

Wyoming Judges' Bench Book

Name: *The Honorable Peter H. Froelicher*
Court: District Court
Judicial District: First Judicial District

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I. 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.** Once an answer has been filed, either party may request a setting for a scheduling conference. When requesting a scheduling conference, please provide a proposed order. The court will conduct the conference. Parties may request that they be allowed to participate via telephone. The request to appear by telephone should be made at least five (5) days before the scheduling conference, and only after consulting with each of the other parties. Appearances by telephone shall be by landline, not by cell phone. The parties should meet prior to the scheduling conference to confer on dates that work for trial, expert witness designations, discovery cutoff, and filing dispositive motions.
- Q. What do you expect from the attorney(s) at the scheduling conference?**
- A.** Please have your calendars available and an agreed upon number of days or hours the trial will take to complete. The court will set an agreed upon trial date and work backwards in setting dates for expert witness designations, discovery cutoff, dispositive motion deadlines, pretrial memoranda, mediation deadline, and other important deadlines.
- Q. Do you use multiple scheduling conferences? Why?**
- A.** Generally, no. If the parties believe the case is complex enough to necessitate a second scheduling conference, one may be requested by written motion.
- Q. Do you use court-directed discovery conferences?**
- A.** No.
- Q. What are your preferences regarding scheduling/discovery conference orders? Do you require that specific things be included in such orders?**
- A.** The court will prepare the scheduling order at the conclusion of the scheduling conference. For a sample of the scheduling order used by the court, please contact my Judicial Assistant, Sue Ellen Essert, at seSSERT@courts.state.wy.us or call (307) 633-4432.

II. PROTOCOL

Q. What are your thoughts on courtroom protocol?

- A. Always act professionally, courteously, and respectfully towards all participants in the courtroom. This includes arriving early for the scheduled hearing or trial, which allows the proceeding to start on time.

Please stand and use the main podium in the center of the courtroom when addressing the court or questioning witnesses. Please use the microphones when speaking so the court reporter can clearly hear what is being said.

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

- A. Being well prepared for the trial or hearing. It is helpful to all participants when attorneys are focused on the disputed legal and factual issues. Thus, the court appreciates when the attorneys confer prior to trial or a hearing to determine if there are facts or legal issues which may be stipulated.

Arguments which reference the applicable legal standards or criteria, the facts which support the standards, and cite to the applicable statutes, rules, caselaw, or constitutional provisions are most effective.

Exhibit notebooks for the court are helpful. The court appreciates citation to applicable statutes, rules, and/or caselaw which support the attorney's requested relief.

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

- A. Failing to confer prior to filing a motion. Rule 801(a)(7), U.R.D.C., requires attorneys to confer with opposing counsel prior to filing a motion. The motion should reflect that the attorney conferred with opposing counsel and whether the opposing counsel objects to the motion.

Filing "emergency" and "ex parte" motions without citation to some authority which authorizes the court to act in an emergency or ex parte.

Failing to comply with and cite to the Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Appellate Procedure, and Uniform Rules of District Court when applicable.

Grossly overestimating the time needed for a hearing or trial. The court has limited time available for hearings and trials.

III. MOTIONS PRACTICE

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

A. Yes. If the motion is filed without a proposed order or a request for a setting the court will not see the motion and it will simply be filed with the Clerk of District Court.

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

A. Yes. Please provide a courtesy copy to our chambers at the same time the brief is filed with the Clerk of District Court.

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. No. The court requires compliance with Rule 801(a)(7), U.R.D.C., and will not set any hearing without a written representation in the motion that the parties have personally conferred in a good faith attempt to resolve the dispute, and that court intervention is needed. If the parties have conferred, and upon receipt of a request for setting and proposed order, the court will schedule the hearing after allowing time for a response and reply as allowed by Rule 6(c), W.R.C.P. Please provide an appropriate request and setting form that includes blank lines for dates/times that can be filled in by the court. If the attorney knows of dates/times that will not work, he or she should communicate those conflicts to the court when requesting the setting. In addition, please advise the court on the anticipated length of the hearing.

If counsel or a party wishes to appear at a motion hearing telephonically, please file a motion to appear by telephone in compliance with Rule 801(a)(7), U.R.D.C., at least five (5) days before the hearing. Telephone appearances must be on a landline.

When a party seeks default judgment from the court pursuant to Rule 55(b)(2), W.R.C.P., the court expects the party to file a written motion for default judgment. Simply obtaining entry of default pursuant to Rule 55(a), W.R.C.P., and then requesting a default hearing is not in compliance with the rule, which states “a party must apply to the court for a default judgment.” The written motion requirement may be fulfilled if the motion is stated in the written notice of hearing. *See*, Rule 7(b), W.R.C.P.

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

A. Rarely, and only when the legal and factual issues are clearly presented in the briefs, and the court believes oral argument will not be beneficial.

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

A. No. Written motions, briefs, and memoranda, however, should include the applicable legal standards or criteria and the facts which support those standards. Additionally,

please cite to the applicable statutes, rules, caselaw, or constitutional provisions which support and/or authorize each specific request for relief.

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. Please comply with applicable statutes, rules, and caselaw.

IV. 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, generally, to: determine the contested issues and contentions of the parties remaining for trial; discuss any objections to witnesses and exhibits; issue rulings on any outstanding motions, including motions in limine; discuss sequestration of witnesses; discuss jury selection; and discuss time management for the trial.

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

A. The topics to be included in a pretrial statement typically will be listed in the court's case management or scheduling order. At a minimum, a pretrial memorandum should include: a list of witnesses and a description of their testimony; a list of exhibits to be offered; the legal and factual issues to be determined at the trial; and any stipulations. Concise but detailed pretrial statements allow the court and parties to focus preparation on the important contested legal and factual issues.

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

A. Mediation is required in divorce and domestic relations cases before the case is set for trial. In all other cases, mediation is strongly encouraged, but not mandatory. Mediation should be completed before the final pretrial conference.

V. JURY TRIAL PRACTICE

A. Jury Selection

Q. How is voir dire conducted in your courtroom?

A. Attorneys are permitted to examine the jurors for cause. The Clerk of District Court usually has a seating chart available before voir dire. Peremptory challenges are usually conducted in chambers. Except in unusual cases, voir dire should be completed on the first half day of trial, which allows each party a maximum of one hour.

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

A. The Clerk of District Court distributes and collects juror questionnaires prior to trial. The parties will be provided copies of the questionnaires before trial. In unusual circumstances and upon timely request the court will consider a request for additional jury questionnaires.

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

A. Because additional jury questionnaires are not typically permitted or requested there is no precise due date. If an additional jury questionnaire is sought, it should be requested by written motion and filed well in advance of trial.

Q. Do you have a preference with respect to the length of the jury questionnaire?

A. No, because jury questionnaires are not typically permitted.

B. Requested Jury Instructions

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

A. The court's scheduling order will detail the schedule and expectations for submission of jury instructions.

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

A. The court's scheduling order will detail the schedule and expectations for submission of jury instructions. One copy of proposed jury instructions should include citations to authority.

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

A. I strongly prefer using the Wyoming Pattern Jury Instructions in criminal and civil cases.

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

A. No.

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

A. Yes. Please email copies to my Judicial Assistant, Sue Ellen Essert, at sessert@courts.state.wy.us and my current law clerk at BRichardson@courts.state.wy.us in Word document format.

C. 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. 9:00 a.m. to 5:00 p.m., with 1 hour to 1.5 hours for lunch, and a 10 to 15-minute break in the morning and afternoon. Usually the court will hold a final pretrial conference at 8:30 a.m. in chambers on the first day of trial. Time management will likely be discussed and a time management order may be issued.

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

A. The court's scheduling order will detail the schedule and expectations for submission of motions in limine. The sooner motions in limine are filed, however, the more time for setting a hearing and to prepare for trial based on the court's ruling.

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

A. Please have your witnesses scheduled, available, and ready to testify. The court will not take up a jury's time waiting for a witness.

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. Exhibit notebooks are helpful but not required. The trial process is much more efficient if the parties confer before trial about objections to proposed exhibits. Time and effort will be saved if the parties stipulate to the admission of exhibits to which there are no objections to admission.

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

A. Technology may be very helpful, but also may be frustrating if the presenter is not proficient with the technology. If you intend to utilize computer-assisted presentations, please, well before trial, familiarize yourself with the technology available in the courtroom where the trial will occur.

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

A. No. Please state your objection clearly and succinctly with reference to a rule of evidence or other applicable rule of law. If further discussion is necessary, please inform the court and counsel and the court will have a sidebar or, if necessary, excuse the jury.

VI. BENCH TRIAL PRACTICE

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

A. Other than the differences occasioned by the lack of a jury, bench trials are conducted similarly to jury trials. I strive to thoroughly familiarize myself with the facts, issues and the applicable law prior to the start of a bench trial. Thus, I typically give the parties the option of waiving an opening statement. In addition, having a witness read directly from an exhibit which has been or will be admitted into evidence is, usually, cumulative and unnecessary. If there are important sections of an exhibit which counsel desire to emphasize, closing arguments are the more appropriate place.

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. I do not require trial briefs or proposed findings of fact and conclusions of law. Trial briefs are helpful, however. If proposed findings of fact and conclusions of law are requested, I prefer submission after the trial, so they are based on the facts presented at the trial.

VII. THOUGHTS ON EFFECTIVE ADVOCACY

Q. What makes an effective advocate in jury arguments?

A. Jurors are generally very busy people taking time out of their lives to perform a vital civic duty. Thus, I suggest concise factual arguments based upon the legal elements of the issues being tried.

Q. What makes an effective advocate in bench arguments?

A. Be prepared, professional, and concise. Identify the legal elements or criteria applicable to the issues before the court and then identify the proven facts which support or do not support the legal elements or criteria.

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

A. Personal attacks on other parties and lawyers, lack of preparation, and wasting the participants' time with discussion of facts and issues that are not relevant to the issues before the court.

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

- A. Long rambling questions are ineffective because they are difficult for the witness, the judge, the jury, and the court reporter to follow. Short, precise, and understandable questions are very effective.

VIII. CRIMINAL MATTERS

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

- A. So long as the motion includes the specific grounds for the motion, a representation that the movant has conferred with opposing counsel and reflects opposing counsel's position on the motion, the court typically grants continuances, which will not result in a violation of the Speedy Trial Rule, Rule 48, W.R.Cr.P. Please understand that a Defendant's written waiver of speedy trial is not grounds to continue the trial and is not favored by the court.

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

- A. I prefer a written motion based upon the factors listed in Rule 46.1(d), W.R.Cr.P., along with a proposed order. The motion should include a representation that the movant has conferred with opposing counsel and reflects opposing counsel's position on the motion. Time permitting, the court will consider an oral request on bond and pretrial release at arraignment or re-arraignment.

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

- A. Most of the pertinent information is included in the presentence report. Please provide precise restitution amounts and credit for time served. I do believe it is helpful to hear from the victim(s) and the Defendant.

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

- A. I have yet to see a private pre-sentence evaluation, so I cannot answer this question effectively.

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

- A. No.

IX. 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. Most domestic cases seem to involve a higher level of acrimony between the parties. Therefore, it is important to stress to the parties the importance of civility, respect, and professional conduct. Focus should be on the legal factors and criteria – set by statute and caselaw – which the court must apply in deciding the issues in a domestic dispute.
- Q. **What do you want to have on temporary order issues?**
- A. Generally, parties are given an opportunity to make offers of proof because time is limited.
- Q. **Do you have a policy on child interviews with respect to custody?**
- A. When the child is of sufficient age and maturity, the purpose of the interview is appropriate, and it is in the best interest of the child, the court will interview the child in chambers with the attorneys and court reporter present.
- Q. **When do you require guardians ad litem? What do you expect from a guardian ad litem?**
- A. GALs are typically appointed in all domestic disputes involving custody of children. Otherwise, a GAL will be appointed when it is required by law. Usually, the court appoints GAL's in contested guardianship cases and contested adoption cases. GAL's shall act in accordance with the standards set by statute and as described in Wyoming Supreme Court cases. See generally, *Robbins v. Robbins*, 46 P.3d 880 and *In the Matter of GAC*, 396 P.3d 411.

X. DISCOVERY PRACTICES

- Q. **What is your approach to resolving discovery disputes?**
- A. Please comply with Rule 37, W.R.C.P. in resolving discovery disputes. The Wyoming Rules of Civil Procedure set out a process for almost every dispute scenario, therefore, please refer to the rules.
- Q. **What are your thoughts on imposing sanctions for discovery abuses?**
- A. Rules 26 and 37, W.R.C.P. will guide the court on appropriate sanctions.
- Q. **Are you generally available to solve problems that arise during a deposition?**
- A. No. Please make an accurate record of any disputes and follow up with an appropriate written motion pursuant to the Wyoming Rules of Civil Procedure.

XI. 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. No, a lack of civility is not a chronic problem, but it occurs. Please carefully review and comply with Rule 801 of the Uniform Rules of District Court.
- Q. What do you expect of lawyers (and their staff) in your courtroom? Clients? Witnesses?**
- A. Courtesy, professionalism, candor, and civility.
- Q. Do you impose any limitations on courtroom movement (approaching witness, podium, etc.)?**
- A. Please always ask to approach witnesses and the bench. Please use the podium at all other times, unless a brief response can be made from counsel tables. Please use microphones in the courtroom. Please comply with Rule 801(b) of the Uniform Rules of District Court.
- Q. What kind of lawyer conduct is unacceptable to you in your courtroom?**
- A. Personal attacks, unprofessional remarks, misrepresentations, tardiness, and lack of preparation. Please carefully review Rule 801 of the Uniform Rules of District Court.

XII. OTHER MISCELLANEOUS ISSUES

- Q. What are your opinions regarding courtroom dress?**
- A. Please dress professionally and respectfully. Appropriate professional attire. See, Rule 801(b) of the Uniform Rules of District Court.
- Q. Do you allow children in your courtroom?**
- A. Yes. As with all persons in the courtroom, children must behave in a manner which does not disrupt the proceedings.
- Q. Do you allow cell phones in your courtroom?**
- A. Yes, but the phone must be turned off or in silent mode so as not to disrupt the proceedings. Please do not use cell phones during court proceedings unless necessary for the proceedings and authorized by the court.
- Q. What, if anything, do you do to enforce promptness in your courtroom?**

- A. I expect parties and counsel to arrive early for the scheduled proceeding so the court may begin at the designated date and time. I strive to begin all court proceedings at the designated time.

XIII. CLERK'S/JUDICIAL ASSISTANT'S COMMENTS

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

- A. Please be courteous and respectful. Both the Law Clerk and Judicial Assistant are communicating with counsel and parties on behalf of the Judge's chambers. Please promptly respond to requests from the Law Clerk and Judicial Assistant. Please comply with the deadlines set in scheduling orders for submission of pretrial documents.

Q. What do you expect of attorneys with respect to scheduling hearings?

- A. Please communicate with Judicial Assistant in advance about dates of unavailability and the Judicial Assistant will do her best to accommodate.

Q. What is your protocol for scheduling hearings?

- A. After filing a motion requesting a hearing with the Clerk of District Court, please provide a courtesy copy of motion and proposed order with date and time left blank to chambers. The motion should also reflect the time needed for hearing.

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

- A. When appropriate, please return communications (emails and phone calls) from the Judicial Assistant and Law Clerk promptly.

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

- A. When making request to appear by phone, please notify Judicial Assistant at least five (5) days before the scheduled hearing. Please confer with opposing counsel prior to making request to appear by phone and indicate in the written motion the opposing party's position.

Please notify the court as soon as possible that a case or pending motion has settled or been worked out and submit a motion to vacate and order where appropriate. This allows the court to attempt to fill the vacated time slot with other pending matters.

If a filing needs immediate attention, please provide courtesy copies of motion and proposed orders to chambers.

Please adhere to the timelines set forth in the court's scheduling orders. If counsel is aware that they will require a special accommodation or extension of time in order to comply with a deadline, please file a motion (stating conferral has been attempted with opposing counsel, pursuant to Rule 801(a)(7), U.R.D.C.), and include an order for the court to review. Providing the court with as much advance notice of these changes as possible ensures the maintenance of a fair and efficient docket.

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

A. Letter size – 8 1/2" x 11". *Please see*, Rule 403, U.R.D.C.