

**DISTRICT COURT – SIXTH JUDICIAL DISTRICT
CAMPBELL, CROOK AND WESTON COUNTIES**

**JUDGE DAN R. PRICE II
JUDGE JOHN R. PERRY
JUDGE MICHAEL N. DEEGAN**

Scheduling Conferences

How are scheduling conferences set and used in your court?

We usually require case status reports and then determine whether a scheduling conference is necessary. Scheduling conferences are conducted in virtually all jury cases.

Are they conducted by you?

Yes.

When done by telephone, are the attorney's responsible for setting up a conference call or does your office have enough lines to allow attorneys to call in?

Currently, our district has what is referred to as a "meet me" line, which can handle up to 35 participants. On occasion, if this line is already reserved and if there are more than 2 lawyers participating in a teleconference, we will require the attorneys to set up a conference call but this rarely happens.

What do you expect from the attorney(s) at the scheduling conference?

We expect attorneys to have a good grasp of their case, particular issues that might arise, an idea of how long all discovery will take, and an idea of the length of time required for trial. Counsel of record, not just an administrative assistant, must participate in scheduling conferences and have their calendar so that matters can be scheduled without conflicts. It is also appropriate to discuss the potential of ADR at that conference.

Do you use multiple scheduling conferences? Why?

Generally, we use multiple scheduling conferences only when a jury case is particularly complex or involves a request for an extended trial time, by way of example 10 or more trial days.

Do you use court-directed discovery conferences?

No.

What are your preferences regarding scheduling/discovery conference orders? Do you require that specific things be included in such orders?

We usually generate these orders internally and they are very specific as to discovery cut-off dates, witness/exhibit list exchange requirements, and pretrial filing and attendance requirements.

Protocol

What are your thoughts on courtroom protocol?

There are not enough lawyers who take the time to read and follow the Uniform Rules for the District Courts. Moreover, too many lawyers seem to believe that it is acceptable to engage in personal attacks against opposing counsel.

What things do lawyers do that are particularly helpful?

Among things that lawyers do that are helpful is maintain good communication with opposing counsel so as to narrow whatever issues need to be tried. It also helps when attorneys are well-prepared for trial. It is important for counsel to come to trial with appropriately marked exhibits and copies for opposing counsel, witnesses, and the court.

What things do lawyers do that are not helpful?

Some lawyers come to court poorly prepared and overly-combative. And, when lawyers fail to maintain good communication with each other, it is a disservice to their clients and the court and every other litigant who is waiting for their day in court. By way of example, too many times lawyers will make opening statements on the day of trial for an all-day trial and discover that there is little in dispute. This wastes valuable time on the court's schedule, which could be allocated to other litigants.

Lawyers who improperly interrupt opposing counsel, witnesses and/or the court are rude and often make getting an accurate transcription of the proceedings impossible.

Motions Practice

Do you require that submitted motions include a proposed order?

No, but this is a preferred practice.

Do you appreciate courtesy copies of briefs delivered to your chambers prior to hearing on a motion? If so, how early would you like them?

Generally, if briefs are filed in a timely manner, filing with the clerk is enough. However, if the case is novel or complex, provision of courtesy copies of briefs by email commensurate with the time of filing is appreciated.

Do you schedule hearings on motions automatically upon receiving a request for setting, or do you prefer to require that counsel call to schedule hearings?

Since the docket is crowded, motions that can be determined without a hearing may not be scheduled. Some motions are set without a call from counsel. If counsel wants a hearing, they should call the JA with available times for all counsel.

Under what circumstances do you decline to grant a request for oral argument?

Generally, these requests are dealt with on a case-by-case basis. If it appears that oral argument might be helpful to the court, these requests are granted. However, due to time constraints in this district if a motion can be decided without oral argument it might not be set for hearing.

Do you prefer that counsel provide copies of the relevant cases prior to a hearing?

If the case in question is not a Wyoming case, it is very helpful to have copies ready for the court and opposing counsel. If the case in question is a Wyoming case, the case citation is usually sufficient.

Is there anything about the way you handle requests for temporary restraining orders and preliminary injunctions that you think the bar should be aware of?

No. Refer to the governing law and the rules.

Final Pretrial Conference

In your view, what is the purpose of a final pretrial conference?

It is to make sure that the parties are, in fact, ready for trial, that the time allocated for trial is appropriate, and so that counsel has a good understanding of how the court conducts trials and the expectations that the court may have in each particular case. Also we attempt to deal with all motions, especially motions in limine, that can and should be properly disposed of well in advance of trial.

Do you have a specified format for pretrial statements? If so, please provide a copy.

In this district, the court's original scheduling order sets forth all of the pretrial statement requirements.

What steps do you take, if any, before the final pretrial conference to encourage settlement of the case? Do you require mediation?

Generally, the most that we do is we try to stay in touch with counsel to determine whether there is any realistic chance of settlement. Generally, we do not require mediation unless a party makes the proper request.

Jury Trial Practice

How is voir dire conducted in your courtroom?

On one side of the courtroom we seat a sufficient number of jurors to equal the number of jurors and alternates required and the requisite number of preemptory challenges. The attorneys inquire of those people and the balance of the potential jurors sit on the other side of the courtroom. If a juror is excused for cause, a new juror is moved to that seat and voir dire continues. After each side passes the panel for cause, counsel, the parties, and the court complete the

preemptory challenge phase of the process. The jurors and alternate(s) are then seated.

Do you encourage the use of jury questionnaires?

We do not use jury questionnaires as a general rule. However, in certain complex cases they can be helpful.

What is your due date for proposed jury questionnaires?

Final jury questionnaires must be distributed to potential jurors by the clerk's office not later than 30 days prior to the commencement of trial. This is the minimum time necessary for the clerk's office to handle the logistical issues associated with the mailing and return of questionnaires. Any requests for jury questionnaire must be made early in the case.

What do you prefer in regard to the length of the jury questionnaire?

Our view is that shorter is better. Anything more than 8-10 questions is unnecessary in all but the most complex case, such as a capital/death penalty case.

When do you require requested jury instructions to be submitted?

For most civil trials, our scheduling orders require that jury instructions be submitted not later than 30 days prior to pretrial. In criminal cases jury instructions are due at pretrial.

What form do you prefer requested jury instructions to take?

We usually require the filing of two sets of jury instructions, one with case citations and one clean copy. We also require these filings by hard copy and email, MS Word preferred.

What is your view of the Wyoming Pattern Jury Instructions?

For the most part they are good and even when they need revision the compilation is instructive. As with anything else, there are times when "one size fits all" is not a truism.

Do you have a set of stock jury instructions that you use?

Yes, particularly in criminal cases. In all cases we have what could be viewed as a rather stock format for jury instructions which is then refined for each case.

Do you prefer to receive an electronic copy of requested jury instructions?

Yes.

Trial Procedures

What is your preferred trial schedule?

9:00	to	10:30
10:50	to	Noon
1:30	to	3:00
3:30	to	5:00

Depending on the type of case, trial schedules can start as early as 8:00 a.m.

What are your preferences with respect to motions in limine and other trial related motions?

The following language is taken directly from our standard scheduling order:

"Absent unforeseen circumstances, the Court will hear no *Motions in Limine*, or other motions that should have been scheduled prior to trial, on the morning of the commencement of trial, or at anytime during the course of the trial. Counsel should anticipate being ready to argue all pending motions at pre-trial."

What are your preferences and/or procedures related to witness scheduling?

In civil cases, we often employ trial time management orders in this district. Consequently, attorneys are expected to have their witnesses there and ready when needed. In the absence of some extraordinary showing, the time that a witness is unavailable or absent will be taxed to the party calling that witness.

What are your preferences with respect to trial exhibits? Do you allow/require the use of exhibit notebooks for the court and jurors?

In civil cases, our pretrial conferences often resolve most issues regarding exhibits. If exhibits are not objected to, they are admitted. We usually allow the use of exhibit notebooks upon request but do not require them.

Do you find the use of computer-assisted presentations effective and/or useful?

Electronic presentations can be effective in a given case and assuming that the equipment works and the operator knows what he or she is doing.

Do you permit "speaking objections" in jury trials?

They are improper, often confusing and should not be used.

Bench Trial Practice

What are the major differences in procedures in your courtroom between bench trials and jury trials?

In bench trials the court may often handle evidentiary questions more liberally.

Do you appreciate or require trial briefs or proposed findings of fact and conclusions of law from counsel?

In most cases these are unnecessary.

Do you prefer proposed findings of fact and conclusions of law be submitted before or after trial or both?

If a request for findings of fact and conclusions of law is properly made under the rule, we generally require filing after trial and on a fairly short deadline.

Thoughts on Effective Advocacy

What makes an effective advocate in jury arguments?

Usually, lawyers who are concise, prepared, and plain-speaking make the most points with jurors. Repetition, lack of preparation and/or haughtiness, are common practices that usually offend jurors.

What makes an effective advocate in bench trials?

Again, those who are concise, prepared, and plain-speaking and who outline the precise relief they request for their client usually get the best results.

What are the most common mistakes made in argument?

Repetitive and lengthy arguments usually serve only to offend judges and jurors and are among the most common mistakes made by lawyers.

What are some techniques that do, or do not, work effectively in the examination of witnesses?

Ask the 6 most important questions and sit down. If you don't know the answer, don't ask the question.

Criminal Matters

How do you handle requests for continuance on pretrials, arraignments and trials?

Requests for continuances are usually dealt with on a case-by-case basis.

When may the issue of bail best be addressed in your courtroom?

While it is proper to re-visit bail at arraignment in district court, the better practice is to move for bail modification and provide proper notice to the State so that all parties have the opportunity to be well-prepared.

What information do you want from counsel at the time of sentencing?

Attorneys in criminal cases usually come well-prepared for sentencing. However, if restitution is due, it is important for the court to have all of that information at the time of sentencing. Objections by the defense to restitution reported in the PSI should be conveyed to the State prior to sentencing.

Are private pre-sentence evaluations useful or encouraged?

No.

Do you have any standard sentences the bar should be advised about.

No.

Special Issues for Domestic Cases

Are there any special issues that arise in your courtroom in domestic cases of which you would like the bar to be aware?

Attorneys should follow the case management orders. Failure to do so will probably cause the court to limit the evidence that a party is permitted to present at trial. Parties should come to court with one, joint property/debt exhibit for use by the court.

What do you want to have on temporary order issues?

Settle them. If there must be a hearing on such matters, counsel should be prepared to address all issues in 2 or less hours.

Do you have a policy on child interviews with respect to custody?

In appropriate circumstances we will consider conducting child interviews. However, at all times we look to the best interests of the child. In making that assessment, we consider the age of the child, his or her degree of maturity, the purpose behind the interview, and whether the benefits of the interview will outweigh the stress and angst the child might suffer as a result of being placed before the tribunal. In the absence of a clear showing of necessity, we rarely interview children under the age of 13 because we believe it to be too stressful on children of such tender years and, in most cases, of little benefit in terms of the ultimate determination to be made by the court.

When do you require guardians ad litem?

Appointment of GALs is addressed on a case-by-case basis.

What do you expect from a guardian ad litem?

Our preferred practice is to see if the parties will agree to have the GAL submit a report prior to trial. In many cases this at the very least narrows the issues to come before the court. We prefer that

GALs make specific recommendations, as opposed to providing only a factual recitation.

Discovery Practices

What is your approach to resolving discovery disputes?

Again, these are handled on a case-by-case basis. Usually, we attempt to resolve these via a conference call with counsel. If that cannot be accomplished, we schedule a hearing.

What are your thoughts on imposing sanctions for discovery abuses?

Sanctions are often appropriate.

Are you generally available to solve problems that arise during a deposition?

No. More often than not our schedules will not allow immediate intervention in deposition/discovery disputes.

Thoughts on Courtroom Protocol

Is lack of civility a recurring problem in your courtroom?

There are occasional but not recurring problems with civility in our district.

What steps do you take to improve civility in your courtroom?

We try to remind lawyers of the governing rules. We often stop ad hominem attacks.

What do you expect of lawyers (and their staff) in your courtroom? Clients? Witnesses?

Of lawyers and staff, we expect professionalism at all time and in all measures. Clients should behave and we expect "client control" from the attorney representing that client. Witnesses should be respectful and attentive.

Do you impose any limitations on courtroom movement (approaching witness, podium, etc.)?

Yes. We expect lawyers to follow the rules.

What kind of lawyer conduct is unacceptable to you in your courtroom?

Unacceptable conduct is the saying or doing of anything that is rude, unprofessional, or that denigrates the practice of law or the court as an institution.

Other Miscellaneous Issues

What are your opinions regarding courtroom dress?

Lawyers should come to court looking like they have a level of professional self-respect as well as respect for the court as an institution.

Do you allow children in your courtroom?

We generally do not like children in the courtroom except for adoption cases where the child's presence is statutorily required.

Do you allow cell phones in your courtroom?

Cellular telephones must be turned off in our courtrooms. We do not allow the employment of cell phones, or anything that can be used for audio or video recording of court proceedings.

What, if anything, do you do to enforce promptness in your courtroom?

This is a very busy district. Oftentimes, lawyers are tied up in another courtroom with another judge and so we must show some flexibility. However, if it appears that a lawyer is perpetually late as a practice we have sent letters reminding counsel that they must present themselves to the tribunal on time.

Judicial Assistant's Comments

(Sally Musgrave is Judge Price's JA. Janene Werkele is Judge Perry's JA. J-Ann Cooper is Judge Deegan's JA.)

What do you expect of attorneys in their dealings with you?

Attorneys should understand that we are dealing with many more cases than just theirs.

Settling trials either the morning of or the day before trial, although appreciated, can wreak havoc on the court's calendar. There is a constant need for time to set numerous criminal and juvenile hearings and last minute settlements just do not give us sufficient time to accommodate this need.

What do you expect of attorneys in regarding to scheduling hearings?

Lawyers should understand that our calendars are so full we are not able to accommodate to their calendars and wishes all of the time. There are occasions that the date and time we have to offer for a given hearing is literally the only time we have available.

What is your protocol for scheduling hearings?

J-Ann – I call everyone to schedule everything.

Sally and Janene – If it is a hearing that is going to be scheduled soon we will call to schedule these matters with counsel. If the hearing is set several weeks or months out on the calendar a notice is sent out.

What can attorneys do to improve communications with you?

Please return phone calls (only a problem w/ a few attorneys). Understand how full all three calendars are, and again remember that we are working with a very high volume of cases and requests for settings.

What would you like attorneys to keep in mind?

- 1. The calendars in this district are very full. More often than not, it is not possible to schedule hearings on short notice.**
- 2. Review and proofread orders before filing.**
- 3. When filing something that needs to be seen by the court immediately, please either bring it directly to us or inform the clerk's office that the document needs to be transmitted to our office at once. It sometimes can take 3 or 4 or even more days for a document to be transmitted to our office from the clerk's office in the normal course of business.**

4. We very much prefer it if plea agreements are signed and filed before a change of plea hearing so that we are not required to copy and distribute copies immediately before the hearing.
5. It is helpful to the court if the attorneys make sure all necessary reports and other documents are filed, and distributed to the appropriate parties in advance of a hearing. Last minute distribution of multidisciplinary team minutes, social summaries, psychological/psychiatric reports, substance abuse assessments, and the like, often cause delays in hearing start times and put the court behind schedule.
6. If hearings are scheduled back to back, one attorney who arrives late can put the court and, at times, all three judges, behind for the rest of the day. By way of example, Attorney A is late for a hearing in front of Judge Deegan. Attorney B, who is also in the hearing with Judge Deegan, is now late for a hearing in front of Judge Perry, causing Judge Perry to run late the rest of the day. This makes our job as judicial assistants very complicated because we then have to try to coordinate attorneys, parties, and witnesses for a schedule that no longer jibes with their notice of setting. In other words, show respect for all concerned and be on time!
7. Please get orders done and filed as required by the rules.

What size paper does your judge prefer for pleadings and briefs?

J-Ann – Judge Deegan prefers legal.

Sally & Janene – Judges Price and Perry have no preference unless there is a governing rule, such as W.R.A.P. 7.05(b)(1).