

WYOMING JUDGES BENCHBOOK

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INTRODUCTION:

I do not have a detailed list of hard and fast rules covering the wide range of cases and controversies that come before the court. I am guided by the Constitution, Statutes, and Court Rules. Otherwise, I try to address each case based on its unique facts and circumstances. However, set forth below are my “top ten” requests that I would make to all lawyers. This is followed by the Wyoming State Bar Q&A.

Top Ten Requests:

- 1. Be Prepared.** There is nothing more obvious, and more frustrating to the court (and likely clients) than lawyers who are unprepared. Simply put, be prepared for the hearing you are attending and/or the pleadings you are filing. Each hearing is different and the lawyers should be prepared to address the needs of that hearing.
- 2. Be on Time.** The court generally sets multiple hearings each day. If an attorney or party is late for a hearing, then it negatively impacts all remaining hearings.
- 3. File a Motion/Request a Hearing.** The court’s staff and the Clerk of District Court are polite and hardworking. However, they cannot and will not give you legal advice. If you have an issue for the court to address, please file a motion and/or request a hearing.
- 4. Accurately Estimate Time.** When requesting a hearing please accurately and realistically estimate the amount of time you need. Most attorneys woefully underestimate how much time it will take to conduct their hearing. The court will strictly adhere to the time limits set for a hearing. Therefore, if the time period set for a hearing is insufficient, then counsel should notify the court and request additional time.
- 5. Provide a Courtesy Copy.** Until e-filing is implemented, please provide a courtesy copy of motions or proposed orders. Please email to soler@courts.state.wy.us; and kmckay@courts.state.wy.us
- 6. Be Professional.** The adversarial litigation process can and will become highly contentious. Nonetheless, lawyers are expected to be professional. The focus in the courtroom and in the pleadings should be on legal and factual arguments of the respective party - not personal attacks on opposing counsel.
- 7. COVID Policy.** Since the beginning of the COVID-19 Pandemic, the court has issued at least fourteen separate guidance memos outlining the court’s policy and procedures. These policies and procedures are updated as needed, and there are different procedures for different hearings. Therefore, lawyers should be familiar with the current policies and procedures for their hearing, all of which can be found at <https://www.courts.state.wy.us/coronavirus-covid-19-updates/> + Fremont County.

8. Read Court Orders. The court will attempt to put all essential information in the court order when it sets a hearing. It will contain information as to whether the hearing is in person or by video; the time allotted for the hearing; as well as any other unique or necessary issues. Please read the court orders before calling chambers and asking these questions.

9. Don't Waste Your Time. Hearing dates and times are in short supply. Each hearing is unique in its purpose. Accordingly, lawyers should focus their time, efforts, and advocacy on the issues at hand and not waste their time on unnecessary or ancillary issues that have no impact or bearing on the hearing being held.

10. Watch an Irving Younger CLE. The art of trial advocacy is extremely difficult. Attorneys often struggle with the proper method and manner of examining and cross-examining witnesses. Therefore, I recommend watching or reading any of the original or updated Irving Younger CLE's regarding evidence, witness examination, cross-examination, and impeachment.

Wyoming State Bar Q&A:

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 scheduling conferences are conducted by the court's judicial assistant, with input and oversight by the court. The court uses and will continue to use the telephone conference function on Microsoft Teams, which is set up by the court.*

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

A. *To be prepared to discuss and map out the schedule of the case. Especially noting any unique issues or potential pitfalls, which if known early can be appropriately accommodated.*

Q. Do you use multiple scheduling conferences?

A. *Not routinely, but if necessary, yes. Case specific.*

Q. Do you use court-directed discovery conferences?

A. *No*

PROTOCOL

- Q. What are your thoughts on courtroom protocol?
- A. *My main concern is for attorneys to be **prepared**. There is no greater sign of disrespect to all involved than being unprepared. I prefer substance over form.*
- Q. What things do lawyers do that are particularly helpful?
- A. *Being on time and being prepared.*
- Q. What things do lawyers do that are not helpful?
- A. *Being unprepared; perpetually underestimating how much time hearings will take; and filing things at the last minute and expecting the court and opposing counsel to absorb the material by osmosis just minutes prior to a hearing.*

MOTIONS PRACTICE

- Q. Do you require that submitted motions include a proposed order?
- A. *Yes*
- Q. Do you appreciate courtesy copies of briefs being delivered to your chambers prior to hearing on a motion?
- A. *YES! Courtesy copies of motions and proposed orders are greatly appreciated. When you file with the Clerk's Office, please send a courtesy copy to: Soler@courts.state.wy.us ; and kmckay@courts.state.wy.us*
- 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. *Automatically-when a motion requesting a hearing and a proposed order are received.*
- Q. Under what circumstances do you decline to grant a request for oral argument?
- A. *Rarely, if ever.*
- Q. Do you prefer that counsel provide copies of the relevant cases prior to a hearing?
- A. *No. We have Westlaw and I know how to use it.*
- 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 – But I would prefer attorneys focus on the actual TRO/Preliminary Injunction Issues and not try to use it as a discovery device or a deposition with an audience.*

FINAL PRETRIAL CONFERENCE

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

A. *To make sure everything is on track for trial.*

Q. Do you have a specific format for pretrial statements?

A. *No*

Q. Do you require mediation?

A. *Yes. A good faith attempt at mediation is generally required in all civil cases.*

JURY TRIAL PRACTICE

Jury Selection:

Q. How is voir dire conducted in your courtroom?

A. *According to the Court's First Amended COVID-19 Jury Trial Operating Plan dated February 17, 2021, located at <https://www.courts.state.wy.us/coronavirus-covid-19-updates/> + Fremont county*

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

A. *On a case by case basis if appropriate.*

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

A. *In accordance with the Case Management Order.*

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

A. *Instructions with citations to relevant authority.*

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

A. *I use them routinely.*

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

A. *Yes.*

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

A. *Yes.*

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. *8:30 a.m. to noon - break for lunch. 1:30 p.m. to 5:30 (or later if needed).*

Q. Do you permit “speaking objections” in jury trials?

A. *Bench trials yes, jury trials no.*

THOUGHTS ON EFFECTIVE ADVOCACY

Q. What makes an effective advocate in jury arguments?

A. *Being prepared. Not taking it or making it personal. Being a professional.*

Q. What makes an effective advocate in bench arguments?

A. *Being prepared. Not taking it or making it personal. Being a professional.*

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

A. *Being unprepared. Making it personal. Losing track of what is actually being requested and why. Attorneys wasting their time and effort on irrelevant and immaterial matters.*

CRIMINAL MATTERS

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

A. *On a case by case basis.*

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

A. *At any time.*

DISCOVERY PRACTICES

Q. What are your thoughts on resolving discovery disputes?

A. *Lawyers should provide an itemized and particularized list as to what they claim has been requested and what has not been produced or provided - and if not produced or provided, explain why. Vague, generalized and argumentative statements claiming non-production (or full production) are not helpful.*

THOUGHTS ON COURTROOM PROTOCOL

Q. Is the lack of civility a recurring problem in your courtroom?

A. *No.*

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

A. *To be on time, prepared, and professional.*

OTHER MISCELLANEOUS ISSUES

Q. Do you allow cell phones in your courtroom?

A. *Yes, but they should be on silent.*