



May 13, 2020

Mary Oblasser  
Project Manager  
Wyoming Supreme Court  
2301 Capitol Avenue  
Cheyenne, WY 82002

**RE: Proposed Wyoming Chancery Court Rules**

Dear Ms. Oblasser:

I am writing on behalf of the Wyoming State Committee of the American College of Trial Lawyers (the College) in relation to Justice Davis' request for comments on the Wyoming Rules of Civil Procedure for the Court of Chancery. As you probably know, the College maintains and seeks to improve the standards of trial practice, professionalism, ethics, and the administration of justice through education and public statements on important legal issues relating to its mission. The College strongly supports the independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings. The Wyoming State Committee of the College believes that certain aspects of the currently proposed chancery court Rules are of potential concern.

The statutes creating a chancery court state that all proceedings in that court shall be without the right to a jury trial. However, establishing the rules of procedure is entirely within the province of the Wyoming Supreme Court, and its rules of procedure will control even in the face of a conflicting statutory provision. See *White v. Fisher*, 689 P.2d 102, 106 (Wyo. 1984).

The State Committee believes it is of utmost importance that the right to a jury trial is not infringed upon, limited or eroded by the chancery court system. Because parties to a chancery court proceeding are not entitled to a jury trial, it is critical that the rules of procedure clearly allow for any party to have the case removed from chancery court if that party wants a jury trial.

We are concerned that the rules, as drafted, might be used to deprive Wyoming citizens of their right to a jury trial unless there is a clarification. The statute states that rules are to include procedures for removal of cases from chancery court. While Rule 3 (either version) addresses the removal of a case filed in district court to chancery court, neither of the two versions address dismissal or removal of a case originally filed in chancery court. We believe the rules must clearly state a right and procedure to remove or dismiss cases from chancery court and that removal or dismissal must be as a matter of right if any party desires a jury trial.

We are particularly concerned that Option A, as drafted, will give a plaintiff an argument that a defendant cannot seek a jury. Since the rule provides no procedure for removal or dismissal, if a defendant tried to file a jury demand, such a filing is subject to being struck

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or deemed a nullity. The problem is exacerbated by the rule's language providing that any "objection" to proceeding in the chancery court will be resolved by the chancery judge in his or her discretion and only upon a showing of "good cause". This could strand a defendant who wants a jury trial in chancery court because the judge makes a discretionary ruling which denies dismissal or removal even though a party would otherwise have been entitled to one under Wyo. R. Civ. P. 38 – a decision that can only be challenged at the end of the case and is subject to an abuse of discretion standard.

The Committee strongly believes that preservation of the right to jury trial requires that there be a specific rule for remanding or dismissing a case from chancery court as a matter of right in the event a party expresses a desire for a jury trial or files a jury demand in chancery court. Any decision as to whether a party is entitled to a jury trial should be made by the District Court. The rules should state explicitly: (1) if a case is originally filed in chancery court, and a party, who would otherwise be entitled to a jury trial under Wyo. R. Civ. P. 38, demands a jury trial, then the chancery court must dismiss the case and (2) if a party has demanded a jury trial in district court, the case may not be removed to chancery court.

As stated above the College strongly supports access to justice and fairness to all parties to legal proceedings. Wyo. Stat. §5-13-104(b) provides that the court is to set "fees" and "charges" for the chancery court and that the fees and charges are to be established in an amount necessary to fund the operation of the court itself. We are concerned that if a party is not entitled to a jury trial, then corporate or wealthy parties could force individuals into the chancery system and use the threat of what may be many thousands of dollars of chancery court fees as a means to coerce a poor or middle-class party into settlement or concessions. We believe that the original fees and "charges" for participating in chancery court should be imposed on and assessed only to those who voluntarily participate in chancery court.

The rule of law must be respected so that rich and poor are treated alike. If the costs of funding the chancery court will be imposed on people who are forced into chancery court against their will, then chancery court will become "a court of the wealthy" where corporate or otherwise wealthy litigants have another tool beyond their own wealth to coerce ordinary Wyoming people in litigation.

Proposed Option B is a much better rule because it provides for an objection by any party within a specified time and makes removal from chancery court a matter of right upon such an objection. The Committee has no concerns about Option B.

Thank you for the opportunity to comment on these rules.

Sincerely,

Scott Ortiz  
Chair of the Wyoming Committee of the  
American College of Trial Lawyers