

Wyoming Judges' Benchbook

Name: Marv Tyler

Court: Sublette District Court

Judicial District: Ninth (Revised 4-2013)

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. Scheduling conferences are set either at the request of the attorneys or on the Court's own motion to take place usually by telephone conference call. The Plaintiff will usually initiate a conference call to the Court. Scheduling Conferences are conducted by the Judicial Assistant and/or Law Clerk. There is only one phone line available.

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

A. We expect that the attorneys conduct themselves in a polite and professional manner with their calendars available and to work together to agree on case scheduling. The attorneys are required to certify that they are in compliance with Rule 26 of the Wyoming Rules of Civil Procedure or explain modification of disclosure deadlines. The scheduling contemplates a means "to secure the just, speedy, and inexpensive determination of every action." They are also expected to be realistic as to deadlines and trial time.

Q. Do you use multiple scheduling conferences? Why?

A. Usually just one scheduling conference will take place; however, in some cases more than one may be necessary. In complex cases, or where the original schedule has been modified by Court Order, there may be more than one scheduling conference. Also, in complex cases, the case may be scheduled in phases – especially in anticipation of numerous motions and motion hearings.

Q. Do you use court-directed discovery conferences?

A. Only as requested by one of the parties (Per Rule 26(f)). We have held court-directed discovery conferences when the attorneys could not cooperate in conducting discovery and court intervention was needed to direct the course and scope of discovery.

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

A. The Court usually prepares a Scheduling Order or Discovery Conference Order. The Court's case requirements are included in Scheduling Orders. The Court will most often enter a separate Case Requirements Order prior to a scheduling conference so that the parties know of this Court's expectations and procedures.

PROTOCOL

Q. What are your thoughts on courtroom protocol?

A. Usually included in all Court-prepared Orders are this Court's expectations:

- Counsel are reminded that they are expected to conduct themselves in accordance with the Rules of Professional Conduct for Attorneys at Law, applicable Wyoming law, the Wyoming Rules of Civil Procedure, and the Uniform Rules for District Courts. In particular, the Court expects compliance with Rule 801 of the Uniform Rules for District Courts.
- STRICT COMPLIANCE WITH THE AMENDED COURT SECURITY ORDER IS EXPECTED OF ALL COUNSEL, ALL PARTIES, WITNESSES, AND OTHERS WITH WHOM COUNSEL HAVE ASSOCIATION OR RESPONSIBILITY AND/OR OVER WHOM COUNSEL HAVE THE ABILITY TO CONTROL.
- OPPOSING COUNSEL, EACH PARTY, AND EVERY WITNESS SHALL BE TREATED WITH COURTESY.

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

A. Come to a Court proceeding prepared, on time, and conduct themselves as professionals. It is particularly helpful when the lawyers have knowledge of the substantive law, rules of procedure, rules of evidence, and they are familiar with this Court's orders (as to this Court's expectations and procedures). It is helpful for lawyers to send a proposed order or other document that alerts the judge that something needs to be addressed by the judge. Lawyers who confer with opposing lawyers/unrepresented parties and who meaningfully attempt to resolve issues before involving the Court, and failing that, reporting the other party's position in a motion, is most helpful.

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

A. Fail to provide requirements in a timely manner; be late; be unprepared; or fail to confer, cooperate, and/or communicate with opposing counsel/unrepresented parties before involving the Court.

MOTIONS PRACTICE

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

A. Yes. Also, "Any motions to be heard shall be accompanied by separate request setting hearing on such motion together with an order scheduling the matter for hearing."

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

A. Yes. A copy should be provided when served on opposing parties. Electronic submission of briefs and Rule 56.1 statements should be provided in Word or WordPerfect format.

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. If a hearing is requested, a blank order setting the hearing is expected. The Court will then schedule the time and place for the hearing, as well as the manner (e.g., telephone conference, video conference, personal appearance, etc.). It is helpful if the movant indicates in the motion what the opposing party's position may be (e.g., if no objection to the motion, a hearing is not necessary.)

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

A. Generally only on discovery disputes. We try to rule on discovery disputes upon written submissions within ten (10) days.

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

A. No, unless such authority is non-published.

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. We do not have any special procedures developed for temporary restraining orders. If possible, we will schedule a preliminary injunction hearing very quickly and the parties should be prepared to proceed, since it is unlikely that such a hearing will be rescheduled as quickly as contemplated by Rule 65.

FINAL PRETRIAL CONFERENCE

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

A. Final pretrial conferences are required for jury trials. Final pretrial conferences are not required in bench trials or hearings unless specifically requested by the Court or the parties. In final pretrial

conferences we essentially cover everything in Rule 16(a) and (c). We prefer to have everything covered that may be anticipated so as to avoid hearings and significant disputes on issues during trial.

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

A. Yes. Attached are sample Case Requirement Orders and sample Scheduling Orders which contain this information.

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

A. Our Case Requirements Orders and Scheduling Orders contain a provision matching Rule 40(b). We require a statement as to settlement in the pretrial conference filings. We usually do not require mediation, unless requested by a party pursuant to Rule 40(b).

JURY TRIAL PRACTICE

Jury Selection:

Q. How is voir dire conducted in your courtroom?

A. The attorneys conduct voir dire in accordance with Rule 47. We have different ways for jury selection: (1) we seat each potential juror in the gallery according to a seating chart derived from the random juror numbers assigned by the Secretary of State; (2) We seat each potential juror in the gallery after drawing each name; or (3) We seat different panels in the jury box and voir dire is conducted on each panel. We usually allow input into the decision by attorneys at the pretrial conference.

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

A. Yes. At the pretrial conference, the attorneys are asked if they want special questionnaires to be submitted and we discuss how they are served and who pays the costs.

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

A. We would want these available to serve the jurors at least one month before trial.

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

A. No preference, but we reserve the right to determine this on a case-by-case basis.

Requested Jury Instructions:

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

A. All instructions and verdict forms are submitted to Judge Tyler electronically in Word or WordPerfect format. They are NOT to be filed. We require an instruction index and contention instructions be submitted at the final pretrial conference. Final jury instructions and verdict form are usually due at least ten (10) 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 instructions and verdict forms are submitted to Judge Tyler electronically in Word or WordPerfect format. We prefer instructions with citation to pattern instruction numbers or cases, along with a set without citations.

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

A. We believe that most of them are adequate, and use them in preference to other sources.

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

A. We default to Wyoming Pattern Jury Instructions. We have modified the instructions before opening statement and the instruction before closing argument.

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

A. Always, along with an electronic instruction index.

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. Nine to five with a 15 minute break around 10:15 a.m., lunch from 12:00 - 1:15, a 15 minute break at 3:15, end at 4:15-4:45 p.m. After the jury leaves for the evening, we have an exhibit conference and address any remaining issues each day.

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

A. They must be filed and heard, or set for hearing, before the final pretrial conference. No motions which could be anticipated in advance of trial will be heard during trial.

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

A. We have no special preferences or procedures. At times, we will require that the attorneys submit (and live by) a trial budget in which limits for direct, cross-examination, and redirect are imposed by agreement. Counsel are expected to provide opposing counsel their anticipated order of calling witnesses.

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 prefer that permission be obtained before publishing an exhibit. While the exhibit is being published, no other activity will occur. We prefer that the Court and each juror receive a copy of each exhibit or that an exhibit be published electronically or by enlargement. We require use of exhibit notebooks.

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

A. This is highly dependent on the quality of the presentation, the type of case, and the ability of the operator. We've seen some extremely effective presentations and others that probably damaged a party's case.

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

A. No! Occasionally, we will have a bench conference.

BENCH TRIAL PRACTICE

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

A. There are no real differences in procedures.

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. These are not required. Occasionally, they may be requested after trial. They are always welcomed, however.

THOUGHTS ON EFFECTIVE ADVOCACY

Q. What makes an effective advocate in jury arguments?

A. Keeping the argument on point and succinct. Since people learn in different ways, use of demonstrative aids, exhibits, blow-ups, computer presentations mixed with effective oral argument helps significantly.

Q. What makes an effective advocate in bench arguments?

A. Keeping the argument on point, succinct, and directly (and truthfully) answer the Judge's questions. If you don't know the answer, admit it - it's better than "bluffing".

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

A. Failing to clearly state what the client wants the jury or Judge to decide and the reasons why the decision should be made that way. There are tendencies to argue too long and wander off point. Arguing in a manner which causes a loss of credibility is a serious mistake.

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

A. Techniques that should be employed begin with an outline of what the attorney intends to elicit from the witness and how this expected testimony relates to an essential element of the case. Conduct the examination in a professional and succinct manner. Except in rare instances, sarcasm, argumentative questions, and emotionally charged attacks should be avoided. Examine the witness so that the jury or Judge can assess the witnesses' credibility - not the attorney's credibility.

CRIMINAL MATTERS

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

A. For good cause they may be granted. We take into consideration the Defendant's right to a speedy trial when making decisions on continuances. Our view is that once we establish key dates and deadlines, they will rarely be changed.

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

A. These requests may be raised at any time. They are usually mentioned at arraignment or initial probation revocation hearing. We issue a Bond and Release Conditions order at arraignments or initial hearings.

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

A. Their recommendation for sentence, the reasons, witness and victim statements, information on pre-sentence incarceration, restitution information, public defender reimbursement, when execution of sentence will occur, and probation terms (if recommended).

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

A. We have had very little experience with these, except for substance/alcohol evaluations or sexual abuse evaluations. These have been helpful and usually redound to the defendant's benefit if obtained early and the defendant is complying with any follow-up recommendations.

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

A. In crimes where profit is a motivating factor (e.g., drug manufacturing and delivery, theft, etc.), I usually include a fine as part of a sentence or as part of a plea agreement. In cases involving enhanced penalties, I usually consider a minimum and maximum sentence.

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. We have special requirements for information to be provided at various times on such cases, but nothing in the way of special issues arise in the courtroom.

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

A. As much specificity as to what is being requested and detailed reasons supporting the request.

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

A. No. Input from a child as to the child's wishes is always a factor.

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

A. In contested domestic matters that involve children, we prefer appointment of a GAL. I expect the guardian *ad litem* to represent the best interests of the child before this Court. The guardian *ad litem* shall be an officer of the Court, shall be an attorney for the minor whom they are appointed to serve, and shall assist the Court in reaching a decision as to a party that shall be awarded temporary and/or permanent legal custody of said minor child. The guardian *ad litem* has the same ethical responsibilities in proceedings as any other attorney. The guardian *ad litem* shall have full right and authority to completely investigate all aspects of the case and to interview all parties and other persons with an interest in the custody, visitation, maintenance and/or education of a minor child upon request by the guardian *ad litem* with reasonable notice.

DISCOVERY PRACTICES

Q. What is your approach to resolving discovery disputes?

A. Court will decide motions involving discovery disputes without a hearing (unless a hearing is specifically requested by the Court) upon the written submissions of the parties. Any response to a motion involving a discovery dispute shall be filed within ten (10) days (as computed by Rule 6(a) of the Wyoming Rules of Civil Procedure) of the filing of the motion. Replies to responses are not expected, but if necessary to address new matters raised in a response, a necessary reply shall be filed within three (3) days (as computed by Rule 6(a) of the Wyoming Rules of Civil Procedure) of the filing of the response.

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

A. The Rule usually mandates sanctions. I tend to have the philosophy that the intent of the Rule is to prevent discovery abuses from occurring, so if discovery abuse occurs, sanctions should be severe.

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

A. Yes. I prefer to be contacted during a deposition rather than deal with the problem weeks or months later.

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. Fortunately, this has not been a recurring problem. We address civility and professionalism in almost every order and those topics are raised in almost every hearing.

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

- A. Judges expect that persons appearing in court will be dressed appropriately and behave with dignity and civility.
1. Never bring weapons to court. Knives, guns and other dangerous items are PROHIBITED.
 2. In Court, wear long pants, or a dress, shoes, and an appropriate shirt without slogans or advertisements. Do not wear shower shoes, shorts, hat, or gang symbols. Do not wear “political cause” buttons or vulgar words on clothing.
 3. Speak loudly enough to be heard, but no shouting is allowed. If you have hearing problems or serious medical problems, tell the judge before the trial begins.
 4. Do not curse, use vulgar gestures, or call people insulting names.
 5. Be courteous to everyone.
 6. Stand when speaking to the judge or to a witness. You may use the podium.

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

A. Yes. Permission must be requested and obtained to leave the podium, approach a witness, approach the jury, or approach the bench.

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

A. A lawyer that lacks civility, lacks professionalism, fails to observe proper courtroom decorum, intentionally (or out of ignorance) violates rules of procedure or evidence, argues over a ruling or decision which has been made, or interrupts another person (including the judge) is unacceptable.

OTHER MISCELLANEOUS ISSUES

Q. What are your opinions regarding courtroom dress?

A. In Court, wear long pants, or a dress, shoes, and an appropriate shirt without slogans or advertisements. Do not wear shower shoes, shorts, hat, or gang symbols. Do not wear “political cause” buttons or vulgar words on clothing.

(a) The conduct, demeanor and dress of attorneys when present during any court proceeding shall reflect respect for the dignity and authority of the court, and the proceedings shall be maintained as an objective search for the applicable facts and the correct principles of law.

(b) The following suggestions are made, assuming that these suggestions make rules unnecessary:

- (1) Arguments, objections and remarks should be addressed to the court;
- (2) Counsel should stand when addressed by the judge or when speaking to the judge;
- (3) When examining a witness, counsel should stand at the lectern and not walk around the courtroom;
- (4) Counsel should obtain permission before coming to the bench; and
- (5) No one should eat, drink or smoke in the courtroom and no one should sit on the tables.

(c) Counsel should instruct clients and witnesses as to appropriate demeanor and dress.

Q. Do you allow children in your courtroom?

A. Yes, but only if necessary. Parties are encouraged not to bring children to court. If they come into the courtroom, they must be accompanied by a responsible adult and must be removed if disrupting proceedings.

Q. Do you allow cell phones in your courtroom?

A. No. Never!

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

A. It depends. Most times if someone is a few minutes late we will have them explain on the record the reason(s). In jury trials, I will comment on how much it costs per hour to run a jury trial and request everyone's promptness. I have an "informal" fifteen minute rule. If someone is more than fifteen minutes late, I'll sometimes move that matter to a later time in the day or another day.

CLERK'S/ADMINISTRATIVE ASSISTANT'S COMMENTS

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

A. I expect them to be polite, courteous, and professional.

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

A. If a hearing is requested, a blank order setting the hearing is required. I prefer that the order have blank lines to fill in the hearing date, time and location. I will then schedule the time and place for the hearing, as well as the manner (e.g., telephone conference, video conference, personal appearance, etc.).

Q. What is your protocol for scheduling hearings?

A. Determination of the type of case is first so I can schedule with regard to urgency. I will then consult the court's calendar and place the hearing appropriately for the designated amount of time.

Q. What can attorneys do to improve communications with you?

A. My preference is to receive an email at pinedaleJA@courts.state.wy.us. My primary use for an email is to save my communication so I am able to reference back if necessary. However, I am always available to be contacted by telephone or by mail.

Q. What would you like attorneys to keep in mind?

A. When attorneys make requests for continuances of hearings, I would like them to consider our case load and the limited availability for the court to reschedule. It is unacceptable to request dates from the Court's calendar. The Court endeavors to keep an orderly calendar and continuances, if not absolutely necessary and requested with good cause, will not be granted. Please do not ask for more time than is absolutely necessary to hear your issue or case.

Q. What size paper does your judge prefer or require for pleadings and briefs?

A. Legal-sized paper for pleadings. Briefs and jury instructions should be submitted on letter-sized paper.