Wyoming Judges' Benchbook

Name: Thomas W. Rumpke

Court: District Court

Judicial District: Sixth Judicial District (6A)

SCHEDULING CONFERENCES

Q. **How are scheduling conferences set and used in your court? Are they conducted by you? When done by telephone, are the attorneys responsible for setting up a conference call or does your office have enough lines to allow attorneys to call in? If yes, how many lines are available?**

A. Generally, we conduct scheduling conferences in chambers. The court sets a pretrial conference once the last responsive pleading is filed. We require counsel to appear in person, unless the court has granted permission in writing to appear by telephone. If multiple parties wish to appear by telephone, the court will utilize the "meet-me-line" which can accommodate 35 participants. If only one party seeks to appear by phone, the attorney is responsible for calling the court.

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

A. This depends on the type of case. In all cases, we expect the parties to comply with the court's orders and Wyo. R. Civ. P. 16 and 26 prior to the conference regarding exchange of basic information.

In civil cases, we expect the parties to have discussed the time needed for discovery and length of trial. To facilitate this process, we require the parties to complete a Joint Report of Meeting and Proposed Joint Discovery and Case Management Plan. We expect the attorneys to have their calendars available so the court can set a trial date at the initial scheduling conference based upon how long the attorneys anticipate discovery taking and the availability of the parties and the court in light of the length of the particular trial.

In domestic relations cases, the case requirements order requires the parties to exchange all information required under Wyo. R. Civ. P. 26(a)(1.1) and the financial information required under Wyo. Stat. Ann. § 20-2-308. As with civil cases, we expect the parties to discuss all necessary deadlines including, but not limited to, expert designations, discovery cutoff, as well as pre-trial and trial dates. Consequently, we expect the parties to have an estimate of the length of the trial and to have their calendars available so the court can set the matter for trial consistent with the anticipated length of the discovery period, the length of trial, and court's calendar.

The initial order setting the pretrial conference, along with the Joint Report of Meeting and Proposed Joint Discovery and Case Management Plan, for civil cases is available on the district court page on the Wyoming courts' website. The case requirements orders for domestic cases (divorces and modifications) are also available on that page.

Q. **Do you use multiple scheduling conferences? Why?**

A. Generally, we do not use multiple scheduling conferences unless a case is particularly complex or involves a request for an extended trial time (i.e., 10+ trial days). Generally, multiple scheduling conferences are not necessary since all deadlines are set at the initial scheduling conference. We will conduct additional scheduling conferences upon the request of the parties.

Q. **Do you use court-directed discovery conferences?**

A. Generally, we do not conduct "court-directed discovery conferences."

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

A. Generally, the court prepares the pretrial order following the initial scheduling conference, which includes the necessary deadlines and procedures for the parties. A copy of the form scheduling order following the initial pretrial conference is available through the district court page on the Wyoming courts' website. There are different form orders for civil and domestic relations cases.

PROTOCOL

Q. **What are your thoughts on courtroom protocol?**

A. First, be on time. It is not uncommon for the court to have twelve or more settings in a given day. Arriving late, or arriving right when a hearing is scheduled to begin and then discussing preliminary matters with opposing counsel when the hearing should be occurring, causes a waste of all the parties' most valuable resource, i.e. time.

Second, the parties, and counsel, should conduct themselves in a polite, civil manner. *See* Wyo. Unif. Dist. Ct. R. 801. All arguments should be addressed to the court, not opposing counsel. Please speak clearly, as I have all matters reported by my court reporter.

Finally, counsel should familiarize themselves with the applicable evidentiary and procedural rules so as to provide the court a clear, concise basis for objections within a given hearing.

Q. **What things do lawyers do that are particularly helpful?**

A. Organization. Organizing any case is vital. It is particularly helpful when attorneys organize their evidence presentation according to the particular issues that are going to be tried.

Pretrial memoranda. A *succinct* memoranda that address the particular issues, as well as providing a summary of the relevant evidence on a given issue, are helpful to the court. By notifying the court which witness will testify regarding which issue helps the court properly focus on the testimony. In addition, citation to applicable case law relevant to a particular issue,

especially issues involving multi-factor tests, are helpful. A well-organized, succinct pretrial memorandum can serve as the roadmap for the ultimate decision reached by the court.

Exhibit notebooks. For trials, exhibit notebooks are helpful. Not only can many foundational issues be resolved by stipulations of the parties before a hearing, but also a well-organized exhibit notebook helps the court follow along. Finally, a well-organized exhibit notebook also assists the court to address quickly any objections that may arise regarding parts of an exhibit in a bench or jury trial.

Q. **What things do lawyers do that are not helpful?**

A. Failing to identify the "deep" issue. By identifying the deep issue in a particular hearing, the finder of fact knows what he/she/they should be listening for during testimony.

Lack of organization. Bouncing around from topic to topic with a single witness, or calling a witness on an issue and then calling another witness on the same issue three witnesses later, makes it difficult for the finder of fact to synthesize all the testimony.

Repetition. Having multiple witnesses testify as to the same essential facts is not necessarily helpful, especially when the testimony is general opinion-type testimony. Additionally, asking a single witness the same question in multiple ways is not helpful.

MOTIONS PRACTICE

Q. **Do you require that submitted motions include a proposed order?**

A. Generally, yes. Proposed orders should reflect an accurate representation of the facts as well as proper statement of the law and how the law applies to the facts.

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

A. Yes. A paper courtesy copy sufficiently in advance of the hearing is helpful.

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

A. Not "automatically." If the court receives a proper request for a hearing, the court will set the matter for a hearing. Otherwise, the court will wait the required time under Wyo. R. Civ. P. 6 and decide the matter. An appropriate request for setting should include places for the court to fill-in a date and time for the hearing, as well as an estimated length of the hearing.

Counsel must consult with one another whenever a hearing is requested. First, there is the possibility that the matter can be resolved. Second, the parties can discuss how long the hearing will take. Without talking to the other side, an attorney may estimate a hearing will take 30 minutes, whereas opposing counsel may have five witnesses and need an hour for their side alone. If the matter is set for 30 minutes, the setting may have to be vacated to provide the other side additional time to present their opposition. Finally, conferring with counsel will allow the moving party to present an accurate picture to the court as to when the hearing can

reasonably be set. Requesting a setting with "available" dates without conferring with opposing counsel almost ensures a scheduling conflict with whatever date the court sets the hearing.

With regard to "emergency" and "ex parte" motions, under the Wyoming Code of Judicial Conduct, particularly Canon 3(B)(6), courts have an obligation to allow parties to be heard on any pending matter. That includes a meaningful opportunity to be heard. Therefore, "ex parte" and "emergency" motions are disfavored.

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

A. Generally, upon a request for a hearing, the court will grant a hearing. When the issues and facts appear undisputed such that oral argument will not significantly assist the court in making a decision, a request for a hearing may be denied. In any case where the final rights of a party will be determined, the court will conduct a hearing.

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

A. Copies of the actual cases are not necessary, but citations to pertinent authority are required. Additionally, pinpoint citations are helpful. Although Bluebook format is not required, parties should provide a citation that the court can use to locate a case. The court uses the Wyoming Supreme Court website and Westlaw and WestlawNext for locating cases. Therefore, providing a LEXIS/NEXIS cite is not particularly helpful.

Q. **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?**

A. No. We follow the rules of civil procedure, Title 1, and all other applicable law.

FINAL PRETRIAL CONFERENCE

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

A. The purpose of the final pretrial conference is to narrow the issues before the court, address all evidentiary issues that can be addressed prior to trial, and to provide the court a clear, concise roadmap as to how the trial will proceed (including the length of the trial). If these goals are accomplished, the court and the parties should be ready for trial on the assigned trial date.

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

A. At the initial pretrial conference, we consult with the attorneys to determine if a final joint pretrial memorandum can be utilized in a given case. The joint final pretrial memorandum form is available on the district court page on the Wyoming courts' website.

If the parties cannot prepare a joint final pretrial memorandum, or the case simply does not lend itself to the use of that format, we do not have a specific format that is required. The initial scheduling order includes a description of all the information that must be included in a final pretrial memorandum.

The parties should bring their exhibit notebooks to the final pretrial conference. Although many objections to exhibits cannot be resolved prior to trial, it is nearly impossible to resolve objections to exhibits when the exhibits are not present for the final pretrial conference.

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

A. We have not required mediation, except as required by court rule. In more complex cases (scheduled for longer trials), we will contact counsel in advance of the pretrial conference to determine if settlement is a possibility.

JURY TRIAL PRACTICE

Jury Selection:

Q. **How is voir dire conducted in your courtroom?**

A. Generally, we permit the attorney's to conduct voir dire. The court will establish basic qualifications and ensure that none of the jurors know the parties or the attorneys. In sexual assault cases, the court may make general inquiry on issue of sexual assault.

Physically, prospective jurors are brought into the courtroom. The number of jurors necessary for a given case (i.e., six or twelve, plus alternates, and peremptory challenges) are seated on one side of the courtroom and the remaining prospective jurors are seated on the opposite side of the courtroom. As prospective jurors are eliminated for cause, the next prospective juror on the list is called and asked to sit in the excused juror's seat.

Once both sides have passed the venire for cause, the court allows the parties to exercise their peremptory challenges and the remaining jurors are called to the jury box to be sworn and serve on the jury. We usually excuse the venire for a restroom break and receive peremptory challenges in the courtroom outside the presence of the venire.

Q. **Do you allow or encourage the use of jury questionnaires?**

A. We generally do not utilize juror questionnaires, but will consider any request to do so on a case-by-case basis.

Q. **What is your due date for proposed jury questionnaires?**

A. We do not have a firm deadline as we generally do not use questionnaires. If a party is requesting a questionnaire, it should be submitted in time so that it can be sent to prospective jurors at least 30 days before trial.

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

A. The shorter a questionnaire, the better the questionnaire. Questionnaires should be no more than eight to 10 questions.

Requested Jury Instructions:

Q. **When do you require requested jury instructions to be submitted?**

A. We require proposed jury instructions be submitted with the party's final pretrial memorandum. The final pretrial memoranda are due 14 days before the final pretrial conference, which is generally about 30 days prior to trial.

Q. **What form do you prefer requested jury instructions to take (e.g. do you prefer jury instructions accompanied by supporting cases, etc.)?**

A. All proposed jury instructions should be submitted with citation to pertinent authority that support the instruction, either case law or pattern jury instruction citation. In civil cases, I also require that parties provide a "clean" set of jury instructions in an electronic format without citation to pertinent authority.

Q. **What is your view of the Wyoming Pattern Jury Instructions?**

A. Generally, the pattern instructions are appropriate. However, each instruction must be tailored to the particular facts of the case before the court.

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

A. Yes. The court generally uses the Wyoming pattern instructions in both criminal and civil cases.

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

A. Yes.

Trial Procedures:

Q. **What is your preferred trial schedule (e.g. 9 to 5 with an hour for lunch, 8 to 2 with no lunch, etc.)?**

A. Generally, on the first day of trial, I require counsel to be at chambers by 8:30 a.m. to address any issues that can be resolved before the venire is seated. Thereafter, I prefer the following trial schedule. The court will begin trial days as early as 8:30 a.m. if necessary.

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

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

A. The court's initial scheduling order addresses these issues. All pretrial motions, including *Daubert* motions, have a deadline. Motions in limine must be filed with the party's pretrial memorandum and will be heard at the final pretrial conference. If motions are not filed in accordance with the court's scheduling order, that party risks the motion not being considered by the court.

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

A. We do not have a preference. It is the parties' responsibility to ensure that their witnesses are ready and available to testify at the point in time they wish to call them as witnesses. If parties wish to call witnesses out of order, it is up to the parties to come to an agreement. Otherwise, the court will require parties to present their case during the time allotted for their presentation.

As far as trial time management is concerned, we ask the parties at the initial scheduling conference if they need a clock. If a clock is requested, the court will enforce this provision and allow each party a certain number of hours to present their case/defense.

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

A. We do not require exhibit notebooks, but, as explained above, they are generally invaluable in a case involving a significant number of exhibits. Exhibit notebooks should be ready and available by the time of the final pretrial conference since motions in limine are heard at that time.

Q. **Do you find the use of computer-assisted presentations (e.g. PowerPoint) effective and/or useful?**

A. Depends on the case and the presentation. Although a picture may be worth a thousand words, sometimes, less is more.

Q. **Do you permit "speaking objections" in jury trials?**

A. No. An objection should be stated as "Your Honor, I object," or "Judge, I object." A one or two-word basis, such as "hearsay" or "best evidence" may be spoken from counsel's table. If anything more than a single word or phrase is necessary to express an objection, counsel should state that they object and ask to approach the bench.

BENCH TRIAL PRACTICE

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

A. Very few other than those procedures involving the jury are not utilized. Counsel may state their objections from counsel's table without the need for a bench conference.

Q. **Do you appreciate or require trial briefs or proposed findings of fact and conclusions of law from counsel? Do you prefer proposed findings of fact and conclusions of law be submitted before or after trial or both?**

A. Succinct trial briefs that focus the court's attention to the real issues are helpful. If a party seeks findings of facts and conclusions of law, then the court will require that both parties submit proposed findings of fact and conclusions of law. Often, the court will do its own written findings of fact and conclusions of law.

THOUGHTS ON EFFECTIVE ADVOCACY

Q. **What makes an effective advocate in jury arguments?**

A. Organization and preparation are most important because these qualities lead to a concise argument. Cases are often won, or lost, before entering the courtroom. When an argument is concise, it follows the contours of the law and the decision seems almost self-evident.

Q. **What makes an effective advocate in bench arguments?**

A. The same as with a jury.

Q. What are the most common mistakes made in argument?

A. Promising to prove a fact that the party cannot prove and repetition. Claims and defenses have elements. In a trial, each party has a story. Promising the trier of fact that you will prove element number one and failing to do so is not remedied by repeating over and over how you have proven element number two. Likewise, telling the end of your story over and over does not help explain why the middle was missing.

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

A. Short, concise questions always work best. If a question has the word "or" in it, it is probably a compound question and the answer will not really tell the trier of fact anything.

Additionally, limiting the number of questions for each witness. A good advocate puts together a jigsaw puzzle for the finder of fact. Not every witness provides testimony that supports every element of a claim or defense. Ask the five or ten most important questions of each witness and sit down. Do not dilute a witnesses' testimony by asking him/her about things they may or may not know about.

CRIMINAL MATTERS

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

A. We handle these on a case-by-case basis. Continuances are disfavored.

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

A. The court will address the issue of bail at the arraignment. In addition, the court will address any motion for a reduction or revocation of bail that is filed with the court.

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

A. 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.

Additionally, if a defendant will be arguing for a split-sentence, it is important that the court have the Sheriff's position on whether he will accept the defendant on a split-sentence.

Q. **Are private pre-sentence evaluations useful or encouraged?**

A. No.

Q. **Do you have any standard sentences the bar should be advised about (i.e. DUI sentencings, acceptance of alcohol-related reckless)?**

A. No.

SPECIAL ISSUES FOR DOMESTIC CASES

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

A. Each case presents its own unique issues. Generally, following the scheduling order is sufficient. If a party wants to have a therapist or a counselor testify as to his/her opinion about a child's current situation, that opinion needs to be disclosed prior to trial.

Q. **What do you want to have on temporary order issues?**

A. Temporary motions should be settled. If they cannot be settled, they need to be tried in less than two hours.

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

A. We do not have a policy. If the parties agree, the court will generally conduct a reported, in-chambers interview based upon written questions submitted by the attorneys before the hearing. Attorneys are present, parents are not. We allow follow-up questions prepared by counsel based upon the answers, if requested. This system seems to work well. However, so long as a child witness is competent, the court must hear the testimony.

Q. **When do you require guardians ad litem? What do you expect from a guardian ad litem?**

A. Whether to appoint a GAL is decided on a case-by-case basis. If a GAL is appointed, 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

Q. **What is your approach to resolving discovery disputes?**

A. Discovery disputes are handled on a case-by-case basis. The initial scheduling order notifies the parties that discovery disputes may be resolved by the court upon motions, without a hearing, unless the court deems a hearing is necessary.

Q. **What are your thoughts on imposing sanctions for discovery abuses?**

A. Sanctions are determined on a case-by-case basis.

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

A. Yes.

THOUGHTS ON COURTROOM PROTOCOL

Q. **Is lack of civility a recurring problem in your courtroom? What steps do you take to improve civility in your courtroom?**

A. Generally, this is not a problem. When this becomes an issue, we usually remind counsel to direct their arguments to the court, not at opposing counsel.

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

A. All persons in the courtroom should act with civility and professionalism. Attorneys shall be prepared for the hearing and shall comport with all applicable court rules, including Uniform District Court Rule 801. Staff should not address the court unless the court has specifically asked staff for information.

Clients and witnesses should act civilly and should not address one another or opposing counsel.

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

A. Yes. Counsel should stand at counsel's table and speak clearly when making objections. When examining a witness, counsel should stand at the podium. Wandering around the courtroom while questioning a witness usually leads to wandering questions.

If counsel wishes to approach the bench or a witness, they must ask for permission to do so.

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

A. If your mother, father, or spiritual advisor would not approve of it, the court probably will not either.

OTHER MISCELLANEOUS ISSUES

Q. **What are your opinions regarding courtroom dress?**

A. Attorneys, staff, clients, and witnesses should dress appropriately.

Q. Do you allow children in your courtroom?

A. Yes.

Q. **Do you allow cell phones in your courtroom?**

A. Yes, but they must be turned to silent or vibrate such that they will not disrupt any hearing taking place in the courtroom.

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

A. Try to start every hearing on time. If you show up late, it does nothing but harm and limit your case.