

Wyoming Judges' Benchbook

Name: James Kaste

Court: District Court

Judicial District: Third Judicial District

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, in a non-domestic 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 and attorneys can participate by telephone or video. The Court only has one line for conference calls and the parties are responsible for setting up the conference call and calling the Court. If the parties want to appear by video, they can contact my judicial assistant at clym@courts.state.wy.us and she will send the invites. 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 us know.

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

A. 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. A copy of the scheduling order I use in civil cases is included with this benchbook. The parties should confer in advance of the scheduling conference and attempt to agree on dates for all deadlines except the pretrial conference and trial. If the parties believe the case would benefit from additional deadlines, such as an IME or mediation deadline, please just let me know.

- Q. Do you use multiple scheduling conferences? Why?
- A. I generally would not use multiple scheduling conferences but would consider it in special circumstances.
- 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 typically prepares a scheduling order after a scheduling conference. Copies of the standard scheduling orders issued by the Court in both civil and criminal cases are attached to this benchbook.

PROTOCOL

- Q. What are your thoughts on courtroom protocol?
- A. At a minimum, attorneys should comply with U.R.D.C. 801. They should also ensure that their clients and witnesses acquit themselves with equal civility and decorum.
- Q. What things do lawyers do that are particularly helpful?
- A. The most helpful thing lawyers can do is work well with opposing counsel. Working cases diligently with opposing counsel ensures that cases do not languish and that the Court only has to address substantive issues that cannot reasonably be resolved prior to trial. It also helps to be on time, well-prepared, concise, candid, and to support assertions of fact and law with evidence and legal authority. Finally, it helps if lawyers know and follow the applicable rules of procedure.
- Q. What things do lawyers do that are not helpful?
- A. It is not helpful when lawyers do not confer and state the opposing party's position in their motions. If a motion is unopposed, it can often be addressed right away. But if I do not know the other party's position, that motion must sit until the time to respond has expired. It is also not helpful when lawyers submit a motion without a request for setting or a proposed order.

It is not helpful when lawyers ask the Court to take some action without citing the authority which authorizes the Court to take the requested action. Similarly, it is not helpful to argue a point of law without citing the Court to relevant legal authorities. It is disappointing, and adversely affects a lawyer's credibility, when I discover on

my own that a whole body of law exists on the very issue the parties are litigating, but neither party cited any law in their submissions. I understand that practicing law is hard and time is limited, but it often takes just one search on Westlaw to confirm my suspicion that I am not the first to address an issue.

It is not helpful when lawyers do not communicate well with each other and with their clients. Many problems can be avoided by good communication outside the courtroom.

It is not helpful when the Court has to follow-up with a lawyer about submitting documents. If you prevailed and are required to prepare an order, please be diligent about that task. Similarly, if you advised the Court that a settlement has been reached and that you will submit the appropriate documents to close the case, please do not make the Court pester you to get the documents filed.

MOTIONS PRACTICE

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

A. Yes, or a request for setting. Otherwise, the motion will not be brought to my attention by the Clerk's Office.

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. No, thank you. I have access to both the paper and electronic file and parties do not need to go to the trouble and expense of providing courtesy copies.

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 I receive a request for setting, 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. Either way is fine.

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

A. If a party wants a hearing or an oral argument, I will grant the request. However, I generally decide discovery disputes without a hearing because I think those need to be addressed quickly.

- Q. Do you prefer that counsel provide copies of the relevant cases prior to a hearing?
- A. No, thank you. I have access to Westlaw and courtesy copies quickly become clutter.
- 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 the applicable statutes, rules, and caselaw, and cite them in your filings.

FINAL PRETRIAL CONFERENCE

- Q. In your view, what is the purpose of a final pretrial conference?
- A. 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.
- Q. Do you have a specific format for pretrial statements? If so, please provide a copy.
- A. Not really. The Court's 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.
- Q. What steps do you take, if any, before the final pretrial conference to encourage settlement of the case? Do you require mediation?
- A. I set matters for trial. That seems to encourage settlement. I do not require mediation but will happily order it in compliance with W.R.C.P. 40.

JURY TRIAL PRACTICE

Jury Selection:

- Q. How is voir dire conducted in your courtroom?
- A. Jurors are assigned numbered seats by random draw conducted by the Clerk of Court the day 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 twelve jurors and one alternate are seated in the jury box.

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

A. I would not encourage the use of additional jury questionnaires and would be hard pressed to allow them absent extraordinary circumstances.

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

A. A request to use an additional jury questionnaire should be made well in advance of trial. The final pretrial conference would likely be too late.

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

A. Shorter would be better.

Requested Jury Instructions:

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

A. With the parties' pretrial memoranda.

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

A. 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 the Court a courtesy copy of your proposed instructions as I just throw them away. 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.

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

A. They set the standard and I will defer to them in almost every instance. They also generally cover the field, and I am reluctant to add to them to include a party's preferred statement from a case they like.

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

A. Yes, in both civil and criminal cases. They can be obtained from my judicial assistant.

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

A. Yes, in Word format.

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. We generally begin at 9 and end at 5 with an hour to an hour and a half for lunch depending on how things are going.

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

A. I prefer they be filed as early as possible and I will set them for a separate hearing before the pretrial conference, if requested.

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

A. I prefer that witnesses be scheduled in an order that facilitates the efficient presentation of evidence and that there be 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.

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 and encouraged in both bench and jury trials, but not required.

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

A. No. 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 could have been anticipated and should have been dealt with prior to trial.

BENCH TRIAL PRACTICE

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

A. Jury trials are more formal, and counsel should adhere strictly to the rules of evidence

and decorum. I am more informal during a bench trial, but 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. That said, where one party in a bench trial is unrepresented, I will typically let them testify in narrative form to ensure that they have a fair opportunity to speak their peace.

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 generally do not require trial briefs or proposed findings and conclusions but would be happy to read them if counsel thinks they would be helpful. I strive to rule from the bench in most instances so I can explain to the parties directly the reasons for my ruling and because I think they should 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 useful or 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 by the pretrial conference at the latest. I do not want to delay ruling in a case, because counsel waited to ask for written findings until the first day of trial.

THOUGHTS ON EFFECTIVE ADVOCACY

Q. What makes an effective advocate in jury arguments?

A. An effective advocate should endeavor to: be themselves; be respectful to all involved; be prepared, organized, concise, candid, and sincere; develop a simple theme for the case and a plan for each witness and exhibit supporting that theme, practice their part and prepare their witnesses; and try to relax. I suggest advocates read things like *Making Your Case* by Justice Scalia and Bryan Garner and then do what they suggest.

Q. What makes an effective advocate in bench arguments?

A. The same things.

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

A. Lack of preparation and a failure to adequately research the applicable law.

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

A. Prepare and then trust your witness on direct. Ask short, simple questions on direct that allow your witness to testify rather than long leading questions. Limit cross examination to essential matters. Do not be afraid to skip cross examination entirely.

CRIMINAL MATTERS

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

A. If good cause exists, opposing counsel does not oppose, 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.

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

A. Bail can be addressed anytime.

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

A. I am happy to hear any information that either party thinks would be helpful.

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

A. I have never seen one, but I would certainly consider any evaluation submitted by either party in support of their sentencing recommendation.

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. I do not believe so.

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

A. I do not have any special requirements, but please file them sparingly.

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

A. I will interview a child in chambers with the attorneys and court reporter present if a party asks for it and I determine that hearing from an older child would be helpful to the Court and not harmful to the child. I do not think forcing a child to go through this process is very productive in most instances. If the child is old enough to offer something helpful, then they should testify.

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

A. 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 appointed, it is very helpful if they can reach an agreement with opposing counsel on who will serve in that role before asking for an order appointing.

DISCOVERY PRACTICES

Q. What is your approach to resolving discovery disputes?

A. My approach is set forth in all my scheduling orders. I try to handle those matters fairly but expeditiously.

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

A. I will impose sanctions where warranted in compliance with the Rules of Civil Procedure.

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

A. Not generally, no. I will take a call if I am not on the bench or otherwise engaged. The rules governing depositions provide for parties to preserve objections and move on. I expect parties to follow the rules. Accordingly, such calls should be exceptionally rare.

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. A lack of civility has not been a problem in the courtroom.

- Q. What do you expect of lawyers (and their staff) in your courtroom? Clients? Witnesses?
- A. I expect everyone in the courtroom to be respectful, polite, and professional and they generally are.
- Q. Do you impose any limitations on courtroom movement (approaching witness, podium, etc.)?
- A. Attorneys should generally speak from the podium when they have the floor. When responding to questions from the Court they may speak from counsel table. Attorneys should ask to approach the bench, a witness, or the jury and then return promptly to the podium.
- Q. What kind of lawyer conduct is unacceptable to you in your courtroom?
- A. Conduct that deviates from U.R.D.C. 801, the Wyoming Rules of Professional Conduct, or basic common decency. Again, this is not a recurrent or even an occasional problem. The attorneys that have appeared before me have been uniformly professional, respectful, and courteous.

OTHER MISCELLANEOUS ISSUES

- Q. What are your opinions regarding courtroom dress?
- A. 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.
- Q. Do you allow children in your courtroom?
- A. Yes, if they do not become a distraction.
- Q. Do you allow cell phones in your courtroom?
- A. Yes, attorneys may bring cell phones into the courtroom, but they must be silenced (including vibrate).
- Q. What, if anything, do you do to enforce promptness in your courtroom?
- A. I start on time.

CLERK'S/ADMINISTRATIVE ASSISTANT'S COMMENTS

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

A. I expect attorneys to be courteous and respectful and they normally are.

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

A. I expect them to have conferred with the opposing counsel or party on acceptable dates and times. I will then work on setting a date that is acceptable to all.

Q. What is your protocol for scheduling hearings?

A. I try to call or email to see if the parties and counsel are available on the days the Court has available. If I fail to contact an attorney after several tries, I will set the date and hope that it works for everyone.

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

A. Be prepared to tell me what kind of hearing they want, the amount of time they need, and if they have spoken to the opposing party or counsel about scheduling. Please also let me know as soon as a case settles and then file the appropriate notice or motion to close the case as soon as possible so I can set other matters during the time your case was scheduled for trial.

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

A. Everyone's time is limited so scheduling can be difficult. Please be patient.

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

A. Letter size pursuant to U.R.D.C. 403.