a jury, the court on motion of a defendant for new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within ten days after verdict or finding of guilty or within such further time as the court may fix during the ten-day period. The motion shall be determined and an order entered within ten days after such motion is filed and if not so entered it shall be deemed denied, unless within such ten days the determination shall be continued by order of the court, but a continuance shall not extend the time to a day more than 30 days from the date the verdict or the finding of guilty is returned."

(7) That Rule 35 W.R.Cr.P. be and is hereby amended to read as follows:

"The court on motion of a defendant shall arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within ten days after verdict or finding of guilty, or after the plea of guilty or nolo contendere, or within such further time as the court may fix during the ten-day period. The motion shall be determined and an order entered within ten days after such motion is filed and if not so entered it shall be deemed denied, unless within such ten days the determination shall be continued by order of the court, but a continuance shall not extend the time to a day more than 30 days from the date the motion is filed."

IT IS FURTHER ORDERED that said amendments be published in the advance sheets of the Pacific Reporter and thereafter in the Wyoming Reporter and shall become effective on August 1, 1978, being more than 60 days after publication; and thereupon the amendments shall be spread at length upon the journal of the court.

Dated at Cheyenne, Wyoming, this 12th day of April, 1978.

BY THE COURT:

/s/
Rodney M. Guthrie, Chief Justice

6-8-78
copy to
A.M.
K.A.
Meechie

(Carol is mailing to dist judge,
(all copies to all lawyers)