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THE COFFEE HOUSE

A Publication of the Wyoming Trial Lawyers Association

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PRESIDENT'S COLUMN

MARK MACY | WTLA PRESIDENT



The Wyoming Trial Lawyers Association is Alive and Well

Our board and committees have been busy in 2026 with a flurry of activities.

Many thanks to all those on the **Legislative Committee**, led by our Chair, Emily Madden. The committee tackled various proposed bills that affect the rights of the individual and, as of late, attacks on the judiciary. This was a budget session. The legislative committee reviewed over 300 proposed bills and resolutions. Many of the bills were proposed after the session started, making the review, interpretation, and effect a challenge. Our team was very responsive, and I heard the term “keep your head on a swivel” several times throughout the almost weekly meetings before and during the 20-day session. With Marcia at the helm, our well-oiled machine of a legislative team was very successful in heading off rogue legislation. Many hours were spent at the Capitol meeting with legislators and in committee meetings. Special thanks to Emily Madden, Mark Aronowitz, and Elizabeth Lance for being on the front line for WTLA.

Our **Continuing Legal Education Committee**, with Rachel Berkness and Claire Fuller as Co-Chairs, along with our family and criminal law sections, planned a great line-up of education in 2026. Our annual meeting on June 17-19, 2026, at Little America in Cheyenne, will conclude our CLE year until the fall. Some of our 2026 programs included an all-day session on The Art of Handling a Family Law Case in Wyoming, Finding the Story Beneath the Facts: Using Psycho-drama and Narrative to Transform Case Preparation, Understanding Gas Chromatography and Whole Blood Analysis:

Forensic Science Foundations for Challenging DUI Evidence, Wyoming Legislative Update, and many more. Mark Aronowitz, our convention chair, has a full slate of exceptional speakers lined up, including a welcome from Governor Gordon and panels featuring state senators, judges, and top-notch lawyers from Wyoming and across the country. Thank you to all for the great work.

The **Membership Committee** has been instrumental in keeping our membership numbers strong and growing. I applaud our Chairmen, Jen Reece and Toni Hartzel, for instituting the new Board Challenge, which tasks each board member to sign up a new member before the annual convention. Joining is easy with the following link. A new member can sign up in lightning speed via <https://www.wytla.org/?pg=join>. Thank you all on the committee for your exceptional work.

Collin Simpson has been active as the lead of **LAWPAC**, a political action committee working to support justice-friendly candidates. Given what we have seen in the last two sessions, elections will be critically important this year, especially the primary held on August 18. The need for funding is at an all-time high so LAWPAC can advance the campaigns of new and incumbent candidates who, if elected, can have an impact on legislation that is important to our clients and practices. Please consider donating at this [link](#). Thank you, Collin and LAWPAC trustees, for all your hard work.

Another successful **Robert R. Rose Voir Dire Competition** took place in September of 2025 at the University of Wyoming, College of Law. We can always count on

a solid group of volunteers led by Sarah Kellogg, with support from long-time dedicated organizers Gary Shockey, Rob Shively, and Bob Rose. Many others give their time teaching for the workshop and serving as judges for the competition, which is a first-class program. Thank you to all who continue to support the Student Chapter of the Wyoming Trial Lawyers Association and provide our law students with quality education.

What would we do without Michael Fitzgerald, who has unselfishly served as the Editor and Chief of the **Coffee House** for the last five years? A great organizer, a great idea guy, and his hard work shows in every edition. Thank you to all who have written articles and volunteered your time to make the *Coffee House* the great learning source and publication it remains.

Our nominating, awards, and women's caucus committees have all done great work as well this year. My thanks to those who help make those committees successful. Your time and commitment are appreciated.

As you can see, WTLA has had a busy and productive year. Join us, serve on a committee or put your name on the ballot to become a board member. We welcome your energy and ideas.

Looking forward to seeing you all at our annual convention, June 17-19, 2026, at the Little America Hotel & Resort in Cheyenne, Wyoming - **Champions of the Underdog!** 🐾

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FROM THE EXECUTIVE DIRECTOR

MARCIA SHANOR | WTLA EXECUTIVE DIRECTOR

2026 Legislative Session: A Cacophony of Issues, Debate and Controversy



The 2026 Budget Session of the 68th Wyoming Legislature convened on February 9th and was a cacophony of competing priorities, disagreements, and lengthy floor discussions not to mention allegations of illegal campaign donations passed out on the House Floor. From intense late-night budget debates to contentious discussions on libraries, education, and even corner crossing, the session was challenging.

According to the Wyoming Legislative Service Office, 509 bill requests were submitted, with 165 (32%) originating from committees. Of those, 114 were numbered, 80 were introduced, and just 65 were enacted.

Ultimately, 318 house bills and senate files along with 17 resolutions were filed including HB 1 and SF 1, mirror budget bills. These numbers reflect not only the number of ideas brought forward, but also the difficulty of moving issues not related to the budget through the process.

Another hurdle for non-budget bills is the two-thirds vote requirement for introduction. While there were consent lists for introduction, many bills were pulled off the list for debate and separate consideration. The process is time-consuming and one of the reasons many bills were not considered for introduction in the House.

House vs. Senate: The contrast between the House and Senate was notable.

In the House:

- Approximately 77 bills failed introduction, with another 48 never considered for introduction.
- An additional 20 bills died on Committee of the Whole.
- Of 192 bills and 8 resolutions, 125 failed introduction or were never considered, and 20 more stalled after committee review.

In the Senate:

- All Senate files were considered for introduction.
- 32 failed, and only one bill failed

Committee of the Whole.

While neither chamber moved everything forward, the Senate operated with greater efficiency; the House struggled under the weight of volume and process.

The Budget:

Long Nights and 300+ Amendments

The budget dominated this session.

The House alone considered over 250 budget amendments, with the Senate deliberating approximately 70 more. In the House, debate stretched late into the night, often consuming entire legislative days including a full Saturday. The result was that many non-budget bills never made it past General File, not necessarily due to lack of support, but because time ran out.

Adding to an already contentious process, there were moments that drew significant attention, including campaign checks being handed out on the House floor, which also took time and focus from the budget and other legislation.

WTLA's Role:

Monitoring, Advocating, and Protecting

Against this backdrop, WTLA's legislative team was on the ground. Our team:

- Reviewed every bill filed.
- Identified priority legislation affecting civil, criminal, and family law, as well as the judiciary.
- Actively monitored, lobbied, and tracked legislation throughout the session.

Key Issue Areas

Judiciary and Judicial Independence

Several proposals aimed at restructuring the judicial selection process failed to gain traction:

- **HB 177 – Judicial nominating commission-senate confirmation** – required Senate confirmation for appointed voting members of the judicial nominating commission. HB 177 was not considered for introduction.

- **HJ 6 – Election of judges and justices** – a joint resolution to amend the Wyoming Constitution to provide for the election of judges and justices. HJ6 was not considered for introduction.
- **SJ 4 – Confirmation of justices and judicial nominations** - a joint resolution to amend the Wyoming Constitution to amend the composition and qualifications of the judicial nominating commission, to allow the legislature to define the actual practice of law for purposes of qualifications for supreme court justices and to require supreme court justices to be confirmed by the senate. SJ 4 failed introduction by a 16 ayes-15 nays vote (required two-thirds vote to be introduced).

These outcomes maintained the current judicial selection process. Each of these bills could return next session, which will not have the same procedural constraints. However, all constitutional amendments and resolutions will still require a two-thirds vote for both introduction and passage.

Three other bills focused on the judiciary:

- **SF 103 Courts-retired judges, constitutional cases and injunctions** – amended requirements for the assignment of retired judges and justices to active cases. SF 103 failed introduction by a vote of 18 ayes -13 nays (required a two-thirds vote to be introduced.)
- **HB 66 Judicial deference-agencies** – amended the judicial review process of agency actions, requiring the court not to defer to a state agency's interpretation of the statute, rule, regulation or final decision and shall review the meaning and effect de novo. Required court to exercise remaining doubt to maximize individual liberty and limit agency power. HB 66 was introduced and passed in committee but was not considered on

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BEATING COMMON DISCOVERY OBJECTIONS

PART TWO: BOILERPLATE AND GENERAL OBJECTIONS AND CONDITIONAL RESPONSES

BY MICHAEL F. LUTZ

The May 2018 edition of the Coffee House included an article that I optimistically titled “Beating Common Discovery Objections *Part One*: Subsequent Remedial Measures.” I intended to promptly make good on my implicit promise to write a “Part Two.” But, somehow, work and life (including three kids who have come along since then) intervened. But, better late than never!

This article is for those lawyers who have had the frustrating experience of serving written discovery requests, agreeing to extensions (so that the respondents can prepare “complete and thorough” responses), and finally receiving those responses . . . only to see that they consist *completely* of objections and *thoroughly* avoid providing any substantive information.

Sometimes, the objections are so numerous it can be tempting to give up. The purpose of this article is to help you dynamite through mountains of “boilerplate” and “general” objections, as well as “conditional responses,” to obtain the gems of information hidden beneath. I recommend challenging these types of objections in all cases. Interestingly, the difficulty will not be challenging these tactics when indulged in by our opponents, given the overwhelming authority against them. The real challenge will be avoiding these tactics ourselves.

What are Boilerplate and General Objections?

“Boilerplate objections” and “general objections” are closely related. They are objections that lack the specificity required by the Federal and Wyoming Rules of Civil Procedure. Both Rule 33 (governing interrogatories) and Rule 34 (governing requests for production) require objections to be stated “with specificity.” See F.R.C.P. 33(b)(4) & W.R.C.P. 33(b)(4) (“The grounds for

objecting to an interrogatory must be *stated with specificity*. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.” [emphasis added]); F.R.C.P. 34(b)(2)(B) & W.R.C.P. 34(b)(2)(B) (“[T]he response must either state that inspection and related activities will be permitted as requested or state *with specificity* the grounds for objecting to the request, including the reasons.” [emphasis added]).

The Honorable David L. Horan, a United States Magistrate Judge for the Northern District of Texas, recently issued a standing order governing discovery. The order is worth reading — Judge Horan systematically summarizes (and emphatically forbids) each common abuse of the written discovery process. His definitions of “boilerplate” and “general” objections are useful:

- “Boilerplate objections are those that, although asserted in response to a specific discovery request, use standardized text or ready-made or all-purpose language that are not tailored to a specific discovery request.” *Sterns v. CitiMortgage, Inc.*, 349 F.R.D. 620, 624 (N.D. Tex. 2025).
- “General objections are generic or broadly stated objections that usually appear in a free-standing list at the beginning of a set of answers or responses, before addressing any specific discovery requests, and are incorporated by reference into every response to every discovery request that follows the list (often ‘to the extent that’ they apply) with no attempt to [show] how (or even that) each objection applies to each request.” *Id.*

In short, the difference between “boilerplate” and “general” objections is this: boilerplate objections are made by copying and pasting canned objections in response to specific

requests, whereas general objections are made without even that modest amount of effort and thought.

Boilerplate and General Objections are Improper

Both boilerplate and general objections are equally improper. Courts in the Tenth Circuit and across the country routinely deem such objections waived. See *Smash Tech., LLC v. Smash Sols., LLC*, 335 F.R.D. 438, 441 (D. Utah 2020); *United States v. Lain*, No. 17-CV-113-J, 2019 WL 2051961, at *6 n.4 (D. Wyo. Jan. 18, 2019) (holding “general objections” waived); *Liguria Foods, Inc. v. Griffith Lab’ys, Inc.*, 320 F.R.D. 168, 187 (N.D. Iowa 2017) (noting that it is an “urban legend” that boilerplate objections preserve objections [quoting Matthew L. Jarvey, *Boilerplate Discovery Objections: How They Are Used, Why They Are Wrong, and What We Can Do About Them*, 61 Drake L. Rev. 913, 925 (2013)]); *Bibbs v. New River Cmty. & Tech. Coll.*, 285 F.R.D. 382, 388 (S.D.W. Va. 2012) (“[B]oilerplate objections regurgitating words and phrases from Rule 26 are completely unacceptable.”); *Hodgdon v. Nw. Univ.*, 245 F.R.D. 337, 340 n.4 (N.D. Ill. 2007) (“These sorts of boilerplate objections are meaningless and insufficient under Rule 33(b)(1) and (4).”); *Johnson v. Kraft Foods N. Am., Inc.*, 236 F.R.D. 535, 538 (D. Kan. 2006) (“a general objection which objects to a discovery request ‘to the extent’ that it asks the responding party to provide certain categories of documents or information is tantamount to asserting no objection at all. In other words, such a general objection does not preserve the asserted challenge to production.”); *Hammond v. Lowe’s Home Centers, Inc.*, 216 F.R.D. 666, 672 (D. Kan. 2003).

While Wyoming state-court authority on the topic is sparse, Judge Bluemel issued a scathing order finding a party’s boilerplate objections were “tantamount to not making any objection at all” and therefore waived. *State of Wyoming v. U.S. Currency Totaling, \$470,040.00*, No. CV-14-182, 2018 WL 10812337, at *13 (Wyo. Dist. Uinta Cnty. May 16, 2018).

Moreover, the practice of interposing boilerplate and general objections may be sanctionable. Rule 26(g)(1) of both the Federal and Wyoming Rules of Civil Procedure requires all objections to be “signed by at least one attorney of record in the attorney’s own name.” That signature “certifies that to the best of the person’s knowledge, information,

and belief formed after a reasonable inquiry” that the objection was “consistent with these rules” and “not interposed for any improper purpose, such as to . . . cause unnecessary delay, or needlessly increase the cost of litigation.”

F.R.C.P. 26(g)(1) & W.R.C.P. 26(g)(1). Rule 26(g)(3) authorizes sanctions for violations that lack substantial justification.

Boilerplate and general objections likely violate Rule 26(g)(1). The case is particularly strong when it comes to general objections. See *High Point SARL v. Sprint Nextel Corp.*, No. CIV.A. 09-2269-CM, 2011 WL 4036424, at *11 (D. Kan. Sept. 12, 2011) (imposing monetary sanctions for asserting general objections). By definition, “general objections” are not stated “with specificity.” See Merriam-Webster Thesaurus Online, <https://www.merriam-webster.com/thesaurus/general#thesaurus-entry-1-2> (last visited April 20, 2026) (the first antonym to Definition 2 of “general” — “as in broad” — is “specific”). Therefore, the mere title “General Objections” is an admission that the objections listed below it are not stated “with specificity” in violation of Rules 33 & 34. See *Smash Tech.*, 335 F.R.D. at 447 (noting that a party’s “use of the

title ‘General Objections’ should have clearly signaled a violation of the specificity requirements in Rules 33 and 34”).

Some Common Boilerplate and General Objections

Proprietary and Confidential

Responding parties often claim that they cannot provide a response based on vague claims that the information is “proprietary” or “confidential.” These are not, however, valid discovery objections:

A concern for protecting confidentiality does not equate to privilege. While a confidentiality objection may be appropriate when a party seeks a protective order limiting the parties’ use or disclosure of confidential information, it generally is not a valid objection for withholding discovery altogether. Courts in this District have repeatedly held that “confidential” does not equate to “nondiscoverable” or privileged.

McKellips v. Kumho Tire Co., 305 F.R.D. 655, 661 (D. Kan. 2015) (citations and quotation marks omitted); see also *Patrick*

v. Teays Valley Trs., LLC, 297 F.R.D. 248, 263 (N.D.W. Va. 2013) (“Defendant is free to seek a protective order to protect its proprietary information, but this is not a valid reason to withhold production.”), *aff’d sub nom. Patrick v. PHH Mortg. Corp.*, 298 F.R.D. 333 (N.D.W. Va. 2014).

Need a Protective Order First

Relatedly, respondents often delay discovery responses that are due under the rules by stating that, before they can provide complete responses, they require a protective order.

This approach ignores that there is a proper time to seek a protective order—before responses are due. See *Ayers v. Cont’l Cas. Co.*, 240 F.R.D. 216, 221 (N.D.W. Va. 2007) (“Motions for a protective order must be made before or on the date the discovery is due.”); *Brittain v. Stroh Brewery Co.*, 136 F.R.D. 408, 413 (M.D.N.C. 1991) (“A motion for a protective order is timely if made prior to the date set for producing the discovery.”); *Nestle Foods Corp. v. Aetna Cas. & Sur. Co.*, 129 F.R.D. 483, 486–87 (D.N.J. 1990).

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THE ROLE OF PROTECTIVE ORDERS IN WYOMING CRIMINAL DISCOVERY

BY P. CRAIG SILVA

Criminal discovery in Wyoming is governed by rules of criminal procedure rather than a broad constitutional right to pretrial disclosure, and the protective order, particularly in federal court, has become the practical pivot for balancing a defendant's right to effective assistance of counsel against legitimate safety, privacy, and investigatory concerns. This article explains the statutory and case-law framework for protective orders, explores common justifications for limiting dissemination, examines the conflicts that arise when criminal and civil proceedings overlap, and outlines ethical considerations defense counsel must observe when handling protected discovery. The aim is to provide trial lawyers with a concise, practice-oriented roadmap for navigating discovery dissemination while preserving client interests and complying with court-ordered restrictions.

Contrary to popular belief, there is no general constitutional right to pretrial discovery in criminal cases. *See e.g. Ceja v. State*, 2009 WY 71, ¶13, 208 P.3d 66 (Wyo. 2009). Instead, discovery in criminal matters is controlled by procedural rules. Under those rules, either the prosecution or the defense can move to place limits on the discovery process through the protective order. Wyoming Rule of Criminal Procedure 16(d) (1) authorizes the court, "Upon a sufficient showing," to deny, restrict, defer,

or fashion other orders limiting discovery or inspection, and permits a party to make such a showing in a written statement examined by the judge alone. Federal Rule of Criminal Procedure 16(d)(1) contains substantially similar language. The practical consequence is that absent a protective order, discovery materials produced in the criminal case generally are not subject to restraints on dissemination outside the litigation.

Prosecutors frequently seek protective orders, limiting dissemination to the defense team for several well-established reasons:

- **Witness safety and intimidation:** Limiting distribution prevents harassment or threats that could coerce or influence witness testimony.
- **Confidential sources and ongoing investigations:** Safeguarding informants and investigative methods preserve future investigative utility.
- **Privacy and reputational harm:** Particularly in cases involving sexual offenses, broad public dissemination—especially in the internet era—can irreparably harm victims or third parties.

See, e.g. Fed. R. Cr. P. 16(d) Advisory Comments. Federal practice in Wyoming in some cases utilizes model protective order language which reads: "Unless otherwise addressed by the parties, discovery material not otherwise governed by a separate protective order shall not be disseminated to any person outside the defense team unless. . . ." By contrast, Wyoming state courts historically employ protective orders less frequently, but the Rule 16(d) (1) authority remains fully available.

In response, defense counsel advance competing but constitutionally rooted interests; most notably, that effective assistance of counsel under the Sixth Amendment requires meaningful access to discovery materials. In addition, case preparation commonly demands

sharing discovery with experts, investigative witnesses, mitigation specialists, and sometimes civil or insurance counsel where restitution or coverage issues are implicated. Consequently, overly restrictive dissemination limits investigation, impairs the ability to test the prosecution's case, and can undermine mitigation efforts at sentencing.

Protective orders are the principal procedural device for reconciling public safety and privacy concerns with the defense's need for access. A well-drafted order can be narrowly tailored: restricting distribution outside the defense team, requiring secure handling, forbidding public disclosure, and providing procedures for counsel to seek limited exceptions (for instance, permitting disclosure to retained experts under an expert's confidentiality oath). The goal is a balance that protects legitimate prosecutorial and third-party interests while preserving defense counsel's ability to investigate and prepare.

Bear in mind that statutory protections may independently prohibit dissemination regardless of a discovery order. For example, the identities of defendants and victims in sexual assault cases are protected under Wyo. Stat. § 6-2-319 (at least until filing in district court), and violation of such statutes can carry criminal penalties. Counsel must be attentive to statutory constraints that overlay or supersede discovery practice.

A frequent flashpoint in this area that is often underappreciated is the complication that arises when criminal prosecutions run parallel to civil litigation. Civil counsel commonly seek criminal discovery to expedite civil claims—e.g., civil-rights suits after arrest, personal injury or wrongful death cases arising from alleged police misconduct, or civil claims tied to alleged criminal conduct. Where a federal-style protective order prohibits its dissemination outside the defense team, sharing discovery with civil counsel may be barred, complicating

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DISCOVERY IN FAMILY LAW CASES: STRATEGIES FOR ATTORNEYS

BY JESSELYN GRUBE, FARRAH SPENCER, AND BRINAE O'NEIL

Discovery is one of the most powerful tools available to family law attorneys. When used effectively, it enables accurate case evaluation, confident client counseling, and informed settlement discussions. When used ineffectively, it can drive up costs, overwhelm clients, and produce little meaningful information.

This article focuses on how attorneys can approach discovery in family law matters with efficiency, strategy, and awareness of the unique challenges these cases present.

Start with Strategy

Before drafting a single interrogatory or request for production, attorneys should identify what information is actually needed to move the case forward. In most family law matters, discovery serves three primary goals: understanding the parties' financial situation, evaluating child custody and parenting issues, and assessing credibility of the parties. Approaching discovery with these goals in mind helps avoid the common trap of overbroad, boilerplate requests that generate overwhelming volume without value.

Unique Realities of Family Law Discovery

Family law discovery faces unique challenges that are often not experienced in general civil litigation. First, these cases are emotionally charged. Parties may respond defensively, incompletely, or inconsistently, particularly when financial or parenting



shortcomings are at issue. Irrelevant or excessive discovery can also further erode any remaining potential for a positive co-parenting relationship.

Second, unlike business disputes, many parties to family law cases do not keep formal, or consistent financial records. Attorneys frequently receive incomplete bank statements, missing tax returns, or informal financial records that require extensive time to review and assess. This can be particularly challenging when representing a party who did not regularly manage the marital finances, as poor record keeping may lead the client to believe the other party is intentionally withholding information, when, in reality, it is simply poor financial keeping.

Third, the relationship between the parties rarely ends when litigation begins. Parties may still live together or may have ongoing communication

due to shared parenting responsibilities. Consequently, new information continues to develop throughout the case. Attorneys should expect an evolving record and plan for ongoing supplementation and review of discoverable information. Attorneys should also set realistic expectations with their clients by explaining that, while discovery can be helpful in advancing a case, it does not guarantee uncovering the exact information they hope to find.

Mastering Initial Disclosures

Under Rule 26 of the Wyoming Rules of Civil Procedure, initial disclosures are the first step in the discovery process. In family law cases, initial disclosures require the parties to produce their entire financial situation, including disclosure of all assets (financial accounts, personal property, titled property, and real estate), debts, retirement accounts, business interests, and income sources. When children are involved, parties must also provide their employment information and a statement supporting their claim to primary physical custody.

From a practical standpoint, attorneys should treat initial disclosures as more than a procedural requirement. A thorough review can identify gaps or inconsistencies in produced information, identify issues to address through formal discovery, and provide an initial framework for potential settlement offers. Equally important, attorneys must ensure their own client's disclosures are complete and

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Geneva Engelhart Casper, WY
Ryan Logan Athol, ID
Matthew Weidinger Denver, CO
Michelle Ganey Smoot, WY
Adeline Mager Centennial, CO
Grant Rogers Laramie, WY
Manion Keith Casper, WY



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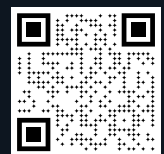
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DISCOVERY IN ARBITRATION: A TRIAL LAWYER'S GUIDE

BY ALEX FEATHERS, ESQ.

By agreeing to arbitrate, a party “trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration.”¹ Accordingly, arbitration seldom adheres to the rules of civil procedure with which we trial lawyers are conversant. This article examines the sources of authority that govern the discovery process in arbitration and concludes by providing practical guidance regarding the modification of discovery limits, non-party discovery, and professionalism.

What Governs the Discovery Process in Arbitration Proceedings?

Discovery in arbitration is governed by: (1) the arbitration agreement, (2) statutes, (3) case law, (4) arbitration provider rules, and (5) the arbitrator.²

1. Arbitration Agreement

Many times, parties proceed with arbitration pursuant to a preexisting arbitration agreement or clause in a contract executed before the dispute arose. The arbitration agreement is the first place to look to determine what, if anything, the parties agreed to about discovery.³ Parties often agree arbitration, and thus discovery in arbitration, will be administered by a certain service provider pursuant to its rules and procedures.⁴ Other times, arbitration agreements specify certain rules of civil procedure that will govern discovery.⁵ Parties can also stipulate to different rules or procedures at any time.⁶

2. Statutes

Arbitration proceedings may be subject to federal or state arbitration acts. For Wyoming practitioners, the Federal Arbitration Act or the Wyoming Uniform Arbitration Act would most likely apply, although other state statutes may provide guidance for specific types of disputes.⁷

a. Federal Arbitration Act

International and interstate disputes are presumed to be subject to the Federal Arbitration Act (FAA), which broadly

applies to arbitration agreements “involving commerce.”⁸ The “involving commerce” requirement is commonly met where the parties are from different jurisdictions and the materials or services at issue came from outside the forum state.⁹ When the requirement is met, the FAA applies unless the contract expressly provides state law governs the arbitration.¹⁰ Under the FAA, the arbitration agreement in a contract is treated as a separate agreement of the parties.¹¹ Therefore, even if a choice of law provision specifies that state law governs the contract, the FAA applies if the provision is silent about arbitration.¹²

Section 7 of the FAA allows an arbitrator to “summon in writing any person to attend before them or any of them as a witness, and in a proper case to bring with him or them any book, record, document or paper which may be deemed material as evidence in the case.”¹³ Section 7 also states that an arbitrator may compel a witness “in the same manner provided by law for securing the attendance of witnesses.”¹⁴ The FAA is silent on arbitrators’ authority regarding discovery before the arbitration hearing.¹⁵ Nonetheless, given that arbitration is a creature of contract, parties may agree to conduct pre-hearing discovery.¹⁶

b. Wyoming Uniform Arbitration Act

In 1959, Wyoming adopted the Uniform Arbitration Act (WUAA) to provide a standardized legal framework for arbitration.¹⁷ The WUAA outlines the generally recognized procedures for arbitration in Wyoming. Pursuant to the WUAA, “arbitrators may issue subpoenas for the attendance of witnesses, for the production of books, records, documents and other evidence and may administer oaths.”¹⁸ Issued and properly served subpoenas, upon application to a state court, will be “enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.”¹⁹ The WUAA also provides, “[o]n application of a party and for use as evidence, the arbitrators may permit a deposition to be taken of a witness who cannot be subpoenaed or is unable to attend the hearing, in the

manner designated by the arbitrators.”²⁰

c. Additional Authority

Other state statutes govern arbitration in select types of cases in Wyoming. For example, disputes between malt beverage manufacturers and terminated distributors may, by agreement of the parties, be submitted to arbitration.²¹ If so submitted, the procedures set forth in Wyo. Stat. Ann. § 12-9-115 govern the arbitration.²² Turning to that statute, Section (d) requires the arbitration to proceed in accordance with the rules of the American Arbitration Association (AAA).²³ In another example, the Wyoming Supreme Court has adopted a program and procedures for the arbitration of disputes between lawyers and clients concerning legal fees.²⁴

3. Case Law

Case law interpreting the governing arbitration act may affect available discovery. For example, federal circuits are split on whether the FAA grants arbitrators the authority to issue pre-hearing subpoenas on non-parties. The Second, Third, Ninth, and Eleventh Circuits interpret Section 7 as only allowing arbitral subpoenas in connection with the arbitration hearing.²⁵ According to those courts, “[a] plain reading of the text of section 7 reveals that an arbitrator’s power to compel the production of documents is limited to production at an arbitration hearing.”²⁶ Conversely, the Eighth Circuit finds arbitrators have implicit authority to issue pre-hearing subpoenas on non-parties.²⁷ The Fourth Circuit takes a position somewhere in the middle and permits arbitrators to issue subpoenas on non-parties for pre-hearing discovery “under unusual circumstances” and “upon a showing of special need or hardship.”²⁸ The Tenth Circuit has not weighed in on the split.

4. Arbitration Provider Rules

Arbitration providers are neutral third parties that facilitate arbitration. Leading national providers include AAA and Judicial Arbitration and Mediation Services (JAMS). Both AAA and JAMS have published recommended discovery procedures for different practice areas such as international disputes, commercial disputes, and employment disputes.²⁹ AAA and JAMS are frequently the providers named in arbitration agreements, although other options are available to

Continued on page 33

DISCOVERY SANCTIONS OR I REALLY MEANT TO GET THAT DONE

BY LARRY JONES

My former law partner, William L. Simpson, prior to becoming a Wyoming District Judge, had an expression covering all areas of the practice, including discovery:

"The law—it's some tricky stuff!"¹

Anyone who has practiced for any length of time has likely woken up in the middle of the night and realized that they have missed some deadline. Whether in private practice, government service or otherwise, lawyers' lives are hemmed in and mostly controlled by our schedules: things that we have agreed to do and which must be completed by a certain time or day. Being human, we are going to miss some of those.

Whether you have private clients or are representing a governmental entity, some people you report to will refuse to take your advice or refuse to do what they must do when they become involved in litigation, and their actions may adversely affect your ability to comply with the court's expectations.

And in many situations, there are just differences between counsel as to what is or is not relevant, discoverable, or confidential, differences which counsel cannot peaceably resolve between themselves. And once again, the court gets involved.

These are the types of situations in which "sanctions" come into play. But remember that they need not. We in the Wyoming Bar are blessed that we are small, and we know many of the lawyers we practice against regularly. The best way to resolve a discovery dispute is with opposing counsel. If you are willing to give additional time or to compromise on a dispute before it reaches the court, everyone wins. Your clients save unnecessary costs and fees, and you can move on to the next fire on your desk. Be willing to give

the other side more time. It will stand you in good stead when you are on the other side of the equation and keep your judge happy that you are not making his docket any worse than it already is.

I learned this lesson a long time ago. After a long day of depositions, opposing counsel requested an extension to respond to a motion for summary judgment I filed. Being tired, cranky, and otherwise ill disposed, my response was: "Why would I want to do that, you would only have more time to file a better brief." My words came back to bite me when counsel quoted me in his motion for additional time, which the court quickly granted.

Besides the obvious benefits of resolving these issues between ourselves in the saving of needless motion practice before the court, the potential remedies available to the court are in themselves a motivator for reasonableness. The Rules governing discovery have become much more complicated over the last 46 years since I graduated law school just as litigation itself is much more intense. But the remedies available to the court have, since the adoption of Rule 37, W.R.C.P., included the 'death' penalty, a dismissal with prejudice. *Matter of Estate of Mora*, 611 P.2d 842, 846 (Wyo. 1980).

While there are other significant provisions in the Rules governing sanctions, such as Rule 26(c), W.R.C.P., "Protective Orders," and Rule 11, W.R.C.P., "Signing Pleadings, Motions, and Other Papers; Representations to the Court, Sanctions," the go to provision in many cases is Rule 37, "Failure to Make Disclosures or to Cooperate in Discovery; Sanctions." The subsections to Rule 37 focus on many of the areas where counsel can, and too often do, run afoul of discovery requirements:

Rule 37(a) - *Motion for an Order Compelling Disclosure or Discovery.*

Rule 37(b) - *Failure to Comply with Court Order.*

Rule 37(c) - *Failure to Disclose or Supplement an Earlier Response, or to Admit.*

Rule 37(d) - *Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.*

Rule 37(e) - *Failure to Preserve Electronically Stored Information.*

Rule 37(f) - *Failure to Participate*

in Framing a Discovery Plan.

The provisions of Rule 37 comprise three pages of small print in the Court Rules and going through them is beyond the scope of this article. However, when an associate comes to me and has a 'legal' question, my first question to them is: Have you read the Rule? or, Have you read the Statute?

Discovery sanctions typically arise when what you have provided is considered by the other side to be incomplete or they do not accept the objections you have raised. In the course of your practice you have probably come up with standard or stock objections to discovery requests. Here is one I have used regularly:

OBJECTION AND LIMITATION AS TO RESPONSES:

Plaintiff here-by objects to this Interrogatory in that it calls for such wide ranging answers that it is impossible to include all the information requested and is contrary to the intent of Rule 33, W.R.-C.P. and the Wyoming Rules of Civil Procedure in general. This Interrogatory is unduly burdensome and overly onerous. It requires Plaintiff and his counsel to conduct an unreasonable amount of research and review of all documents related to this matter in order to satisfy the question. Further, it requires Plaintiff to reach legal conclusions as to which "facts" support a particular conclusion. Additionally, it is objectionable as an attempt by Defendant to require Plaintiff to establish its case for it. It is improper to ask a party to state all facts or evidence. *See IBP, Inc. v. Mercantile Bank*, 179 F.R.D. 316, 319 (D.Kan. 1998); *Lucero v. Valdez*, 240 F.R.D. 591, 594 (D.N.MN. 2007). Without waiving these objections, Plaintiff provides the following response:

When you believe the other side has not complied with their responsibilities under the Rules, the next step is a Motion to Compel. Rule 37(a)(1). Of course, there is a requirement that the parties confer prior to the filing of the Motion to Compel. *Id.* Once, the Motion is filed, however, sanctions are in play. Even if you have a change of heart before the hearing on the Motion and provide the information requested, the Court is obligated to assess expenses incurred. There are

some safe harbors, but once the Motion to Compel is filed, there is a substantial likelihood that one side or the other will have to pay costs. Rule 37(a)(5).

Significantly more coercive sanctions come into play once an Order Compelling has been entered by the court and there is continued non-compliance.

If a party . . . fails to obey an order to provide or permit discovery, . . . the court where the action is pending may issue further just orders. They may include the following:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;
- (vi) rendering a default judgment against the disobedient party; or
- (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

W.R.C.P. 37(b)(2)(A).

If you reach this level of dispute and motion practice before the court, generally it means one of three things:

- a) You have a client who refuses to cooperate;
- b) You have not been sufficiently diligent in attending to this particular case; or
- c) You are faced with a judge who, at least in your opinion, does not understand the applicable law on whatever issue is involved.

You can see the consequences of a non-cooperating client in the case of *White v. State ex rel. Wyoming Department of Transportation*, 2009 WY 90, 210 P.3d 1096 (Wyo. 2009). Reading that decision suggests that the clients were at least part of the reason for a failure of what appears to have been fairly routine discovery in

a wrongful death action resulting is a dismissal of the case with prejudice.

An example of a discovery dispute where the lawyer was forced to take the objections all the way to the *Wyoming Supreme Court* is *Debyah v. State ex rel. Department of Workforce Services*, 2015 WY 94, 353 P.3d 711 (Wyo. 2015), where the claimant in a Workers' Compensation case asserted his Fifth Amendment Right in response to discovery questions. The Wyoming Supreme Court held that the hearing examiner had improperly dismissed the case as a discovery sanction.

And once again, it is important to note that costs and attorneys' fees are generally awarded in situations where an order to provide discovery has not been complied with. Rule 37(b)(2)(c) provides:

Payment of Expenses. — Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

Interestingly, such attorney's fees can be assessed even if the party is being represented *pro bono*. *Windham v. Windham*, 2015 WY 16, 348 P.3d 836 (Wyo. 2015).

Additional Wyoming case law on discovery sanctions can easily be found using AI. Our firm uses the LexisNexis Protégé program which is self-contained and eliminates the potential of disclosing confidential client information. But as is true with all AI generated results, it is necessary to actually read the cases. I don't know of any AI program which does not hallucinate and provide non-relevant case citations. In law school we had "headnotes" as a research guide, but we were also taught never to cite a headnote. It was always a gift from opposing counsel when they mis-cited or misquoted a case because they relied on mere headnotes and had not read the actual case. AI generated information is just "headnotes" in another form.

There have already been Wyoming cases where AI generated citations have gotten attorneys or pro se parties into trouble. See e.g. *Chagnon v. Nelson*, 2025 WYCH 8, 2025 Wyo. Trial Order LEXIS 9, 2025 LX 247476 (Wyo. Chancery Court, July 2,

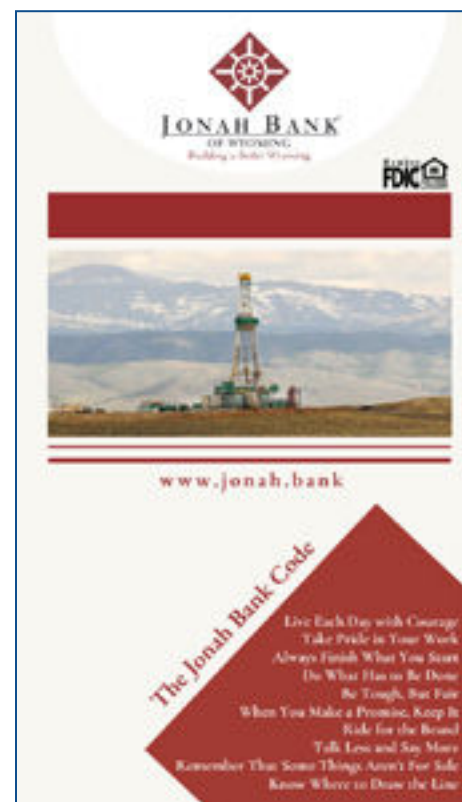
2025); *Wadsworth v. Walmart Inc.*, Case No. 2:23-CV-118-KHR, Document 181, (Wyo. D.Ct. February 24, 2025). There is also a website which collects many of the AI hallucination cases. <https://www.damiencharlotin.com/hallucinations/> There are currently over 1350 reported cases in which counsel or *pro se* parties have cited hallucinated cases to a court and been caught. I find them instructive and good reading.

CONCLUSION

Discovery is a crucial part of litigation these days. When I first began practice, older attorneys would go to trial with a case file that was perhaps an inch thick, not having engaged in discovery or depositions. A totally different era. If done well, discovery can make your case, or let you know where your weaknesses are. If not done well, you are likely to be faced with motions to compel and for sanctions, which can lose a good case. Avoiding discovery sanctions may take extra work on the part of the lawyer, whether work he has to do or by ensuring his client does what they need to do. Either way, the potential for sanctions can wake us up in the middle of the night, destroying an otherwise good night's sleep.☛

note

- 1 Slightly altered for publication.



VERDICTS AND SETTLEMENTS

CASE TYPE: Commercial Vehicle Crash – Brain Injury

CASE

*Taryn Seabolt and Dalton Finley v.
Wasatch Tank Lines, LLC and
Lawrence Cyr*

COURT

Ninth Judicial District Court of
Fremont County, Wyoming

JUDGE

Hon. Jason M. Conder

CASE NUMBER

2024-CV-0043873

VERDICT OR SETTLEMENT

The case was successfully mediated between the parties, hiring Brad Bonner, Yellowstone Mediation as the mediator. The settlement amount and terms are confidential.

FACTS

In July of 2020, Taryn Seabolt and Dalton Finley suffered serious, permanent injuries when a tractor-trailer carrying aviation fuel crashed into the rear of their vehicle on Wyoming Highway 26 outside of Crowheart at roughly 50 miles per hour. The impact sent Taryn and Dalton's vehicle into a spin, landing 60 feet from where they were hit. Dalton lost consciousness, and Taryn required a life-flight. Taryn and Dalton, a young Wyoming couple, were diagnosed by a neurologist and a neuropsychologist with traumatic brain injuries. Luckily, Taryn and Dalton survived this horrible event and have been able to move on with their lives, recently celebrating the birth of their first child.

INJURIES

Damage to the medial prefrontal cortex and diagnosed with traumatic brain injuries and PTSD. A brain injury of this magnitude, especially at a young age, carries a risk of progressive comorbidities such as seizures, early onset dementia, memory issues motor weakness, headaches, dizziness and other collateral issues.

PLAINTIFFS' AGES AT TIME OF CRASH

17 and 19 (Taryn and Dalton, respectively)

WORK

Dubois K-12 School and Ranch Hand

MEDICAL BILLS

\$119,877.14 (Taryn); \$13,437 (Dalton)

PLAINTIFFS' ATTORNEYS

M. Kristeen Hand and Jacob N. Lewis of The Spence Law Firm, LLC; Kelly A. Rudd of Baldwin, Crocker & Rudd, P.C.

DEFENDANTS' ATTORNEYS

Bruce C. Burt of Burt & Payne, P.C.

PLAINTIFFS' EXPERTS

John R. Cary, MA, CRC, CDMS, East Wenatchee, WA – Life Care Planner and Vocational Rehabilitation;
Adam Grill, Billings, MT – Trucking Expert; Travis Snyder, DO, Salt Lake City, UT – Neuroradiologist and Radiologist; Nadia Webb, PsyD, MPAP, Portland, OR – Neuropsychologist; Mariusz Ziejewski, Ph.D., Fargo, ND, Accident Reconstruction and Human Body Dynamics.

DEFENDANT'S EXPERTS

Lindsay Embree, Ph.D., Salt Lake City, UT – Neuropsychology.

Report by: M. Kristeen Hand and Jacob N. Lewis, The Spence Law Firm, LLC



CASE TYPE: Natural Gas Explosion Resulting in Burns

CASE

Ernst v. Western Group Housing, LLP

COURT

United States District Court for the District of Wyoming

JUDGE

Hon. Alan B. Johnson

CASE NUMBER

24-CV-010-ABJ

VERDICT OR SETTLEMENT

Confidential settlement at mediation.

FACTS

The plaintiffs, a USAF enlisted airman and his wife, were residents of base housing located at F.E. Warren AFB, a non-governmental entity. As a result of snow accumulation over the gas meter, the weight caused an elbow in the piping to give way and filled the crawlspace with natural gas.

INJURIES

The explosion resulted in both plaintiffs receiving 2nd and 3rd degree burns without grafting or surgery. One plaintiff was diagnosed with PTSD and bi-lateral tremors.

PLAINTIFF'S AGE

Both plaintiffs were in their 40s.

WORK

Husband employed by the USAF. Wife a self-employed CNA and beautician.

MEDICAL BILLS

Combined medicals bills were less than \$30,000.

LOST WAGES

Nominal

PLAINTIFF'S ATTORNEYS

Mark Macy, Macy Law Office, P.C., Cheyenne, WY.

DEFENDANT'S ATTORNEYS

Murphy & Decker, P.C., Denver, Colorado.

PLAINTIFF'S EXPERTS

Hank Mowery, P.E., Knott Labs, Denver, CO; Alan Pang, M.D., Certified Burn Surgeon, Abilene, TX.

DEFENDANT'S EXPERTS

None

CASE TYPE: Motor Vehicle Collision

VERDICT OR SETTLEMENT

\$135,000 pre-litigation settlement.

FACTS

The plaintiff was a restrained front-seat passenger in a vehicle traveling westbound on a busy four-lane road in Casper, Wyoming. Another vehicle attempted to cross all lanes of traffic and entered the path of plaintiffs'

vehicle. The driver of the plaintiff's vehicle, who was traveling too fast for conditions, collided with the crossing vehicle. Liability claims were asserted against both drivers.

INJURIES

Burst fracture of the lumbar vertebra and compression fracture of L2, requiring hospitalization, a back brace, and rehabilitation. After discharge and rehabilitation, the plaintiff continues to suffer from chronic back pain, emotional distress, recurring nightmares, panic attacks, and lasting spinal curvature.

PLAINTIFF'S AGE

18 years old at time of injury

WORK

Cashier

MEDICAL BILLS

\$36,791.71 in past medical expenses

LOST WAGES

\$13,494.79 in past lost wages

PLAINTIFF'S ATTORNEYS

Emily S. Madden, The Spence Law Firm LLC.

DEFENDANTS' ATTORNEYS

N/A

CASE TYPE: Third Party Bad Faith Under Montana Unfair Trade Practice Act

CASE

*Donna Fryer and Barbara Davison
v. Constellation and UMIA Ins Co.*

COURT

United States District Court for the
District of Montana Billings Division

JUDGE

Hon. Susan P. Watters

CASE NUMBER

1:22-CV-00014-SPW

VERDICT OR SETTLEMENT

\$3 million compensatory award to each plaintiff, \$4.5 million punitive damages award to each plaintiff, for a total verdict of \$15 million against both defendants.

FACTS

Plaintiffs sued the medical malpractice insurance companies for the bad faith handling of the medical malpractice cases against Dr. Enrico Arguelles and Arthritis & Osteoporosis Clinic. Insurance company medical reviews determined that liability in the underlying cases was reasonably clear,

but Constellation and UMIA refused to attempt to effectuate prompt, fair, and equitable settlements.

INJURIES

Emotional distress damages from the bad faith claims handling.

PLAINTIFF'S AGE

Donna Fryer 76; Barbara Davison 76

WORK

Retired

PLAINTIFF'S ATTORNEYS

Jon M. Moyers of Moyers Law, Billings, Montana; Michael Eiselein of Eiselein Law, Bozeman, Montana; and Kathryn Troidahl of Kohn Law Firm, Minneapolis, Minnesota.

DEFENDANT'S ATTORNEYS

Mark Malloy of Meissner Tierney Fisher & Nichols, Milwaukee, Wisconsin; and Paul R. Haffeman of Davis, Hatley, Haffeman & Tiche, Great Falls, Montana

PLAINTIFF'S EXPERTS

Martha Sheehy and Dan Doucette

DEFENDANT'S EXPERTS

John Sullivan, Cal Stacey, and Molly K. O'Brien

Continued on page 34



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DISCOVERY IN WYOMING CRIMINAL CASES

BY DANECE DAY, CROOK COUNTY ATTORNEY

“The only way to make sense out of change is to plunge into it, move with it, and join the dance.” – Alan Watts

As a family law attorney for more than 25 years, I enjoyed the comfort of the Wyoming Rules of Civil Procedure, especially after the 2017 implementation of mandatory disclosures found in Rule 26. Life was predictable. At the initial meeting with a client, they’d be given the list of “must produce immediately” items and cases without complex issues could move forward without the rigors of additional demands, depositions or other discovery. Very little of the upfront information was electronic and you didn’t need an IT guru to comply with the rules.

Fast forward to November 2022. My career took an unexpected detour into the realm of criminal prosecution, and nothing has been the same. Discovery in a criminal case is a creature all its own and often, for prosecutors, there are traps and foibles at every turn. Unlike the civil world where there are symbolic slaps on the wrist and fines for playing games with discovery, in a criminal case fundamental rights are on the line and gamesmanship is not tolerated. The Wyoming Supreme Court has said, “We have previously indicated that failure to comply with a discovery order should not be tolerated. In another case addressing the State’s failure to provide discovery in a criminal case, we stated that, ‘The failure to comply with a discovery order is to be deplored.’” *Black v. State*, 2017 WY 135, ¶ 21, 405 P.3d 1045, 1052–1053 (Wyo. 2017) (quoting *State v. Naple*, 2006 WY 125, ¶ 29, 143 P.3d 358, 367 (Wyo. 2006)). A well-investigated and important case can and should die a sudden death if discovery is not completed in a timely fashion. The lives and futures of criminal defendants and their victims truly hang on compliance with Wyoming Rule of Criminal Procedure 16.

“Notice and Demand” – “*You don’t know what you don’t know until you know*” is an understatement when it comes to criminal cases. In the criminal world, there are no mandatory disclosures. Defense attorneys must issue written requests for statements their clients have made, their client’s prior criminal record, documents

and tangible objects, reports, examinations and test results. Prosecutors must demand alibis and exculpatory evidence. To obtain witness statements, defense counsel must file a Rule 26.2 request for an order requiring the prosecution to provide the same. Most Wyoming courts require such disclosures as part of the pretrial process, but that can come months after the information is needed to properly advise a client, enter plea negotiations and ensure victims’ needs are met.

Discovery in criminal cases is not *pro forma*. Every case requires careful review to ensure every piece of information has been gathered from law enforcement, that audio and video evidence can be seen and heard, and that statements from witnesses aren’t mere summaries. More importantly, exculpatory evidence can’t be withheld. As noted in the *Black* case, Wyoming courts can and will order prosecutors to do the heavy lifting in cases because we have the resources, through local, state and federal law enforcement channels, to do so. While it’s counterintuitive to build the case against yourself, it’s required. As the United State Supreme Court explained,

the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. . . . That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice.

Brady v. Maryland, 373 U.S. 83, 87–88 (1963).

“Real Consequences” – In the *Black* case, the Defendant who had been convicted by a jury of heinous aggravated assault was granted a second opportunity for a fair proceeding. It took more than five years, appointment of a special prosecutor, a plethora of motions and two

appeals before the criminal matter was finally resolved and justice was achieved. That does not include the \$ 1983 claim the Defendant filed against the attorneys and law enforcement officers involved in the handling of his case or the subsequent disbarment of the prosecutor who failed to comply with court-ordered discovery. This saga could have played out much differently for everyone if the tenets of *Brady* been taken seriously.

“The Blessing and Curse of Technology” – In *The Salmon of Doubt: Hitchhiking the Galaxy One Last Time*, Douglas Adams wisely said, “We are stuck with technology when what we really want is just stuff that works.” In a perfect world all law enforcement agencies would use the same cameras and systems to manage their reports and they’d interface with the data management systems attorneys use. It’s embarrassing when the secured links prosecutors send to defense counsel don’t work. It’s also expensive to have your IT team on speed-dial so you can comply with the rules. However, prosecuting crimes, especially traffic citations, has never been easier than it is today. Twenty seconds of video from the front of a trooper’s vehicle showing speed or weaving is irrefutable and watching officers perform sobriety maneuvers removes some of the doubt that was easy to raise in the past.

All that technology, however, doesn’t replace good policework and even better report writing skills. There are things cameras just don’t convey—like the odor of burnt marijuana or the subtle cues officers rely on to judge credibility. As the *Black* case illustrates, technology can often lead to voluminous amounts of data that are hard to access, retrieve, manage and share. The Wyoming Supreme Court wasn’t impressed with that excuse and reiterated, “Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly.” *Black*, 2017 WY 135, ¶ 50, 405 P.3d at 1060–6.

That sense of fairness requires more than a casual approach to the Rules of Criminal Procedure and compliance with court-ordered discovery deadlines on the part of prosecutors. It requires engagement, commitment, and an understanding that a failure to be transparent and proactive is the antithesis of why we’ve chosen to dance in the first place. ●

WORKERS' MEMORIAL DAY REMEMBRANCE 2026

The Wyoming Capitol rotunda was once again filled with workers, families, and organizational leaders gathered to remember those whose lives were lost on the job. April 28th, Workers' Memorial Day, is recognized around the world as a day of remembrance and a call to action. The Wyoming State AFL-CIO and the Wyoming Trial Lawyers Association hosted this year's event, continuing to shine a light on workplace safety across our state.

Once again, Wyoming remains the most dangerous place to work, with the highest rate of workplace fatalities in the nation. Although fatalities declined in 2024 from the prior year, our state still ranks first in the number of workers who leave for their jobs and do not return home.

While we recognize that progress, Workers' Memorial Day is a time to honor the men and women who lost their lives on the job—and to recommit to preventing future tragedies.

Wyoming State AFL-CIO representatives stressed the importance of bringing awareness to the dangerous conditions many of our workers are exposed

to. Phil Cornella, president, opened the ceremony with a call for state leaders to stand with Wyoming workers and ensure that state and federal laws are enforced. Marcie Kindred, Executive Director emphasized the ongoing importance of workplace safety, noting that Wyoming has ranked either first or among the top five states for workplace fatalities for more than two decades.

Jason Johnson, Cheyenne attorney and WTLA Board member, noted that the most meaningful way to honor those lost is through continued efforts to make every job in Wyoming safer. He also highlighted Kids' Chance of Wyoming, which provides post-secondary and trade school scholarships to the children of workers who have been seriously injured or killed, helping ensure they have a path forward.

Attendees also paid tribute to Alex Harsha, who worked for Mountain States Pressure Services, an oil and gas company based in Rock Springs. He died on the job on February 3, 2025. His aunt, Jessica Isaacson, remembered Alex as loving and devoted in every role he held. Family was everything to him, she



said, and that love was especially evident in his relationship with his five-year-old daughter, the light of his life.

Kevin Reddy led a bell ceremony honoring the 37 workers lost in 2024, and Alex Harsha. The bell rang 38 times, each chime echoing through the rotunda as those gathered stood in silence.

The ceremony closed with attendees singing "You Are My Sunshine," a song Alex often sang to his daughter, a personal tribute that underscored the lasting impact of each life remembered that day. 🕯



(L) Jason Johnson addresses attendees, honoring the 37 workers lost in Wyoming and highlighting Kids' Chance, a nonprofit that provides post-secondary scholarships to the children of fallen workers. (R) Attendees gather in the Wyoming Capitol to commit to safer work places and to honor those lost on the job in our state.

CRIMINAL LAW SUMMARIES



BY BAILEY LAZZARI

Maki v. State, 2026 WY 32, 585 P.3d 191 (Wyo. 2026)

Key Takeaway: *A prior deferred sentence on a misdemeanor charge that ended in revocation and an entered conviction does not disqualify a defendant from a deferred sentence under W.S. § 7-13-301.*

Maki entered a plea agreement calling for a deferred sentence on a felony conspiracy charge. After the PSI revealed a 1996 misdemeanor DUI deferral in which his probation was revoked and a conviction entered, the district court declined to impose the agreed sentence, reasoning that allowing another attempt at deferral after an unsuccessful first one defied common sense.

The Wyoming Supreme Court reversed. Under the plain language of § 7-13-301, eligibility requires only that the defendant has not previously been convicted of a felony and has not previously received a discharge and dismissal. Maki had neither. The Court contrasted § 7-13-301's use of "any felony" with the controlled substances

deferral statute's use of "any offense," finding the legislature's choice of narrower language was intentional and could not be judicially expanded.

The Court emphasized that its ruling restored only eligibility, not the agreed sentence. Because the plea was entered under W.R.Cr.P. 11(e)(1)(B), the district court retains full discretion on remand to determine whether a deferred sentence is appropriate.

Lynch v. State, 2026 WY 8, 582 P.3d 908 (Wyo. 2026)

Key Takeaway: *A successful felony deferral cannot be expunged under Wyo. Stat. Ann. § 7-13-1502 because it produces no conviction.*

In 1979, Lynch pled guilty to felony unauthorized use of an automobile. After successfully completing probation, his plea was withdrawn and the case dismissed. His DCI record, however, incorrectly listed him as a convicted felon. He sought expungement under Wyo. Stat. Ann. § 7-13-1502 in 2025.

The Wyoming Supreme Court affirmed the denial, holding that § 7-13-1502 applies only to a "person convicted of a felony," and a successful deferral produces no conviction. The old deferral statute's power to "annul" a guilty plea achieves the same result as the current § 7-13-301(d)'s express declaration that discharge and dismissal is not a conviction for any purpose.

The Court acknowledged the anomaly Lynch identified—that a person who fails a deferral and receives a conviction may later become eligible for expungement while a person who successfully completes one cannot—but declined to address it as a matter of legislative policy. The Court did note that Lynch's DCI record was simply wrong and should

be corrected to accurately reflect the deferral disposition and dismissal.

Hicks v. State, 2025 WY 113, 578 P.3d 366 (Wyo. 2025)

Key Takeaway: *The Wyoming Supreme Court announced a new bifurcated test for Article 1, Section 14 challenges that gives independent meaning to the disjunctive "cruel or unusual" language. Defense counsel should argue cruelty and unusualness separately and must support any unusualness argument with a thorough independent analysis of other jurisdictions' statutes.*

Hicks was nineteen years old when he participated in two murders and received three consecutive mandatory life without parole sentences. In 2024, he filed a W.R.Cr.P. 35(a) motion arguing that emerging adults share the developmental characteristics of juveniles and that the Wyoming Constitution affords broader sentencing protections than the Eighth Amendment, warranting extension of *Miller v. Alabama* to his age group.

The Wyoming Supreme Court rejected the argument on all grounds but used the case to establish an important constitutional framework. Conducting a thorough Saldana analysis, the Court concluded that Article 1, Sections 14 and 15 are textually distinct from the Eighth Amendment but do not support categorical protection for emerging adults. The Court also declined to import the federal evolving standards of decency framework into Wyoming constitutional analysis.

The Court announced a bifurcated test giving independent meaning to the disjunctive "cruel or unusual" language in Article 1, Section 14. A punishment is "cruel" if it is so grossly disproportionate to the offense that it shocks the moral sense of the people. A punishment is "unusual" if it is obsolete or contravenes contemporary standards as measured by a clear consensus of state legislatures or courts. Applying this test, the Court found Hicks's sentences were neither cruel nor unusual.

Bressette v. State, 2025 WY 125, 579 P.3d 112 (Wyo. 2025)

Key Takeaway: *Rule 41(g) cannot provide relief once seized property has left government possession. Clients whose*

Continued on page 34



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CIVIL CASE SPOTLIGHT



BY CATHERINE E. DISANTO

McCall v. Best of the West, et al., 2026 WY 21, 583 P.3d 1221 (Wyo. 2026)

John McCall was a member of two LLCs when a dispute arose between him and the other LLC members over their operation. McCall sought to dissolve the LLCs and initiated an action for declaratory judgment and injunctive relief. After he was expelled as a member, his membership interests were transferred in violation of a court order, and he asserted claims including conversion and defamation. A jury awarded \$75,000 on his defamation *per se* claim and awarded \$1,784,640 on his conversion claim. The district court denied defendants' post-trial W.R.C.P. 50(b) motions, but later granted relief under W.R.C.P. 60(b), reducing the conversion claim to \$293,017.57 and reduced the defamation award to \$500 on the grounds McCall failed to prove his economic loss or loss to his reputation, and that only nominal damages were permitted under Wyoming law.

On appeal, the Wyoming Supreme Court reversed the district court's reduction of conversion damages. The Court determined that the jury could find both that McCall was properly expelled from the LLCs and that his property had been converted. The jury appropriately considered the valuation of McCall's converted property interests, and the Court reinstated the jury's verdict.

The Court further held that the district court misapplied the law governing defamation *per se* damages. The Court reaffirmed that such claims are

actionable without proof of special damages and that harm to reputation is presumed. It rejected the view that presumed damages are limited to nominal amounts, explaining that general damages—such as reputational harm, humiliation, and emotional distress—may be substantial and are properly left to the jury's discretion. Drawing on Wyoming precedent and the Restatement (Second) of Torts, the Court emphasized that damages in defamation *per se* cases serve a compensatory function even in the absence of precise proof, and that juries are afforded broad latitude where no fixed standard exists. Because the district court improperly substituted its judgment for that of the jury and relied on an erroneous legal standard, it abused its discretion in reducing the award, and the original verdict amount was reinstated.

Drewry v. Brenner, individually and his official capacity as Chief of Police; and the Town of Greybull, 2025 WY 121, 579 P.3d 49 (Wyo. 2025)

Scott Drewry sued the Town of Greybull and Police Chief William Brenner following his resignation from the Greybull Police Department. Drewry's employment involved multiple incidents bearing on credibility, including misrepresenting his education, disciplinary issues related to conduct while on duty, and directing a blood draw before obtaining a warrant. A settlement agreement included a non-disparagement clause prohibiting the Town and Brenner from speaking negatively about Mr. Drewry "regarding the investigation, termination or resignation." After Drewry obtained employment with another police department, Brenner circulated a memorandum to law enforcement and local officials stating Drewry had a "history of deception," would not be considered a credible witness, and should be excluded from investigations involving Greybull PD. Drewry asserted claims for breach of the settlement agreement, defamation *per se*, and intentional infliction of emotional distress. The district court granted summary judgment on all claims, finding the statements were truthful, privileged, and barred by qualified immunity.

On appeal, the Wyoming Supreme Court

affirmed dismissal of the defamation *per se* claim, holding it was precluded by qualified immunity. The Court emphasized that the doctrine shields officers from tort liability when they act within the scope of their duties, in good faith, and reasonably, and that the inquiry is objective rather than dependent on alleged subjective animus. It reiterated that good faith is established where "a reasonably prudent officer . . . could have believed that his conduct was justified based on the information he possessed," and that disagreement among observers does not defeat immunity because "[i]f officers of reasonable competence could disagree . . . the officer will be said to have acted in good faith as a matter of law." The Court further concluded Brenner's actions were reasonable because a similarly situated officer "might have reached the same decision" in light of prior internal investigations and Mr. Drewry's perceived credibility concerns.

In contrast, the Court reversed summary judgment on the breach of contract claim, focusing on the scope of the non-disparagement clause. It held that the phrase "the investigation" was ambiguous because it was unclear whether it referred solely to the blood draw incident or encompassed broader inquiries into Drewry's conduct. Because the clause prohibited negative statements tied to "the investigation," the meaning of the term was central to determining whether the memorandum breached the agreement. The Court explained that the parties' language created "the possibility of a double meaning," rendering summary judgment inappropriate and requiring resolution by the trier of fact.

Williams v. Gage, 2026 WY 30, 585 P.3d 183 (Wyo. 2026)

Wendy Williams sued attorney Richard Gage for legal malpractice arising out of his handling of her claim under the National Vaccine Injury Compensation Program. Williams believed her prior counsel missed the statute of limitations on a 2010 vaccination claim and retained Gage to "fix" the issue by pursuing a dual-injury theory tied to both 2010 and 2011 vaccinations. Gage refiled the petition but did not include the 2010 claim, and Williams

Continued on page 35

2026 CONVENTION: Champions of the Underdog

JOIN US!

For reasons that will be explained during my welcoming comments on Wednesday June 17th, our convention theme this year is WTLA: Champions of the Underdog. Having spent a great deal of time lobbying for both Lawyers and Advocates for Wyoming and WTLA, the theme could have appropriately been titled: Wyoming and WTLA at a Crossroads.

The crossroads is that, in addition to seeing familiar tort reform style legislation, we have also been inundated with odd, complicated and poorly drafted legislation, almost certainly originating from outside Wyoming, that is seemingly intentionally difficult to understand and oppose. Within the State we have also seen numerous bills questioning, challenging, or attacking our judicial nominating and appointment process including at least one bill calling for Elections of Judges. Budget Sessions require a two-thirds majority for introduction and many of these bills failed because of that rule but the 2027 General Session will not have that rule and, in the House of Representatives, it is highly likely that many of these bills would have passed with a majority vote.

Our convention will take place two months before a Primary Election that will be of critical importance for determining the makeup of the House, Senate and Governor's office as well the legislation we will see in 2027 and 2028. We have intentionally crafted a convention focusing on this important crossroads as our practices could look very different in July 2027 than they do now. Fittingly, our opening speaker is Governor Mark Gordon who is in the final year of his final term. It is doubtful anyone is in a better position to discuss the enormous changes we have seen in the legislative branch of government during the last eight years. We also have a former Speaker of the Wyoming House, Senator Eric Barlow, who is running for Governor, as well as the current Majority Floor Leader in the Senate, Tara

Nethercott. Our esteemed Judicial Panel includes Federal District Court Judge Kelly Rankin, Justice Robert Jarosh, and the Honorable Misha Westby from the Second Judicial District.

From outside Wyoming and recognizing that our convention will take place during Juneteenth we will be welcoming Mr. Terrance Carroll from Denver who was the first African American Speaker of the House in Colorado. Mr. Carroll will speak to us about lessons learned from decades of his public service and advocacy. We will also be joined by Bruce Plaxen from Maryland who is currently serving as the President of AAJ. Edwin Hong from Los Angeles and Jeanne Huey from Dallas will share important information about AI and its' ethical implications.

We will also be listening to and learning from a magna cum laude Yale University graduate with a Distinction in Philosophy, a magna cum laude Harvard law school distinguished alumni and law professor, a former United States Marine, an Eastern District of New York AUSA who prosecuted organized crime in the 1990's, the former Attorney General of Oregon and the current CEO of the Rodel Institute. Incredibly, everything in this paragraph is describing the same person, John Kroger, who taught Kelly Rudd and me during law school at Lewis and Clark over twenty years ago and who would never allow me to share his entire biography during the convention itself. He remains my favorite law professor and I am very excited that he is able to join us.

We will also be learning from many of our own esteemed members, celebrating our civil and criminal victories in the last year, hearing from some of our favorite mediators, and attending a very special Awards luncheon.

We hope you can join us for a unique and special convention worthy of the unique times in which we are living and practicing.

Mark Aronowitz, Convention Chair

2026 EXHIBITORS



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REGISTER NOW!

AGENDA

WEDNESDAY, JUNE 17

- 9:30 AM REGISTRATION OPENS
- 1:00 PM **WELCOME**
MARK ARONOWITZ, CONVENTION CHAIR,
JACKSON, WY
- 1:15 PM **REMARKS**
HONORABLE GOVERNOR MARK GORDON
- 2:15 PM **DRAMA AT TRIAL - ACTION!**
KURT ZANER, DENVER, CO
- 3:15 PM **BREAK**
- 3:30 PM **MEDIATION PANEL**
BRAD BONNER, CODY, WY
DICK HONAKER, ROCK SPRINGS, WY
DEVON O'CONNELL, LARAMIE, WY
JEREMY MICHAELS, GILLETTE, WY
- 4:30 PM **BREAKOUT SESSIONS**
CRIMINAL CASE HIGHLIGHTS
DEVON PETERSEN, LARAMIE, WY
RYAN SEMERAD, CASPER, WY - INVITED
CRYSTAL STEWART, CHEYENNE, WY
CIVIL CASE HIGHLIGHTS*
KELSEY FLEENER, TIMNATH, CO
MIKE NEWMAN, ROCK SPRINGS, WY
C. JOHN COTTON, GILLETTE, WY
DIANA RHODES, CHEYENNE, WY
FRANK CHAPMAN, KELLY, WY - INVITED
- 6:00 PM **WELCOME RECEPTION**
PARAMOUNT BALLROOM
SPONSORED BY THE SPENCE LAW FIRM

THURSDAY, JUNE 18

- 7:00 AM **WTLA MEMBER BREAKFAST & ELECTIONS**
- 8:00 AM **TECHNOLOGY: THE LATEST AND GREATEST - ETHICS**
EDWIN HONG, LOS ANGELES, CA
- 9:00 AM **AAJ UPDATE AND HELPFUL HINTS FOR TRIAL**
BRUCE PLAXEN, AAJ PRESIDENT, COLUMBIA, MD
- 10:00 AM **BREAK**
- 10:15 AM **THE DOCUMENT CAMERA IS THE FUTURE OF TRIAL PRESENTATION! HOW TO CREATE VISUALS LIVE IN DEPOS, BY ZOOM, AND AT TRIAL**
DUSTIN HERMAN, TAMPA, FL
- 11:15 AM **LEADERSHIP AND LEGACY: LESSONS FROM PUBLIC SERVICE AND ADVOCACY**
TERRANCE CARROLL, DENVER, CO

*BREAKOUT AVAILABLE VIA ZOOM

THURSDAY, JUNE 18 CONT.

- 12:15 PM **AWARDS LUNCHEON**
PRESENTATION OF WTLA AWARDS
- 1:30 PM **HOW TO GET A GOOD NIGHT'S SLEEP**
JOHN R. KROGER, PRESIDENT & CEO
RODEL INSTITUTE
- 2:30 PM **LEGISLATIVE PANEL**
SENATOR TARA NETHERCOTT, CHEYENNE, WY
SENATOR BARRY CRAGO, BUFFALO, WY
SENATOR ERIC BARLOW, GILLETTE, WY
- 3:30 PM **BREAK**
- 3:45 PM **BREAKOUT SESSIONS**
VOIR DIRE WORKSHOP
MEL ORCHARD, JACKSON, WY
BRYAN ULMER, JACKSON, WY
FAMILY LAW BREAKOUT
JEANNE HUEY, DALLAS, TX
CATCHING UP WITH OUR RISING STARS*
MODERATED BY: SARAH KELLOGG, JACKSON, WY
RACHEL BERKNES, CHEYENNE, WY
LINDSEY CRANDALL, CODY, WY
BAILEY LAZZARI, LANDER, WY
EMILY MADDEN, CASPER, WY

WOMEN'S CAUCUS HAPPY HOUR

FRIDAY, JUNE 19

- 7:00 AM **MINDFULNESS - ETHICS**
DEVON O'CONNELL, LARAMIE, WY
- 8:00 AM **CRIMINAL AND CIVIL CASE SUMMARIES**
JEFF STANBURY, LANDER, WY
EMILY MADDEN, CASPER, WY
- 9:00 AM **CROSSING THE AISLE OR FLIPPING THE SCRIPT**
JASON NEVILLE, CASPER, WY
- 10:00 AM **BREAK**
- 10:15 AM **JUDICIAL PANEL - ETHICS**
MODERATED BY: EMILY RANKIN
HONORABLE JUSTICE ROBERT C. JAROSH, WYOMING SUPREME COURT
HONORABLE CHIEF KELLY H. RANKIN, U.S. DISTRICT COURT OF WYOMING
HONORABLE MISHA WESTBY, DISTRICT COURT, 2ND JUDICIAL DISTRICT, ALBANY COUNTY
- 11:15 AM **ETHICAL USE OF AI IN LAW PRACTICE: RULES, RISKS, AND PRACTICAL GUIDANCE - ETHICS**
JEANNE HUEY, DALLAS, TX
- 12:15 PM **ADJOURN - SEE YOU IN 2027!**

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A CALL TO SUPPORT LAW PAC

BY EMILY S. MADDEN

Recent legislative sessions have reminded us that a fair legal system does not sustain itself. It depends on leaders and legislators who respect the role of the courts and the rule of law and who recognize that access to justice is worth protecting. This year, that work feels especially urgent.

That's why this upcoming election cycle matters so much. With

Wyoming's primary set for August 18, 2026, the opportunity to make a meaningful difference in key races is now, well before Election Day.

There are many worthwhile ways to get involved. LAW PAC hopes to support key races early, when contributions can still help strong candidates gain traction, build visibility, and stay competitive. Other organizations are doing important work as well. For example, Common Sense Republicans for Wyoming is an issues-based PAC focused on messaging and marketing rather than direct candidate contributions. Each effort serves a different purpose, and all are part of the broader work of encouraging thoughtful civic engagement in Wyoming.

Of course, meaningful participation requires meaningful resources. In the

last election cycle, some Senate races cost upwards of \$80,000. If LAW PAC is going to make a real difference in the races that matter most, it will take broad and early support. Whether that means a \$10 monthly gift or a larger one-time contribution, every dollar helps strengthen that effort, and every contribution is genuinely appreciated.

Notably, support for LAW PAC is not limited to lawyers or WTLA members. Anyone can contribute through the QR code below. If contributors are asked to create an account, it's simply to satisfy mandatory reporting requirements; it is not related to WTLA membership.

Please support LAW PAC however you are able, and please share the link or QR code with others who may wish to help. 🗳️

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Lawyers Active in Wyoming Political Action Committee helps elect Wyoming State Legislative Candidates who support the legal system including fair and equal access to the jury system in Wyoming.

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Please join your colleagues in supporting justice-friendly legislative candidates by making a one-time or reoccurring contribution to LAW PAC.



Live Auction for LAW PAC DURING WTLA CONVENTION

Wednesday, June 17 • Paramount Ballroom • Cheyenne

Join us for a fun evening featuring exclusive trips, experiences, and unique Wyoming items — all in support of LAW PAC and its work protecting access to justice, an independent judiciary, and the rights of Wyoming citizens.

Featured auction items include:

- Jackson getaway on Snow King Mountain
- Guided Snake River fishing trip
- Wyoming Whiskey, Rockies tickets and More!

Bid big. Have fun. Support Wyoming's justice system.

PAST STATE BAR PRESIDENTS' LETTER TO THE EDITOR

To the People of Wyoming:

We are past presidents of the Wyoming State Bar, writing to support an independent judiciary, the rule of law, and our constitutional system.

It is reasonable to disagree with court decisions – half the people leaving a courtroom generally do. Constructive, respectful debate is a necessary, if not vital, part of democracy. But personal attacks on judges are inappropriate and dangerous. Judges must be free from improper influence or political pressure so they can apply the law fairly based on the facts and the Constitution. This independence protects everyone's rights and public confidence in our courts.

The Wyoming Constitution separates powers among the legislative, executive, and judicial branches, each with distinct roles. The judiciary's role is to interpret and apply the law and respecting that role—whether or not we like a result—is vital to stable government.

As lawyers, we hold a special trust. As officers of the court, Wyoming lawyers have a professional obligation to support the fair and impartial administration of justice. Our responsibility extends beyond our clients to the integrity of the legal system itself. As past presidents of the Wyoming State Bar, we are committed to promoting public understanding of the rule of law, fostering respect for judicial processes, and supporting the institutional independence necessary for courts to fulfill their constitutional duties. We will continue to engage the public in civil, fact-based dialogue, and to defend the judiciary when it is unfairly maligned.

Judicial independence does not shield judges from accountability; accountability must come through the Constitution's established processes, including the voters' critical role in the retention vote of judges. Intimidation, personal attacks, attempts to change our merit selection system, and efforts to undermine the courts do not create accountability, they erode confidence in justice and the rule of law.

An independent judiciary safeguards the rights of all Wyoming citizens and strengthens trust in our legal system. We will continue to support these principles in service to the people of Wyoming.

Sincerely,

Past Presidents of the Wyoming State Bar:

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L. Galen West 1993-1994
Kermit Brown 1994-1995
H.M "Hoke" MacMillan . 1996-1997
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Kelly Neville 2019-2020
Billie Addleman 2020-2021
Kenneth Barbe 2021-2022
Christopher Hawks . . . 2022-2023
Anna Reeves Olson . . . 2023-2024



WTLA MEMBER SPOTLIGHT

Mikala Bolkovatz-Sheridan is an Associate Attorney at Coal Creek Law who brings a thoughtful, client-focused approach to every matter she handles. She earned her bachelor's degree in criminal justice from the University of Wyoming, along with associate degrees in Homeland Security and Sociology, and received her J.D. from the University of Wyoming College of Law in 2024. She is licensed to practice in Wyoming, Montana, and Kansas, and is currently awaiting approval for admission in Colorado.

A Cheyenne native, Mikala is proud to serve the community with time, talent, and treasure. She is thankful to be part of Kiwanis and supports Thankful Thursday. She offers trusted legal guidance with compassion, professionalism, and a strong commitment to results. During law school, she spent two years in the Estate Planning and Probate Clinic, assisting low-income Wyoming residents with estate planning matters and developing the practical skills that continue to shape her work today.

Her practice includes estate planning, family law, civil litigation, collections, and criminal defense, allowing her to assist clients across a wide range of legal matters. Whether helping families plan for the future, guiding clients through difficult domestic matters, or advocating in civil, financial, and criminal matters, Mikala is committed to delivering practical solutions with personalized representation. She takes pride in building strong client relationships, understanding each client's goals, and providing clear, responsive counsel at every stage of the legal process.

Guided by integrity, diligence, compassion, and faith, Mikala strives to be a steady advocate and trusted advisor for those facing important life decisions and legal challenges. Outside the office, she enjoys spending time with her husband, Chad, her identical twin, Mariah, her family, and friends. She also loves hiking, hunting, fishing, and enjoying Wyoming's natural beauty.

GERRY L. SPENCE RISING STAR AWARD

BY MARK ARONOWITZ

The State of Wyoming, the Wyoming legal community and the Wyoming Trial Lawyers Association lost two legendary attorneys and renowned members in 2025. Senator Alan Simpson passed away on March 14th at the age of 93 and Gerry Spence passed away on August 13th at the age of 96. WTLA moved quickly to rename our lifetime achievement award the Alan K. Simpson Award and, during our June convention in Lander, that honor was bestowed upon Former Wyoming Chief Justice E. James Burke.

This year, in time for our June 2026 convention, the Rising Star Award is being renamed the Gerry L. Spence Rising Star Award. Having practiced law for nearly seventy years, associating Mr. Spence's name with this particular award may seem counterintuitive. However, one of the themes Mr. Spence would frequently speak or write about was his comfort in litigating against established attorneys and his fear of being on the other side of young attorneys who were learning their craft and finding their way. The following paragraphs are from an article he published in a 2010 Law Review Article – "Persuading Yourself You Can Win."¹

I hear young lawyers whimpering, "I cannot win against him – he's tried a thousand cases and I'm trying my first." But he who has tried a thousand cases has always tried them in the same way. Therefore, he has tried only one case, and you will win because you are more real, down to your shivering heart, your panting lungs, down to your cramped belly, yes, down to your honest caring soul.

It takes courage to meet one's self because we have been taught that this person is so horribly insignificant, so unworthy, so useless, weak, and stupid – this no-talent lawyer. But fear is all right. Quite all right. We cannot be afraid unless we care – both about ourselves and our clients. Fear is good medicine. Without it, we cannot be courageous. Without it, we do not care. And we cannot ask a jury to care for our client if we do not care.

All of this is very simple. Yes? You need not persuade yourself that you can win. No. Just march into court, be more real than your opponent, be more honest, be more caring, prepare more, and fight harder – and you will prevail. That is the secret."

I can hear Gerry's voice while reading his words. And I look forward to meeting and congratulating the first recipient of the Gerry L. Spence Rising Star Award in June.

note

- 1 Gerry Spence, *Persuading Yourself You Can Win*, 36 Buff. L. Rev. 14, 15 (2010).

FROM THE E.D.

Continued from page 3

Committee of the Whole in the House.

- **HB 93 The people's right to judicial transparency** – required court records and audio recordings to be publicly available at no cost. HB 93 failed introduction by a vote of 34 ayes -28 nays (required two-thirds vote to be introduced.)

SF 103, HB 66 and 93 will not require a two-thirds vote in the 2027 General Session. The vote this year on SF 103 and HB 93 was sufficient to advance each bill out of the chamber of origin.

Civil Legislation

Outcomes were mixed:

- **SF 74- pesticide labeling** seemed like an innocuous bill about labeling pesticides but would have undermined Wyoming common law limiting the liability of pesticide manufacturers by abrogating Wyoming's failure to warn standard. WTLA Opposed SF 74 which failed introduction on a 17 ayes -13 nays vote.
- **HB 62 Christian Smith Safety Act**

- was sponsored by Representative Smith following a tragic accident where his nephew, Christian, was seriously injured when a snow-plow crashed into their vehicle. It became clear that the \$250,000 cap under the Wyoming Governmental Claims Act would not begin to cover Christian's medical and future care needs. In response, Representative Smith introduced HB 62 to increase the maximum liability limits to \$1,000,000 for a single claimant and \$2,000,000 for multiple claimants, with provisions for annual adjustments based on inflation—aimed at better protecting families facing similar circumstances in the future.

The Revenue Committee considered the bill, amending the proposed caps to \$300,000 and \$750,000, and advanced it on a 7-2 vote. HB 62 became one of many casualties because of time constraints and was never heard in Committee of the Whole in the House.

WTLA has been working to increase the caps in the governmental claims act for years, with a Joint Judiciary Committee-sponsored bill considered in the 2025 session and again in 2026 with HB 62.

Our legislative team submitted the issue as a potential interim topic for study. The Joint Judiciary Committee did not make it a priority for their interim work. WTLA will continue to raise this issue and work toward solutions that better reflect the needs of Wyoming families.

Additional Civil Legislation

- **HB 3 – Wyoming pregnancy centers-autonomy and rights** – Amended and passed House and Senate, signed by the governor. Included in the act, authorization for pregnancy centers or any person aggrieved by a violation of this act to commence a civil action.
- **HB 10 – Sexually explicit materials in libraries-requirements** – Failed Senate reference to Committee of the Whole Motion. Included in the act, authorization for a cause of action for violations.
- **HB 32 – English proficiency-commercial motor vehicle drivers** – Passed the House and Senate and governor signed.
- **HB 47 – Duty to assist during emergencies** – Failed introduction.
- **SF 94 – Governmental immunity-road reconstruction and**



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Dawn Smith,
Founder & Managing Partner,
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maintenance - Failed introduction.

Criminal Law

Several bills addressing public safety and criminal conduct were enacted, including:

- **HB 8 – Stalking of minors**
– Passed the House and Senate, governor signed.
- **HB 9 – Grooming of children-offenses and amendments**
- Introduced, Passed committee and committee of the whole.
- **HB 28 – Sexual exploitation of children-amendments**
– Passed the House and Senate, signed by the governor.
- **SF 7 - Theft amendments** – Passed the Senate and the House and signed by the governor.
- **SF 8 – Absconding for criminal purposes criminal offense**
– Passed the House and Senate and signed by the governor.
- **SF 9 – Fentanyl to minors-enhanced penalty** – Passed the House and Senate, signed by the governor.
- **SF 85 RAVEN Act** – Passed the House and Senate, signed by the governor.

At the same time, other proposals, including changes to marijuana classification and juvenile justice never advanced past introduction.

- **HB 166 – Marijuana – class III substance** – did not consider for introduction.
- **HB 170 – Escape parole eligibility** – did not consider for introduction.
- **HB 173 – Juvenile discipline-parental obligations** – did not consider for introduction.
- **HB 184 – Juvenile – criminal deferral** – did not consider for introduction.
- **HB 192 – DUI penalties-refusal of a chemical test** – did not consider for introduction.

One additional criminal law bill passed the Senate to fail on Committee of the Whole in the House, SF 87 – Felony interference with a police officer-amendments.

Family Law

Many family law proposals stalled:

- **Guardianship protections (HB 101)** – a working group of attorneys and stakeholders will be formed to study the issue during the interim.

- **HB 113 Parent rights** – amendments – did not consider for introduction.
- **Shared custody (SF 93) and parental rights measures** – failed to advance and did not make the priority list for interim study.

SJ 6 Shared parenting day was enacted, designating April 26 of each year to be shared parenting day in the state of Wyoming.

Final Takeaway

The 2026 session was not just busy, it was unusual and unsettling. Process challenges, an overwhelming number of proposals, and prolonged debates distracted from the focus of passing a budget and other legislation benefiting the state.

At the same time, the session highlighted the increasing tension around the role of government, the courts, and individual rights in Wyoming.

For WTLA, we will continue to advocate for access to the courts, defend an independent judiciary and protect the rights of clients and the integrity of the legal system. These issues and values continue to matter more than ever. 🗳️

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BIG BEAUTIFUL BILL MAKES THE PLAINTIFF DOUBLE TAX PERMANENT



BY JEREMY BABENER,
TAX LAWYER TO PLAINTIFF LAW FIRMS
AND BUSINESS CONSULTANT

[Updated version of article previously published by Forbes](#)

Last year President Trump signed into law the One Big Beautiful Bill Act, making permanent many temporary tax changes from the Tax Cuts & Jobs Act.

The One Big Beautiful Bill Act (“BBB”) made permanent several temporary provisions of the Tax Cuts and Jobs Act of 2017 (“TCJA”), while also introducing changes to numerous items related to individual income tax. Several provisions in the BBB affect personal injury plaintiffs and plaintiff firms.

Plaintiff Double Tax Is Here To Stay

When a plaintiff receives taxable proceeds from a verdict or settlement, they’re taxable on 100% of it. That’s true even when the plaintiff keeps only 60% after subtracting 40% for their lawyer’s contingent fee. Of course, their lawyer still pays tax on that amount. Thus, the fee portion is taxed twice.

The double tax hits plaintiffs bringing many types of claims, including those for emotional distress in the absence of physical injuries, bad faith denials of insurance coverage, and defamation. It also hits plaintiffs in many sexual abuse cases and other physical injury cases with taxable proceeds, including punitive damages and post-judgment interest.

Legal fees have long been deductible under the miscellaneous itemized deduction rules. However, the TCJA eliminated the miscellaneous itemized deduction for tax years 2018 through 2025. That created the “plaintiff double tax.”

Many hoped that the TCJA’s elimination of the deduction would expire on December 31, 2025, when most of the TCJA’s

tax changes were scheduled to sunset. However, the BBB permanently eliminated this deduction. Legal fee deductions are still available in limited settings, including in cases of “unlawful discrimination.” Says, Rachel McCrocklin, Chief Trust Officer at Eastern Point Trust Company, “Extension of the double tax affects so many plaintiffs. Our Plaintiff Recovery Trust Arrangement allows plaintiffs to avoid the problem, but it shouldn’t be necessary.”

BBB Made the TCJA’s Lower Tax Rates Permanent

The TCJA reduced individual tax rates at nearly all levels of taxable income, with the most significant benefits accruing to those at higher income levels. If the TCJA’s reduced tax rates had expired on December 31, 2025, the top three income brackets would have paid federal income tax rates of 33%, 35%, and 39.6%, respectively.

The BBB made the TCJA’s reduced tax rates permanent. Thus, the top tax rate will remain at 37%.

No New Litigation Finance Tax

An earlier version of the BBB included a punitive tax on litigation finance companies. Especially when plaintiff firms oppose wealthy corporate defendants,

access to litigation finance can be critical. Many opposed the new tax, which was removed from the final version of the BBB. Unsurprisingly, many believe it will be proposed again.

The change would have imposed a tax equal to the highest individual rate, plus 3.8%, or 40.8%, on “qualified litigation proceeds received by a covered party.” A covered party was “any third party to a civil action which receives funds pursuant to a litigation financing agreement and is not an attorney representing a party to such civil action.” “Qualified litigation proceeds” were “realized gains, net income or other profit received by a covered party during the taxable year which is derived from, or pursuant to, any litigation financing arrangement,” and could not be reduced by “any ordinary or capital losses.” This is all to say – it would have obstructed most litigation finance.

Says University of Chicago Law School Lecturer Michael Kelley, “The proposed litigation finance tax would have had the most negative impact on individuals and small and medium size businesses, which would lose access to funding necessary to litigate meritorious claims against much larger and well-funded tortfeasors and infringers. The bill would also have stifled

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LIFE AFTER LAW SCHOOL

Almost sixty law students gathered to hear from experienced attorneys about what practicing law can look like after graduation. The Wyoming Trial Lawyers Association and its Student Chapter hosted the April 14th event at the University of Wyoming College of Law, combining lunch with discussion and questions about life after graduation.

WTLA past presidents and board members shared practical insights on everything from where to live to the many ways a law degree can be used. Michael Fitzgerald, a personal injury attorney and WTLA Board member, spoke about the lasting impact a judicial clerkship can have on shaping a legal career.

Beth Lance, WTLA lobbyist and past president, highlighted the breadth of opportunities available to lawyers. She outlined some of her experience, including serving a GAL, as counsel to the Episcopal Diocese, and helping a legislative task force update specific statutes. She encouraged students to explore different practice areas, including both sides of criminal law, emphasizing that varied experience makes for a stronger lawyer.

Devon Petersen, a criminal defense attorney and WTLA Board member, urged students to observe trials whenever possible to better understand courtroom dynamics, strategy, and advocacy. He emphasized the value of

participating in clinical programs during law school. He stressed the importance of joining organizations that support lawyers and the legal system, like WTLA.

Jason Tangeman, a WTLA past president, encouraged students to think first about where they want to live, noting that career opportunities tend to follow. He added that focused legal education can open doors to new practice areas and connect lawyers with experienced mentors along the way.

All four lawyers recommended having fun during law school and recognizing the freedom that comes with being a student. Take studies and deadlines seriously, but enjoy the ride. ●



Michael Fitzgerald (L), Devon Petersen (LC), Beth Lance (RC), and Jason Tangeman (R) answer student questions about what real life as a lawyer looks like.



Michael Fitzgerald encourages students to take full advantage of the opportunities available to them during law school.



Beth Lance speaks with students about the many different paths available for practicing law.



Nearly 60 law students gather to hear from a panel focused on life after law school.

BOILERPLATE OBJECTIONS

Continued from page 5

Vague and Ambiguous

Often, virtually every request is met with an objection that the request is “vague and ambiguous.” No matter how carefully a request is phrased, a clever lawyer can always find some ambiguity.

For that reason, the burden is on the responding party to show that the alleged vagueness or ambiguity frustrates its ability to respond. “The party objecting to discovery as vague or ambiguous has the burden to show such vagueness or ambiguity. A party responding to discovery requests should exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in interrogatories.” *Johnson v. Kraft Foods N. Am., Inc.*, 238 F.R.D. 648, 655 (D. Kan. 2006) (footnotes and quotation marks omitted); see also *Thomas v. Cate*, 715 F. Supp. 2d 1012, 1030 (E.D. Cal. 2010) (“The party objecting to discovery as vague or ambiguous has the burden to show such vagueness or ambiguity by demonstrating that ‘more tools beyond mere reason and common sense are necessary to attribute ordinary definitions to terms and phrases.’” (citations omitted)).

Moreover, just as there is a proper time to seek a protective order (before discovery responses are due) there is also a proper time to clarify an allegedly ambiguous discovery request (again, before responses are due). A party should “attempt to obtain clarification by conferring with the requesting party prior to objecting” that an interrogatory is vague and ambiguous. *Sterns v. CitiMortgage, Inc.*, 349 F.R.D. 620, 625 (N.D. Tex. 2025); see also *Heller v. City of Dallas*, 303 F.R.D. 466, 492 (N.D. Tex. 2014).

What are Conditional Responses?

While some attorneys may not be familiar with the phrase “conditional response,” the verbiage that makes a discovery response “conditional” is familiar: “subject to and without waiving the above objections”—or some similar phrase. A conditional discovery response makes it impossible to determine whether a responding party is withholding responsive information—and, if so, which objection forms the basis for doing so. See *Sterns v. CitiMortgage, Inc.*, 349 F.R.D. 620, 625 (N.D. Tex. 2025) (“Responding to or answering a request or interrogatory ‘subject to and without waiving’ objections

has no basis in, and is not consistent with, the Federal Rules of Civil Procedure and only leaves the requesting party guessing and wondering as to the scope of the documents or information that will be provided as responsive will be.”).

Conditional Responses are Improper

Courts in the Tenth Circuit have repeatedly and emphatically condemned conditional responses:

“Conditional objections,” also referred to as “conditional responses,” are invalid and unsustainable. Among the reasons is that objections followed by an answer preserve nothing and serve only to waste the time and resources of both the Parties and the Court. Answering subject to an objection lacks any rational basis. There is either a sustainable objection to a question or request or there is not. Rules 33 and 34 demand an answer to an interrogatory, a statement that inspection or production will be permitted as requested, or an objection. The discovery rules contemplate no other response.

Sprint Commc’ns Co. L.P. v. Charter Commc’ns, Inc., 341 F.R.D. 291, 302 (D. Kan. 2022) (citations, internal quotation marks, and brackets omitted); see also *Smash Tech., LLC v. Smash Sols., LLC*, 335 F.R.D. 438, 447 (D. Utah 2020); *Garcia v. State Farm Mut. Auto. Ins. Co.*, No. 1:24-CV-1286 KK/KRS, 2025 WL 2966364, at *26 (D.N.M. Oct. 21, 2025); *Howard v. Segway, Inc.*, No. 11-CV-688-GKF-PJC, 2013 WL 869955, at *4 (N.D. Okla. Mar. 7, 2013) (“Once a party has decided to produce documents, it has the duty—at a minimum—to identify what it is producing. A party that objects and produces creates an ambiguity as to what documents, if any, have been withheld.”).

While conditional responses to interrogatories and requests for production are equally improper, Rule 34 specifically requires that an objection to a request for production “must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.” F.R.C.P. 34(b)(2)(C) & W.R.C.P. 34(b)(2)(C).

Why do These Discovery Practices Persist?

Given all the authority against boilerplate/general objections and conditional

responses, why are they so common? There are likely four reasons.

The first is tradition. When new lawyers learn to respond to discovery requests, they typically copy what more senior lawyers do. The bad habit of interposing legally invalid objections, and making responses contingent on those objections, is passed down from one generation of lawyers to another with little thought. But a tradition inconsistent with the rules—and with full and transparent discovery—is not one we should continue.

The second is fear. Lawyers worry that, if they fail to list every objection known to the legal profession, they may accidentally waive one, thereby destroying their client’s case, and with it, their career. This reason doesn’t hold up to scrutiny. As noted above, courts routinely hold that boilerplate and general objections are tantamount to no objection at all. The false sense of security lawyers gain from making dozens of boilerplate and general objections may lead them not to make—and therefore waive—a smaller number of specific objections.

The third reason is time pressure. Litigation—and particularly responding to discovery—is tedious and sometimes exhausting. Resorting to boilerplate and general objections and conditional responses may appear to make the task of answering discovery easier. It seems to spare lawyers of the need to consider all of the facts and review all of the documents carefully enough to determine which objections are justified and which aren’t.

This reason is difficult to grapple with. There’s no simple fix to having too much to do in too little time. However, the ultimate goal of our legal system is to provide justice. The system fails when cases are decided on incomplete facts. So, as genuinely difficult as it is, we all must do the work necessary for discovery to be full and transparent.

Last, there’s the fact that many lawyers don’t challenge improper objections because they make such objections themselves. If anyone is going to break the cycle of attorneys slinging improper objections back and forth, it should be the plaintiffs’ bar. After all, our clients have the burden of proof, so the more limited and opaque discovery is, the more the system skews against them. If we break ourselves of the bad habit of relying on improper objections, we will have the moral authority

to challenge them—and won't be met with reciprocal motions and accusations of hypocrisy in response briefs.

Call to Action: Challenge Boilerplate and General Objections and Conditional Responses in All Cases

While researching this article, I came across a similar piece written by an Alabama attorney, Aaron Maples. Mr. Maples called on his fellow Alabama trial lawyers to challenge boilerplate and general objections in all cases with a motion to strike. *See Aaron N. Maples, Why You Should Always Challenge General and Boilerplate Objections in Written Discovery Responses*, 40 Ala. Ass'n Just. J. 84, 86 (2020).

My first reaction was that Mr. Maples' advice was extreme. Given that boilerplate and general objections (and conditional responses) are ubiquitous, would it really be practical to bring a motion to strike in every case in which defense counsel refuses to withdraw them?

On reflection, I think the answer is yes, for a few reasons:

First, as Mr. Maples points out, experience teaches us that important—even

case dispositive—information can sit undisclosed behind boilerplate objections. *Id.* Thankfully, intentional concealment of evidence is quite rare among members of the Wyoming bar. A much more common problem is that lawyers lean on laundry lists of objections to avoid doing a fully adequate search for responsive information. When lawyers are informed that they must make specific objections or risk waiving all of their objections, they tend to provide not only more robust objections, but also more robust responses.

Second, condemnation of boilerplate and general objections, and conditional responses, is virtually universal. The caselaw is overwhelming—and, helpfully for a Rule 37 conferral letter or motion—summarized in this article. So, mounting a challenge will not require a great expenditure of time or resources.

Third, the more often judges must explain that the rules require specific objections, the more frustrated they become. The *Smash Technology* and *Liguria Foods* orders, in particular—which are colorful and impassioned—appear to be the result of long-simmering frustration. Therefore,

each time a party challenges these tactics, the greater the likelihood of an order sufficiently harsh to deter them. In contrast, each time these plainly improper tactics go unopposed, the more entrenched they become in litigation culture. While some attorneys fear bringing discovery motions based on the assumption that the judge will be equally annoyed with both parties, the orders on these tactics (properly) reserve their ire for the offending parties that plainly violate the Rules.

Fourth, the call to oppose boilerplate/general objections doesn't just come from partisan commentators. In *Liguria Foods*, the late Honorable Mark W. Bennett called on "all lawyers" faced with boilerplate objections to request that opposing counsel withdraw them—and seek relief if opposing counsel fails to do so. *See Liguria Foods, Inc. v. Griffith Lab'ys, Inc.*, 320 F.R.D. 168, 190–91 (N.D. Iowa 2017).

So good luck to all attorneys hammering away at mountains of improper discovery objections. I hope you break through and strike the mother lode of information you need. And stay tuned for Part Three of the series—which, I hope, will be forthcoming sooner than May of 2034! 🍀



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ROLE OF PROTECTIVE ORDERS

Continued from page 6

case strategy and potentially delaying civil proceedings. Conversely, in state court jurisdictions without an explicit discovery prohibition, such sharing is less restricted—if not nonexistent.

Concurrent proceedings also create strategic and constitutional conflicts. Defendants deposed in related civil actions may assert the Fifth Amendment right against self-incrimination, stalling civil discovery. Family law contexts are especially sensitive—for example, attempts to depose an alleged child victim in a divorce or custody proceeding can interfere with a parallel criminal investigation and raise questions of prejudice and testimonial protection. *See e.g. State v. Deal*, 740 N.W.2d 755 (Minn. 2007). Courts commonly manage these tensions by staying civil actions until resolution of the criminal case or by imposing protective measures that limit use of compelled testimony.

If necessary, when drafting or negotiating a protective order in a criminal case one should:

- **Seek specificity:** Draft protective orders that identify categories of protected materials, define “defense team,” and state permitted uses and storage protocols.
- **Include procedures for disclosure to experts:** Require written acknowledgments, return or destruction obligations after litigation, and limits on further dissemination.
- **Provide a mechanism for emergency relief or modifications:** Permit party to apply for limited exceptions upon showing need.
- **Consider time limits and post-conclusion obligations:** Require return or continued protection of materials after case disposition, and clarify obligations if counsel withdraws or a client proceeds pro se.

The idea is to draft the order in a way that provides specific and necessary protection of the information but is not so broad as to be impractical to enforce.

Criminal protective orders can also implicate a lawyer’s ethical duties to the client. Wyoming Rule of Professional Conduct 1.16(d) directs counsel, upon termination of representation, to

take reasonable steps to protect client interests—giving notice, allowing time for successor counsel, and surrendering client papers. Where a protective order governs discovery, these professional obligations must be honored within the order’s constraints. If new counsel enters, producing discovery to successor counsel is ordinarily permissible under the order; but, by contrast, if a client intends to proceed pro se, counsel should seek court permission before relinquishing protected materials. At least one ethical opinion recognizes that a client’s desire to receive discovery materials is not absolute and may be constrained by court orders (*See, e.g., N.C. Formal Ethical Opinion*, 2013-2).

Protective orders can be indispensable tools in modern criminal practice—necessary to protect safety, privacy, and investigative integrity while preserving a defendant’s right to effective representation. For trial lawyers in Wyoming, the practical task is advocacy: tailor protective orders narrowly, anticipate parallel civil conflicts, respect statutory confidentiality mandates, and observe professional responsibilities when custody of discovery changes. ☐

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DISCOVERY IN FAMILY LAW

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well-organized to maintain credibility and avoid delays. Initial disclosures have increasingly become an overlooked deadline, and clients tend to submit only the bare minimum on their schedules. However, detailed initial disclosures can be the key factor in determining whether the cost and demand of discovery is actually necessary.

Using Formal Discovery Effectively

When initial disclosures fall short, formal discovery becomes necessary. As is true in other areas of law, family law attorneys have a variety of discovery tools that, when implemented effectively, can produce critical information. The available discovery methods include interrogatories, requests for production, requests for admission, subpoenas, and depositions. These discovery methods are all governed by the Wyoming Rules of Civil Procedure. In most family law cases, interrogatories and requests for production are the most cost effective and efficient method of obtaining needed information. Requests for admission are particularly useful for narrowing issues and locking in positions. Depositions and subpoenas are more often employed in high-conflict cases, when complex financial issues arise, or when a third-party possesses key evidence. Effective discovery requires precision. Tailored requests aimed at specific issues are far more effective than broad requests that invite objections, increase conflict, create an unnecessary fishing expedition, and result in excessive production.

Financial Discovery: Where to Focus

Financial issues are central to nearly every family law case. Effective discovery in this area requires both document

collection and detailed review. The primary financial documents family law attorneys focus on are tax returns, bank and credit card statements, paystubs, retirement and investment account statements, and business records. In cases involving children, the Confidential Financial Affidavit and required supporting documents are essential for calculating child support, and often cover the bulk of the financial records a party needs to produce.

When reviewing financial discovery, attorneys should be aware of a few common red flags, including:

- Lifestyle and monthly expenses exceeding reported income
- Inconsistent or fluctuating income
- Frequent transfers to friends or family
- Significant or repeated cash withdrawals
- Significant write-offs on tax returns

These issues often justify expanded or more targeted discovery, and may impact both property division and support calculations.

Developing Custody and Parenting Evidence

Discovery plays a critical role in building custody cases. Unlike financial discovery, which relies heavily on documents, parenting-related discovery often requires a broader approach. Relevant evidence may include school and medical records, communications between the parties, criminal records, and social media activity. Interrogatories and requests for admission can be particularly effective in uncovering a party's position on child custody, decision-making patterns, and willingness to co-parent.

Records from third parties, such as teachers, medical providers, or therapists, can provide valuable insight but are frequently contested. Attorneys should be prepared to address objections and, when necessary, seek court involvement.

The Balancing Act: Cost, Outcomes, and Client Expectations

Discovery is not

without cost. Attorneys should balance the anticipated value of the information and its impact on the case's outcome, against the time and expense needed to obtain it. Clients may be hesitant to invest in extensive discovery, particularly if they do not immediately see its value. Early conversations about strategy, cost, and anticipated outcomes are essential to outline client expectations and avoid future frustrations. It is also important to make clients aware that discovery requests typically trigger reciprocal requests. While clients are often eager to serve discovery, their perspective may shift when they are required to respond to extensive requests.

Practical Tips for Better Outcomes

Several strategies can significantly improve the effectiveness of discovery. First, it is important to educate your client on the discovery process as early as practicable. Explain the purpose of discovery, the importance of full disclosures, and what documents will be needed. Early preparation leads to smoother and more complete responses from your client.

Second, be strategic. Focus on high-value information tied directly to disputed issues. Avoid duplicative or boilerplate requests for information already in your client's possession. Never request information from an opposing party that could be produced by your client. Also, evaluate the need for discovery with your client by considering whether the information requested could actually impact the case legally, or if it is to only provide emotional relief.

Discovery is also an area where attorney civility can make a huge difference in the case. If an informal request is reasonable and would be without objection in formal discovery, simply work with your client to provide it. Grant reasonable extensions when needed. Limit your requests to prudent information. In family law, we often meet our clients during one of the most difficult and emotional periods of their life. There is no reason to create additional conflict and costs by misusing discovery.

Finally, organization is critical in these types of cases. Family law discovery often involves ongoing supplementation. Maintaining organized records allows for more efficient

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DISCOVERY IN FAMILY LAW

Continued from page 31

review and case development.

Handling Discovery Disputes

When disputes arise, Rule 37 of the Wyoming Rules of Civil Procedure requires attorneys to first meet and confer in good faith. Court often like to see this effort as more than one short email threatening a Motion to Compel. Instead, try sending opposing counsel a formal letter outlining the exact requests that are missing or insufficient, why those requests are relevant, offer an explicit deadline before a motion will be filed, and offer a date to have a phone call regarding the issues. If those efforts fail, a motion to compel may be necessary. Strong motions should provide a succinct factual background, legal standard, explanation of the requests at issue, and documentation of meet and confer efforts. Requests for attorney's fees and sanctions at this step are not unreasonable, especially if noncompliance with discovery requests is unjustified and multiple attempts to confer were made.

Ethical Considerations

Discovery requests and responses implicate several ethical obligations outlined in the Wyoming Rules of Professional Conduct. Attorneys must have candor to the court and should never

conceal discoverable information. Ensuring compliance protects both the integrity of the discovery process and the attorney's professional standing. Attorneys should consider these unique circumstances in family law:

- Clients often post emotionally charged or inappropriate things on social media. Attorneys cannot advise clients to later delete such posts, as doing so could be considered spoliation of evidence. Instead, counsel clients from the start of their case to be mindful with social media.
- Many clients believe they can simply delete bad text messages. Similar to social media, if done with malicious purposes, this can be considered spoliation of evidence, and those messages can be recovered. Again, counsel clients early on the importance of what they communicate.
- Metadata is an evolving tool in discovery. If there are concerns as to the authenticity of a produced record, metadata can provide valuable information such as when the file was created, what device was used to create it, file type, and author information. Cross checking metadata can help protect against inaccurate discovery.
- In emotionally charged situations, clients may be tempted to begin discretely recording the situation, which can be helpful evidence. However, while Wyoming is a one-party consent state, it is

important to advise clients not to manipulate or provoke certain situations just to capture a recording. Even if a recording is unhelpful or potentially damaging to your case, it must be produced if requested.

Discovery as a Settlement Tool

Precise discovery requests often encourage settlement. By clarifying financial realities and exposing strengths and weaknesses in custody positions, discovery eliminates ambiguities and promotes informed negotiations. In many cases, the information obtained through discovery is what ultimately allows the parties to reach resolution without trial. Sometimes, simply receiving a discovery request can motivate an opposing party to settle just to avoid the effort and burden of responding and having to disclose certain information.

Conclusion

Discovery in family law matters is not simply a procedural step, but a strategic process that can shape the direction and outcome of a case. By prioritizing relevance and proportionality, attorneys can use discovery to efficiently obtain key information, set realistic client expectations, and prepare their cases for settlement or trial. Discovery should not be used as a means to increase conflict between parties who are already experiencing a challenging time in their lives. Efficient use of discovery can aid in resolution of a family law case. ●

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DISCOVERY IN ARBITRATION

Continued from page 9

parties who want to stay out of court. For example, the Colorado-based Judicial Arbiter Group (JAG) is a reputable provider in the Rocky Mountain region. JAG has not published recommended discovery procedures; its arbitrators, all of whom are former judges, use the rules of civil procedure as a starting point.³⁰

5. Arbitrator

Arbitrators are the individuals empowered by the parties to oversee the arbitration proceedings and, in most cases, to make final and binding decisions.³¹ The discovery process in arbitration is generally governed by the rules of the chosen provider, but arbitrators have broad discretion to modify discovery to meet the specific needs of each case. JAMS notes:

The experience, talent and preferences brought to arbitration will vary with the arbitrator. It follows that the framework of arbitration discovery will always be based on the judgment of the

arbitrator, brought to bear in the context of variables such as the applicable rules, the custom and practice for arbitrations in the industry in question and the expectations and preferences of the parties and their counsel.³²

Overall, arbitrators aim to facilitate “an efficient, cost-effective arbitration that affords the parties a fair opportunity to be heard.”³³

Practice Pointers

Specify Discovery Needs. Arbitrators take into consideration certain factors when setting discovery limits.³⁴ These factors include the nature of the dispute, agreement of the parties, relevance and reasonable need for requested discovery, privilege and confidentiality, and the characteristics and needs of the parties, among others.³⁵ If the need for additional discovery arises and opposing counsel will not agree to modify the scope of discovery, be prepared to present the arbitrator with specific, factual reasons why additional discovery is legitimately needed for a fair hearing.³⁶ Avoid boilerplate or overly aggressive language.

Revisit Non-Party Discovery Norms.

To obtain non-party discovery, JAMS arbitrator Barbara A. Reeves recommends a practitioner first “see if the nonparty will voluntarily provide the needed documents or sit for a deposition.”³⁷ “Second, be prepared to make a factual showing to the arbitrator of the need for the discovery and request that the arbitrator issue subpoenas for deposition testimony and/or document production.”³⁸ “If a nonparty challenges the arbitrator’s authority to issue a discovery subpoena . . . and it would prejudice the parties to delay production of the evidence until the evidentiary hearing, ask the arbitrator to schedule a hearing for compelling nonparties to testify and produce documents.”³⁹

Focus on Professionalism. Judge David Goldberg at JAG encourages arbitrators, counsel, and parties to “work collectively” during discovery.⁴⁰ While he welcomes calls from counsel, Judge Goldberg said he feels “disappointed” when parties cannot resolve discovery disputes without assistance.⁴¹ “Arbitrators really enjoy when the lawyers get along, when

Continued on page 36

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25-CH-01831 (07/25)

VERDICTS AND SETTLEMENTS

Continued from page 13

CASE TYPE: Car Crash

CASE

Confidential

COURT

Confidential

JUDGE

Confidential

CASE NUMBER

Confidential

VERDICT OR SETTLEMENT

\$75,000, Post-Suit

FACTS

Client, an elderly woman with significant pre-existing spinal degeneration (and prior fusion surgery), was driving outside of Burns, Wyoming when another driver

ran a stop sign and broad-sided her. While surgery was recommended to address her condition, she was not a candidate due to a heart condition.

INJURIES

Soft tissue injuries to spine, including disc herniation, and arguable aggravation of pre-existing condition.

PLAINTIFF'S AGE

85

WORK

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MEDICAL BILLS

\$20,000

PLAINTIFF'S ATTORNEYS

Doug Bailey

DEFENDANT'S ATTORNEYS

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PLAINTIFF'S EXPERTS

Treating physician, Dr. Steven Beer

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CRIMINAL LAW SUMMARIES

Continued from page 16

property was seized and released to a tow company or third party must pursue a separate civil action under the Wyoming Governmental Claims Act, which has strict notice and filing requirements.

The Wyoming Supreme Court affirmed the denial of a motion for return of seized property, holding that W.R.Cr.P. 41(g) does not authorize relief when the government no longer possesses the property and that sovereign immunity bars a claim for money damages absent compliance with the Wyoming Governmental Claims Act.

After Bressette's arrest, law enforcement searched his truck pursuant to a warrant and released it to a tow company without notifying him. The substances seized from the truck tested negative and those charges were eventually dismissed; however, Bressette did not learn the truck was at the tow lot until he reviewed discovery months later. By then he owed \$14,000 in towing and storage fees he could not pay, and the truck was eventually auctioned. He filed a *pro se* Rule 41(g) motion seeking return of the truck or monetary compensation.

The Court affirmed denial of both forms of relief. Rule 41(g) is essentially a replevin action and courts lack jurisdiction to grant it once the government no

longer possesses the property. Sovereign immunity bars monetary relief under Rule 41(g); a defendant must instead file a separate civil action in compliance with the Wyoming Governmental Claims Act, including its notice requirements and filing deadlines. The Court acknowledged Bressette may have a viable due process claim based on the disposal of his property without notice but determined the proper mechanism is a separate civil suit, not a motion in the criminal case.

Castaner v. State, 2026 WY 25, 584 P.3d 454 (Wyo. 2026)

Key Takeaway: *Wyo. Stat. Ann. § 6-10-301(c)'s twenty-five-year parole eligibility guarantee applies only to juvenile offenders sentenced to life imprisonment, not to those sentenced to a term of years. A lengthy term-of-years sentence for a juvenile convicted of second-degree murder is not unusual under Article 1, Section 14 absent a clear national consensus against it.*

The Wyoming Supreme Court affirmed a 42-to-75-year sentence imposed on a fifteen-year-old convicted of second-degree murder, holding that the juvenile parole eligibility statute does not apply to term-of-years sentences and that the sentence was not unusual under Article 1, Section 14.

Castaner shot and killed his

seventeen-year-old former girlfriend following a period of escalating threats. He pled guilty to second-degree murder and received a 42-to-75-year indeterminate sentence.

Castaner argued Wyo. Stat. Ann. § 6-10-301(c), which guarantees parole eligibility after twenty-five years for juveniles sentenced to life imprisonment, capped his available sentence. The Court rejected that argument, holding that § 6-10-301(c) applies by its plain language only to juveniles sentenced to life imprisonment. Applying it to a term-of-years sentence would render the statute's commutation language meaningless and require reading words into the statute that the legislature did not include.

On the constitutional challenge, the Court applied the bifurcated framework from *Hicks v. State*, 2025 WY 113, decided weeks earlier. Castaner conceded his sentence was not cruel after *Hicks* was issued. On unusualness, a punishment is unusual only when a clear consensus of state legislatures has abandoned the practice or courts have deemed it contrary to law, a burden Castaner did not meet. The Court also left open whether the *Bear Cloud III* functional-life standard should extend to juveniles convicted of second-degree murder, as Castaner's sentence fell below that threshold.

CIVIL CASE SPOTLIGHT

Continued from page 17

later terminated him mid-litigation and proceeded pro se. Williams obtained a favorable entitlement ruling on the 2011 claim. She then sued Gage, alleging he failed to pursue the additional claim and improperly limited her recovery.

The dispositive issue in the malpractice case arose from Williams's failure to comply with the scheduling order requiring her, as plaintiff, to designate expert witnesses by January 15, 2025. She did not do so and sought an extension after the deadline, which the district court denied. Gage, by contrast, timely designated himself as an expert and opined he complied with the standard of care and caused no injury. He then moved for summary judgment based on Williams's lack of expert testimony. The Wyoming Supreme Court affirmed the denial of an extension, emphasizing that "excusable neglect is measured on a strict standard" and requires conduct consistent with that of a reasonably prudent person, which Williams failed to show.

Affirming summary judgment, the

Court reiterated that a legal malpractice plaintiff must establish "(1) the accepted standard of care . . . (2) the attorney's conduct departed from that standard; and (3) the attorney's conduct was the legal cause of the injuries," and that such proof "will typically need . . . expert testimony." Because the issues involved were not within "a lay person's common sense and experience," Williams's failure to designate an expert left her unable to prove essential elements of her claim. Summary judgment in favor of Gage was therefore proper.

***Newcomb v. Gray*, 2026 WY 20, 583 P.3d 1213 (Wyo. 2026)**

Timothy Newcomb filed a declaratory judgment action seeking to remove Wyoming's Secretary of State Chuck Gray from office under Section 3 of the Fourteenth Amendment, alleging the Secretary had provided "aid or comfort" to participants in the events of January 6, 2021. The complaint contained minimal factual allegations and relied largely on conclusory assertions, with additional materials submitted outside the

pleadings. The State moved to dismiss under Rule 12(b)(6), arguing both failure to state a claim and lack of standing. The district court dismissed the complaint, limiting its review to the pleadings and concluding Newcomb had not alleged facts entitling him to relief.

The Wyoming Supreme Court affirmed, holding the complaint failed as a matter of law. Applying the Rule 12(b)(6) standard, the Court reiterated that dismissal is appropriate only when "it is certain on the face of the complaint that the plaintiff cannot assert any facts that create entitlement to relief." It concluded Newcomb's claim failed because Section 3 of the Fourteenth Amendment is not self-executing as a private cause of action, explaining that enforcement must occur "in accordance with state statutes." The Court further emphasized that Wyoming law provides only limited mechanisms to remove a statewide official—impeachment or quo warranto—and that Newcomb could pursue neither. Because a declaratory judgment action is not a substitute for quo warranto and Newcomb lacked authority to invoke either remedy, he "failed to state a claim on which relief can be granted," and dismissal was proper. ◉

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BIG BEAUTIFUL BILL

Continued from page 26

technological innovation, resulting in tax revenue losses far exceeding any projected tax revenue gains payable by litigation funders under the proposed bill.”

No AI Regulation Moratorium

Artificial intelligence (“AI”) is making it easier for bad actors to engage in unlawful or criminal behavior, such as creating algorithms that make discriminatory employment decisions and powering “deep fake” technology that creates fake or obscene images of others. In response to this rising threat, states and localities are considering legislation that would regulate the use of AI.

[An early version of the BBB threatened the ability of states and localities to do so.](#)

That version included a provision imposing a 10-year moratorium on state and local enforcement of “any law or regulation . . . limiting, restricting, or otherwise regulating artificial intelligence models, artificial intelligence systems,

or automated decision systems entered into interstate commerce.” The bill would have made AI regulation the sole province of the federal government for the next decade. However, the final version of the BBB dropped the moratorium.

SALT Deduction Gets a Bump, and PTET Remains Intact

One of the TCJA’s most controversial provisions was limiting the individual taxpayer deduction for state and local tax (“SALT”) payments to \$10,000. Many saw the provision as an effort by Republican lawmakers to punish individuals who live in “blue” high-tax, large-population states like California, New Jersey, and New York.

The BBB [increased the SALT deduction cap](#) to \$40,000 for 2025 for taxpayers making less than \$500,000, which will increase by 1% each year from 2026 through 2029 before reverting to \$10,000 in 2030. Taxpayers with a modified adjusted gross income of over \$500,000 have a \$40,000 cap that is phased downward to a \$10,000 floor in 2025 through 2029.

Equally relevant for plaintiff attorneys who own firms organized as pass-through entities like partnerships, limited liability companies, S corporations, or sole proprietorships is that the final BBB does not contain a restriction on state-level pass-through entity tax (“PTET”) that an earlier version had. PTET is a workaround developed by states after the TCJA. Because the SALT deduction cap generally does not apply to entities, with PTET, a pass-through entity can deduct the amount of the state tax it paid, reducing the taxable income allocated to its owners and avoiding the \$10,000 SALT limit. The owners of the pass-through entity receive a state tax credit equal to the amount the entity paid.

Opportunity Missed for Sexual Abuse Victims

Though legislation was introduced early last year to exempt from tax recovery proceeds received by sexual abuse victims, that change didn’t make it into the BBB. There are legislative opportunities later this year, including in a technical corrections bill. ●

DISCOVERY IN ARBITRATION

Continued from page 33

they work together on stipulations and adopt mechanisms that are designed to maximize the time spent in arbitration [while] minimizing the expense.”⁴² So, focus on professionalism when approaching discovery in arbitration. ●

notes

- 1 *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 31 (1991) (citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985)).
- 2 See Barbara A. Reeves, *Arbitration Discovery Rights in California: What You Need to Know*, ADVOCATE, (2023).
- 3 Reeves, *Arbitration Discovery Rights in California*, *supra*.
- 4 *Id.*
- 5 *Id.*
- 6 *Id.*
- 7 See 9 U.S.C. § 1, et seq.; see also Wyo. Stat. Ann. § 1-36-101 to § 1-36-119.
- 8 *Comanche Indian Tribe v. 49, L.L.C.*, 391 F.3d 1129, 1131 (10th Cir. 2004).
- 9 Mark A. Nickel, When Parties Arbitrate: The Powers and Limitations of Discovery in Arbitration under the Federal Arbitration Act, GORDON REES SCULLY MANSUKHANI, LLP (2021); see *Parm v. Nat’l Bank of Cal., N.A.*, 835 F.3d 1331, 1333-34 (11th Cir. 2016); *Allied-Bruce Terminix Companies,*

- Inc. v. Dobson*, 513 U.S. 265, 282 (1995).
- 10 Terry L. Trantina, *What Law Applies to an Agreement to Arbitrate?*, DISPUTE RESOLUTION MAGAZINE, 29 (2015); *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 60-64 (1995).
 - 11 *Id.*
 - 12 *Id.*
 - 13 9 U.S.C. § 7.
 - 14 *Id.*
 - 15 Reeves, *Arbitration Discovery Rights in California*, *supra*.
 - 16 *Id.*; *Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989) (“parties are generally free to structure their arbitration agreements as they see fit.”).
 - 17 Wyoming Uniform Arbitration Act (Wyo. Stat. Ann. § 1-36-101 to § 1-36-119).
 - 18 Wyo. Stat. Ann. § 1-36-109(a).
 - 19 *Id.*
 - 20 Wyo. Stat. Ann. § 1-36-109(b).
 - 21 Wyo. Stat. Ann. § 12-9-115(d).
 - 22 *Id.*
 - 23 *Id.*
 - 24 WY R FEE ARB Rule 3.
 - 25 Nickel, *When Parties Arbitrate*, *supra*; *Life Receivables Tr. v. Syndicate 102 at Lloyd’s London*, 549 F.3d 210 (2nd Cir. 2008); *Hay Group, Inc. v. E.B.S. Acquisition Corp.*, 360 F.3d 404 (3rd Cir. 2004); *CVS Health Corp. v. Vividus, LLC*, 878 F.3d 703, 706 (9th Cir. 2017); *Managed Care Advisory Grp., LLC v. CIGNA Healthcare, Inc.*, 939 F.3d 1145 (11th Cir. 2019).
 - 26 *Id.* (internal citations omitted).
 - 27 *Sec. Life Ins. Co. of Am. v. Duncanson & Holt (in Re Sec. Life Ins. Co. of Am.)*, 228 F.3d 865,

- 870-71 (8th Cir. 2000) (holding Section 7 gives arbitrators implicit “power to order the production of relevant documents for review by a party prior to the hearing”).
- 28 *COMSAT Corp. v. Nat’l Sci. Found.*, 190 F.3d 269, 276 (4th Cir. 1999) (noting a party may be able to compel pre-arbitration discovery “under unusual circumstances” and “upon a showing of special need or hardship”).
 - 29 *Rules, Forms, and Fees*, AAA, <http://www.adr.org/rules-forms-and-fees/>; *Arbitration Discovery Protocols*, JAMS, <http://www.jamsadr.com/arbitration-discovery-protocols>.
 - 30 Services, JAG, <http://jaginc.com/services/>.
 - 31 See “Arbitrator”, WEX, LEGAL INFO. INST., CORNELL LAW SCHOOL, <https://www.law.cornell.edu/wex/arbitrator>; see also *Welty v. Brady*, 123 P.3d 920, 928 (Wyo. 2005) (“the parties’ agreement defines the arbitrators’ authority”).
 - 32 *Arbitration Discovery Protocols*, JAMS, *supra*.
 - 33 Reeves, *Arbitration Discovery Rights*, *supra*.
 - 34 *Arbitration Discovery Protocols*, JAMS, *supra*; Interview with J. David Goldberg, Arbitrator, JAG, in Denver, Colo. (Apr. 8, 2026).
 - 35 *Arbitration Discovery Protocols*, JAMS, *supra* at Exhibit A.
 - 36 Reeves, *Arbitration Discovery Rights*, *supra*.
 - 37 *Id.*
 - 38 *Id.*
 - 39 *Id.*
 - 40 Interview with J. David Goldberg, *supra*.
 - 41 *Id.*
 - 42 *Id.*



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