

# Wyoming Judges' Benchbook

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Name: Judge Melissa M. Owens

Court: Teton County District Court

Judicial District: Ninth 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. Scheduling Conferences are set on the Court's own motion once an answer is filed. They are conducted by the Court's Judicial Assistant. The order setting the scheduling conference directs the attorneys how to call in. We have several lines available for the attorneys and/or parties to call in. If there are three or more attorneys to a case, they should call in jointly on a single line.

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

A. For the attorney who will be handling and trying the case to be on the call and to have their calendar available. To know when their Rule 26 disclosures are due and to be prepared to inform the Court if they are already complete. To have an idea of how much time they will need to complete discovery in the case. If discovery is expected to take more than four to six months to complete, counsel should be prepared to identify the reasons for requiring additional time. Counsel should also have an idea of if they will be filing any pre-trial or dispositive motions and any other settings that may be required other than the pre-trial conference if the case has any unique components.

Q. Do you use multiple scheduling conferences? Why?

A. No, generally we conduct one scheduling conference. If the parties are close to settling the case, they may request that the initial scheduling conference be reset for 30 to 45 days. Civil trials are always set at the pretrial conference.

Q. Do you use court-directed discovery conferences?

A. No, however, if there is a particular dispute regarding discovery the Court may appoint a special master to hear and rule on the dispute.

- Q. What are your preferences regarding scheduling/discovery conference orders? Do you require that specific things be included in such orders?
- A. The Court generates its own order which provides the attorneys and/or parties with all of the specifics they need to know regarding deadlines and the Court's procedures.

## **PROTOCOL**

- Q. What are your thoughts on courtroom protocol?
- A. It is very important to treat everyone in the courtroom with kindness and respect. Attorneys can advocate strongly for their clients without resorting to disrespectful behavior to one another or the Court. Counsel should be familiar with the standards of professional behavior set out in the Uniform Rules for District Courts Rule 801.
- Q. What things do lawyers do that are particularly helpful?
- A. Writing clear and concise pleadings that state the law and how the facts apply to the law. Quality is better than quantity. In addition, if the Court generates an order setting a hearing and requests the parties be prepared to argue a certain fact, it is helpful if the attorneys focus on that fact. The Court has prepared itself for the hearing and has read all of the relevant pleadings. Reciting the pleadings is not helpful to the Court. Being specific about the relief being requested and why the Court should grant that relief is helpful.
- Q. What things do lawyers do that are not helpful?
- A. Reciting the pleadings which the Court has already read. Failing to cite the applicable law entitling the movant to the relief they are requesting.

## **MOTIONS PRACTICE**

- Q. Do you require that submitted motions include a proposed order?
- A. If a hearing or a motion to continue a hearing or deadlines is requested then a proposed order is helpful to the Court. If a lengthy dispositive motion is filed the Court will generate its own order.

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, unless it is filed the day before or the day of the hearing.

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. Pursuant to W.R.C.P. Rule 6(c)(4), the Court may, in its discretion, determine motions without a hearing. The Court will set the hearing, if needed, once a motion is fully briefed.

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

A. Many motions can be decided without a hearing. In particular, lengthy dispositive motions wherein the parties have included all of the relevant facts and caselaw generally do not require a hearing.

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

A. Yes.

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. In family law cases, TRO's are entered immediately upon request with regard to assets or removing children from the Court's jurisdiction. Preliminary injunctions are determined on a case by case basis. Any party seeking an ex parte temporary restraining order should contact the Court's Judicial Assistant by telephone to alert the Judge's Office of the filing.

#### **FINAL PRETRIAL CONFERENCE**

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

A. For the parties to be ready to go to trial and be prepared to discuss any matters that need to be dealt with before a jury is called and/or the trial proceeds. The Court generally hears all pretrial motions, including dispositive motions at the pretrial conference.

- Q. Do you have a specific format for pretrial statements? If so, please provide a copy.
- A. The case management order that is generated after the scheduling conference provides those specifics.
- Q. What steps do you take, if any, before the final pretrial conference to encourage settlement of the case? Do you require mediation?
- A. The Court requires mediation if one party requests it. The Court is aware that if a case goes to trial it is very likely the attorneys have tried their best to reach a resolution.

## **JURY TRIAL PRACTICE**

### *Jury Selection:*

- Q. How is voir dire conducted in your courtroom?
- A. Voir dire is conducted by seating all of the potential jurors in the gallery of the courtroom. If we have a high profile case we may use the jury box as well to accommodate a larger amount of potential jurors. We provide the jurors with a paddle with their number on it (much like used at an auction) so the court reporter can see who is answering the question and it also helps the attorneys identify who they are speaking with. This is a new process which the Court has used once (as of February, 2022) and all involved thought it worked very well. The peremptory challenge process is conducted by agreeing outside the presence of the jury which group of jurors the attorneys may exercise their regular peremptory challenges on and which group is reserved for the use of alternate peremptory challenges. Then we pass a piece of paper back and forth between the parties with the Court looking at it each time an attorney exercises their challenge to ensure the process is being done correctly.
- Q. Do you allow or encourage the use of jury questionnaires?
- A. Yes, we do allow the use of special questionnaires in the appropriate cases. This would require a motion from one of the parties and a determination by the Court if the questionnaire is appropriate based on the facts of the case.
- Q. What is your due date for proposed jury questionnaires?
- A. The case management order specifies the proposed questionnaire must be filed prior to the pre-trial conference so that the court can hold a hearing if necessary, based on objections made or modifications that may be required.

- Q. What do you prefer in regard to the length of the jury questionnaire?
- A. It depends on the type of case, but the Court does not put a limit in the case management order.

*Requested Jury Instructions:*

- Q. When do you require requested jury instructions to be submitted?
- A. Seven days prior to the pre-trial conference.
- Q. What form do you prefer requested jury instructions to take (e.g. do you prefer jury instructions accompanied by supporting cases, etc.)?
- A. A hard copy mailed or delivered to Court chambers, as well as an emailed copy sent to the judicial assistant and staff attorney. The proposed instructions should include citations. The proposed instructions should not be filed with the District Court Clerk.
- Q. What is your view of the Wyoming Pattern Jury Instructions?
- A. They are the best resource for instructions.
- Q. Do you have a set of stock jury instructions that you use?
- A. Yes, but the Court prefers the attorneys provide input on the instructions to be used by providing the Court with their proposed instructions.
- Q. Do you prefer to receive an electronic copy of requested jury instructions?
- A. See above.

*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 to 5. Lunch is usually an hour and fifteen minutes to an hour and a half depending on the case and the time of year the trial is conducted. The Court generally takes two to three fifteen-minute breaks during each trial day.

- Q. What are your preferences with respect to motions in limine and other trial related motions?
- A. The trial management order specifies the deadlines so that all responses and replies can be filed at least five days prior to the pre-trial conference. It also addresses how the attorneys should handle particularly complex or lengthy pre-trial motions.
- Q. What are your preferences and/or procedures related to witness scheduling?
- A. Any stipulations between the parties regarding witnesses are always helpful. The Court allows the parties to manage and try their case without micro-managing the process as long as they are using their time efficiently in an effort to not have jurors waiting around for lengthy periods of time.
- 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. The Court's Trial Management Order and Scheduling Order outlines the procedure for submitting exhibits to the Court. In hearings or trials where exhibits will exceed one 3" binder, exhibits for the court shall be submitted electronically in advance of the hearing. Generally jurors are not provided with exhibit notebooks, but in some cases such notebooks may be appropriate.
- Q. Do you find the use of computer-assisted presentations (e.g. PowerPoint) effective and/or useful?
- A. In some cases, yes.
- Q. Do you permit "speaking objections" in jury trials?
- A. No, the attorney needs to state their legal objection. If the Court needs to hear more from the attorneys in order to make a ruling, the attorneys will be asked to approach the bench and arguments can be made outside the presence of the jury.

#### **BENCH TRIAL PRACTICE**

- Q. What are the major differences in procedures in your courtroom between bench trials and jury trials?
- A. In bench trials the Court will generally allow the attorneys to remain seated if it helps them to handle voluminous exhibits more efficiently.

- 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. Rarely. The Court prefers to generate its own orders.

#### **THOUGHTS ON EFFECTIVE ADVOCACY**

- Q. What makes an effective advocate in jury arguments?
- A. Concise and respectful of everyone present.
- Q. What makes an effective advocate in bench arguments?
- A. Concise and courteous.
- Q. What are the most common mistakes made in argument?
- A. During non-jury proceedings, reciting what the Court has already read in the briefs.
- Q. What are some techniques that do, or do not, work effectively in the examination of witnesses?
- A. Know when to quit. Sometimes a very efficient direct or cross-examination is all that is needed.

#### **CRIMINAL MATTERS**

- Q. How do you handle requests for continuance on pretrials, arraignments and trials?
- A. Stipulations among the parties for good cause are routinely granted if the case has not been pending for a long period of time. The Court will evaluate more significant requests in open court on the record with the Defendant present.
- Q. When may the issue of bail best be addressed in your courtroom?
- A. At arraignment usually, but either party can move for additional hearings at any time based on the facts and circumstances.
- Q. What information do you want from counsel at the time of sentencing?
- A. The PSI's provide the Court with a great deal of information that is necessary for the Court to evaluate a fair and just sentence. Arguments of counsel should focus on why the plea

agreement should be accepted or why each party is asking for the sentence they are asking the Court to impose.

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

A. No.

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. If custody is going to be contested at a hearing or trial, the Court will require the use of a GAL to represent the minor child(ren).

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

A. A short presentation on why there needs to be swift action taken by the Court usually related to the safety of child(ren). The Court encourages parties to submit verified motions in such circumstances. A TRO will handle matters of assets and will be entered upon request of either party.

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

A. Yes, the parties and the GAL will be allowed to submit up to three questions each. The Court will conduct the hearing in chambers with the court reporter and the lawyers present, but not the parties. The Court does not want the child to be subjected to testifying in front of their parents.

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

A. When custody and visitation are contested. The guardian ad litem should gather as much information as possible about the living situations of the parties, interview teachers or daycare providers and seek information from non-biased parties who have observed the family interactions in the past.



## **DISCOVERY PRACTICES**

- Q. What is your approach to resolving discovery disputes?
- A. Usually a special master is appointed to conduct a hearing as most disputes arise in complex civil litigation. The Court's Scheduling Order sets an expedited response period for all discovery motions.
- Q. What are your thoughts on imposing sanctions for discovery abuses?
- A. Sanctions being imposed are a good deterrent for future abuse of the discovery process. When each request is answered with an objection in an effort to withhold information from the other side, the parties should expect that sanctions may be imposed.
- Q. Are you generally available to solve problems that arise during a deposition?
- A. Yes.

## **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. It has not been a problem thus far. I treat all those in my courtroom with respect and I expect the same of those who appear in Court.
- Q. What do you expect of lawyers (and their staff) in your courtroom? Clients? Witnesses?
- A. They should be dressed appropriately and treat one another with respect. The practice of law is a stressful profession and adding in additional conflict is unnecessary and unproductive. Parties addressing the Court are expected to speak into the microphone. It is helpful for parties to be mindful of the speed of their speech when a matter is being reported.
- Q. Do you impose any limitations on courtroom movement (approaching witness, podium, etc.)?
- A. I prefer use of the podium, but in cases where exhibits can be problematic we can adjust things. In criminal proceedings without juries, staying seated at counsel tables seems to be more effective so the Defendant and their client can communicate if I need additional information from the Defendant that their counsel may not have discussed with them yet. Attorneys should always ask to approach the witness and the bench.

- Q. What kind of lawyer conduct is unacceptable to you in your courtroom?
- A. Being rude in any manner. Head shaking and eye rolling during other presentations is distracting and unwarranted as well.

#### **OTHER MISCELLANEOUS ISSUES**

- Q. What are your opinions regarding courtroom dress?
- A. People should dress nicely. I do not think it is appropriate to wear jeans in a courtroom, although I am understanding that in some courts that has been a tradition for years.
- Q. Do you allow children in your courtroom?
- A. If there is a circumstance where someone cannot find child care I would allow it if it is absolutely necessary. However, if the particular child is to be the subject of the courtroom proceeding then they should not be present.
- Q. Do you allow cell phones in your courtroom?
- A. I allow attorneys to have their cellphones so they can use them to check their calendars or call witnesses.
- Q. What, if anything, do you do to enforce promptness in your courtroom?
- A. It has not been a problem. I begin court at the scheduled time and since attorneys know that they usually arrive a few minutes before the hearing begins. If someone is late (which can happen) a simple apology will usually suffice.

#### **CLERK'S/ADMINISTRATIVE ASSISTANT'S COMMENTS**

- Q. What do you expect of attorneys in their dealings with you?
- A. It would be helpful if attorneys provided prompt responses to emails and telephone calls when possible.
- Q. What do you expect of attorneys in regarding to scheduling hearings?
- A. It would be helpful if attorneys compared calendars for the upcoming 12 months prior to telephone scheduling conferences, particularly if there are more than 2 attorneys involved and a multi-day hearing or trial is being scheduled.

- Q. What is your protocol for scheduling hearings?
- A. If the Court finds that a hearing is necessary, the Court will schedule a hearing. If counsel has a conflict with the setting, a written motion and proposed order resetting the hearing should be submitted to the Court.
- Q. What can attorneys do to improve communications with you?
- A. 1. Copy all opposing counsel, or, as the case may be, pro se parties or the GAL on email correspondence to Judge's staff.  
2. Notify the Judicial Assistant and the Staff Attorney as soon as a case settles and provide an estimate of when dismissal papers will be filed with the Court.  
3. Always remind the Court when an interpreter is needed.  
4. File supplemental / revised / proposed pleadings or orders through the Office of the Clerk of the District Court, not via email to the Judge's staff.  
5. Email courtesy copies of filed pleadings to Judge's staff if they relate to settling or continuing a hearing in the next 48 hours.  
6. Indicate opposing party's position in any motion requesting a continuance or permission to appear by videoconference.  
7. For out of county cases that have been assigned to Judge Owens, please provide courtesy copies of any filed pleadings to the Judicial Assistant by email and USPS mail. The Clerk of the District Court in the respective county is the record keeper of the cases and the best way for the presiding judge to be kept aware of any new filings is by promptly providing a courtesy copy to the Judge. The same is true for any cases that are assigned from Teton County to out of county Judges: please file your pleadings with the Teton County Clerk of the District Court and provide copies to the presiding Judge via the Judicial Assistant.
- Q. What would you like attorneys to keep in mind?
- A. That the Court sets trials in civil matters at the pretrial conference.
- Q. What size paper does your judge prefer or require for pleadings and briefs?
- A. Uniform Rule 403 requires the use of letter size paper.