

Wyoming Judges' Bench Book

James Kaste
District Court Judge
Third Judicial District

INTRODUCTION

This bench book is designed to help attorneys and litigants understand the Court's general expectations and preferences in the most common situations. Every District Court Judge expects counsel to know and follow the court rules applicable in their case. The Rules of Professional Conduct for Attorneys at Law and the Uniform Rules for District Courts of the State of Wyoming apply in every case. Please pay particular attention to U.R.D.C. 801 which outlines every District Court Judge's expectations for professional behavior and decorum. Compliance with these rules will go a long way towards securing the just, speedy, and inexpensive determination of your action or proceeding and will improve the quality of your experience in this Court.

MANDATORY ELECTRONIC FILING

All submissions to the District Courts by attorneys shall be filed electronically using File & ServeXpress (FSX) in accord with the Wyoming Rules for Electronic Filing and Service.

SCHEDULING CONFERENCES

I strive to ensure that all cases have a scheduling order and a trial date as soon as the pleadings are closed. Once the answer has been filed in a civil case, the Court will contact the parties and set a scheduling conference. In domestic cases, the Court will issue a scheduling order setting the matter for trial approximately 180 days after the answer is filed. I conduct scheduling conferences myself and attorneys can participate by telephone or video. If the parties want to appear by telephone, they will need to set up the conference call. If the parties want to appear by video, they can contact my judicial assistant at clym@courts.state.wy.us and she will set up a TEAMS meeting. No separate motion is required to participate by video, but please reach out to Ms. Lym at least the day before the conference.

If you are not contacted or you do not receive a scheduling order in a domestic case within two weeks after the answer is filed (regardless of whether a counterclaim has been filed), please contact Ms. Lym. Occasionally, it will not come to my attention that an answer has been filed and the case needs a schedule. If this happens in your case, please let Ms. Lym know.

At the scheduling conference please have your calendars available and come with realistic expectations about when deadlines should be set and how long it will take to try the case. Examples of the scheduling orders I use in civil, domestic, and criminal cases are included with this bench book.

DISCOVERY

Attorneys should conduct discovery in compliance with the applicable court rules. Every scheduling order I issue includes a provision outlining the procedure this Court employs to resolve discovery disputes. I expect counsel to follow that procedure, particularly the requirement that the movant certify that they have conferred with the opposing party prior to filing any discovery motion.

MOTIONS PRACTICE

Motions and responses should comply with the applicable rules and be filed in accord with any applicable deadlines. Filings should be well organized; limited to relevant information; cite applicable statutes, rules, and caselaw; and assertions of fact should be substantiated by citations to admissible evidence. Courtesy copies of motions, responses, and cases are not necessary. Motions should be accompanied by either a proposed order or a request for setting. Otherwise, the motion may not come to my attention.

- *Duty to confer:* Pursuant to U.R.D.C. 801(a)(7), every scheduling order I issue requires the moving party to confer in good faith with opposing counsel prior to filing any motion, whether substantive, procedural, or even trivial. Every non-dispositive motion must state that the movant has conferred as required by the rule and state the opposing person or party's position on the proposed motion. If the movant has been unable to confer with the opposing person or counsel before filing the motion, then the movant must describe their attempts to confer and explain why the motion should be considered by the Court before the parties have conferred. Failure to comply with these requirements may result in dismissal of the motion.
- *Continuances and extensions:* While continuances and extensions should not be sought routinely, I strive to be reasonable. If you need a continuance or extension, confer with opposing counsel and explain why you need more time in your motion. In domestic cases where the Court sets the trial immediately and for a half day trial, if you need more time to prepare the case or more time to try the case, please ask. If you have been diligent in your work on the case and thoughtful about when to ask for more time, your request will probably be granted.

In criminal cases, if good cause exists, opposing counsel does not object, and the Defendant's speedy trial rights are not violated, then continuances will generally be granted. Multiple requests for continuance are disfavored and will be viewed with increasing scrutiny.

- *Scheduling motion hearings:* If a party requests a hearing, I will set the matter for hearing. My judicial assistant and I make every effort to schedule hearings at times that accommodate the parties and counsel. When a request for setting is filed, my judicial assistant will reach out to the parties to find a setting that works for the Court and counsel. Counsel may also contact my judicial assistant before filing a request for setting to obtain a setting that works for the Court and counsel. If you do not respond to my judicial assistant in a reasonable amount of time, then I will set the matter at a time convenient to the Court.
- *Dispositive motions:* In the event a party files a motion for summary judgment under W.R.C.P. 56, I do not find that filing a separate statement of facts pursuant to W.R.C.P. 56.1 is helpful and my scheduling orders direct that no separate statement of facts shall be filed. Any assertion of material fact in any part of the motion or brief should be supported by pinpoint citation to the evidentiary materials supporting the fact, by paragraph or page, with as much specificity as possible. All citations to legal authorities should be pinpoint cites.

MEDIATION

I do not require parties to mediate civil cases absent a request under W.R.C.P. 40(b). I expect counsel to exercise good judgment about whether a case should be mediated and, if it should, to mediate the case before the trial begins. I do not view a late decision to mediate as good cause to continue a trial.

FINAL PRETRIAL CONFERENCE

The purpose of a final pretrial conference is to ensure that the parties are ready for trial, to determine the contested issues of fact and law, to decide all matters that can be decided before trial, and to address any other matters, whether procedural, substantive, or logistic, to ensure that the trial proceeds smoothly. Counsel should be prepared to do those things at the final pretrial conference. My scheduling orders set forth the subjects that must be addressed in the pretrial memoranda, but counsel can include any additional information they think will be helpful. Counsel can format and organize the information in their memoranda in whatever way they think works best.

BENCH TRIALS

In bench trials, counsel should strive to conduct themselves and their examinations in the same manner as a jury trial. The rules of evidence apply regardless of the audience, so please lay appropriate foundation for exhibits, move for the admission of exhibits, avoid eliciting hearsay, avoid talking about settlement discussions, etc. That said, where one party in a bench trial is unrepresented, I will typically let them testify in narrative form to ensure they have a fair opportunity to be heard.

I generally do not require trial briefs or proposed findings and conclusions, but I am happy to read them if counsel thinks they would be helpful. I strive to rule from the bench so I can explain to the parties directly the reasons for my ruling and so they can walk out of the courtroom with a decision just like they would after a jury trial. After I rule, I typically ask the prevailing party to prepare a short order memorializing my ruling. As a result, I do not generally find proposed findings and conclusions to be a good use of anyone's time and money. However, if counsel requests written findings, they will be required to submit proposed findings and conclusions. If counsel intends to request written findings, please do so before the pretrial conference. I do not want to delay ruling in a case, because counsel waited to ask for written findings until the first day of trial.

If you are asked to prepare an order after a bench trial or motion hearing, unless otherwise ordered, please follow W.R.C.P. 58 and present the order to the Court within fourteen days. Please be diligent about this task and do not make me pester you for an order.

JURY TRIALS

In a jury trial, please respect the jury's time. Please schedule witnesses in an order that facilitates the efficient presentation of evidence and ensures that there is no delay between witnesses. I understand that scheduling can be difficult and will work with counsel to overcome difficulties not of their own making, but please do not make the jury wait.

- *Jury Selection:* In this Court, jurors are assigned numbered seats by random draw conducted by the Clerk of Court the Friday before the trial begins. The entire panel sits behind the bar in their assigned seats and the parties are provided a seating chart. The entire panel is examined for cause, first by the Court and then by counsel in turn. The parties use the seating chart to record their peremptory challenges which are conducted in the courtroom. If not excused for cause or by a peremptory challenge, juror number 1 is seated in the jury box first, then the next available juror and so on until thirteen jurors are seated in the jury box. The alternate is selected by random draw conducted by the Clerk of Court immediately before deliberations begin.
- *Voir Dire:* I adhere to the view that proper voir dire questions are designed to learn questions *about* the juror and not to convey information *to* the juror. I expect counsel to strictly comply with W.R.C.P. 47(c) or W.R.Cr.P. 24(c) and to expeditiously question jurors in a manner that comports with the limited purpose of voir dire explicitly set forth in those rules.
- *Objections:* I do not permit speaking objections in front of the jury. If you cannot state your objection in one sentence or less, preferably in less than three words, then you may ask to approach. Most unanticipated objections can be stated in three words or less. Most other objections can be anticipated and should be raised prior to trial.

- *Jury Instructions:* Each party should file one set of their proposed jury instructions with citations to authorities and their proposed verdict form. It is not necessary to file a set of proposed instructions without authorities or to provide courtesy copies of your proposed instructions. Instead, each party should email a Word version of their proposed instructions and verdict form to clym@courts.state.wy.us when they file their pretrial memoranda. Please use the pattern instructions whenever possible. They set the standard and cover the field. I generally will not modify or supplement them with a party's preferred statement from a case they like.

CRIMINAL MATTERS

An example of the scheduling order that I use in criminal cases is included with this bench book. I believe it generally covers the parties' obligations to each other prior to trial and eliminates the need for many pretrial filings. Please do not file a motion that duplicates something that the Court has already ordered or will order as a matter of course at arraignment.

- *Bond Modification:* I will consider bond modification at arraignment or at any other time a party wishes to raise it. Please be prepared to explain what has changed since bond was set by the Circuit Court.
- *Presentence Investigation Reports:* I do not routinely order presentence investigation reports prior to conviction. If the defendant requests a report prior to conviction, I will order that one be prepared. Except in exceptional circumstances, I only accept plea agreements under W.R.Cr.P. 11(e)(1)(B).
- *Sentencing:* At sentencing, I give the defendant the first and last word. Please be prepared to present any materials, statements from others, your full argument, and any statement from the defendant at the outset of the sentencing hearing. The last word should respond to the State's presentation.

DOMESTIC CASES

Examples of the various scheduling orders I use in domestic relations cases are included with this bench book. To ensure that domestic cases are resolved in a timely manner, I enter a scheduling order as soon as an answer is filed. I will set the case for trial in approximately 180 days. For most cases, this is enough time. The scheduling order also sets the case for a half-day trial. For many cases, especially where counsel have collaborated to narrow the issues, this is enough time. If it is not, please file an appropriate motion.

- *Standard Visitation:* In appropriate cases, the scheduling order will include a Standard Visitation Order. Because this order does not consider individual circumstances, I recognize that it will not provide the best outcome in many cases. If it does not provide the best outcome in your case, counsel should feel free to

advocate for a different schedule. I am not wedded to the standard order but will turn to it absent another good option.

- *Temporary Orders*: I do not utilize any special procedures to address motions for temporary orders. I will hold a hearing in most instances and will expect to hear testimony. You can expect that I will have questions for those witnesses. You can also expect I will be suspicious of requests made at the end of summer visitation, where the only reason for the motion is the preference of the child after an extended visit with the moving parent, where abuse is alleged but not reported immediately, or where one parent has violated an existing order by keeping or moving the children.
- *Guardian ad Litem*: I will appoint a guardian ad litem if either party asks for one. Occasionally, I will appoint one on the Court's own motion, where I think it would be helpful. If a party wants a guardian ad litem, it is very helpful if they can reach an agreement with opposing counsel about who will serve in that role before asking for an order appointing.

MISCELLANEOUS

The practice of law is hard and I try not to make it harder by adding requirements to the many rules counsel are already required to follow. In accord with those rules, I generally expect the following from counsel:

- Attorneys should read the rules and the Court's scheduling orders and follow them.
- Attorneys should be prepared to start on time.
- Conduct that deviates from U.R.D.C. 801, the Wyoming Rules of Professional Conduct, or basic common decency is unacceptable. I expect everyone in the courtroom to be respectful, polite, and professional and they generally are.
- Attorneys should stand whenever they address the Court. They should speak from the podium when they have the floor and respect when others have the floor. When responding to questions from the Court they may speak from counsel table. When anyone is attending by video, please remember to speak into the microphone so remote participants can hear.
- Attorneys should ask to approach the bench, a witness, or the jury and then return promptly to the podium.
- Attorneys may bring their cell phones into the Court, but please make sure they are silenced (including vibrate).

- Attorneys should dress professionally. Clients and witnesses should be counseled to dress up, whatever that means for them, and they should avoid clothing with offensive messages.
- This Court typically does not require counsel to file a motion to appear by video conference. Evanston is long way for many out-of-town attorneys and the weather can be dangerous for much of the year. I trust counsel to make good decisions about whether they need to attend in person, and I will not second guess your judgment. If you want to appear by video, please contact my judicial assistant at clym@courts.state.wy.us and she will set up a video conference. While we can set up a video conference on short notice (and will when the weather is bad), please reach out to Ms. Lym at least the day before the conference and please communicate your intention to appear by video to all other counsel.

I hope the foregoing information is helpful. If you have questions, please ask.