

Wyoming Circuit Court Judges' Benchbook

Name: EDWARD G LUHM

Judicial District: Fifth

County of Circuit Court: Washakie, Big Horn, Hot Springs

GENERAL COURTROOM PRACTICE TIPS

Motions Practice

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

A. This is the best practice. Copies of proposed orders must be forwarded to the other parties, of course.

Q. Do you appreciate courtesy copies of briefs being delivered to you prior to hearing a motion?

A. No. This is not necessary.

Scheduling Conferences

Q. Do you have scheduling conferences? If so, 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?

A. Yes. In criminal cases the date and time for a pretrial conference are typically established in the bond order. The pretrial conference also serves as a scheduling conference. Counsel or self-represented defendants who reside outside of the area may request to appear telephonically. Most are permitted to attend by phone, but callers should verify with my clerk they intend to do so prior to the hearing. The need for a conference call utilizing something other than the court's own system is decided on a case by case basis, but it is seldom necessary.

In civil cases there is an initial case management conference, unless if it appears that the issues are not complicated, in which case an order setting a trial will be entered. Of course any party may, upon motion, request a case management conference.

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

A. I expect familiarity with the file, of course. Have your calendar handy. Have a good idea how long you think you will need to present your case.

Pretrials

Q. Do you have final pretrial conferences?

A. In civil cases it depends on the nature of the case. For criminal trials the scheduling order identifies a final pretrial conference/ change of plea date.

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

A. At the final pretrial conference, the court needs to know that everyone is ready for trial. The court wants assurances that discovery is complete, that witnesses have made arrangements to be available to testify, and that we have scheduled adequate time to take all the evidence in one proceeding. I also need to know if any party or witness requires special accommodations.

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

A. No. Minimum requirements are set forth in the scheduling order. Memorandums of law are appreciated.

JURY TRIAL PRACTICE

Jury Selection

Q. How is voir dire conducted in your courtroom?

A. As far as I know, the same as in every other Wyoming state court. Counsel question the panel and are given the opportunity to challenge a potential trial juror for cause. Then they exercise their peremptory challenges.

Q. Do you allow or encourage the use of jury questionnaires? If so, what is the due date for questionnaires?

A. The court sends out a questionnaire to everyone when they are notified that they may be called for jury service. Counsel are provided a copy of that prior to trial. Upon motion the court would consider the need for an additional questionnaire.

Jury Instructions

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

A. At the time of the final pretrial conference.

- Q. What form do you prefer requested jury instructions to take (e.g. do you prefer jury instructions accompanied by supporting cases, in electronic form, etc.)?
- A. Both a copy with authorities (e.g., statute, case, pattern instruction number) and a “clean copy” to be numbered and copied for the jury. Having them available in an electronic format can be useful.

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

A. Exceedingly useful.

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

A. Wyoming Pattern Jury Instructions nos. 1.09A, 1.01, 1.12, 1.10, 1.11,1.03.

Trial Procedure

Q. What is your preferred trial schedule (e.g. 9 a.m. – 5 p.m. with an hour for lunch, 8 a.m. – 2 p.m. with no lunch, etc.)?

A. Typically, for a trial of one day or longer, I meet with counsel at 8:30 a.m. and then begin court in the courtroom at 9:00 a.m. While somewhat flexible but prefer a lunch break for a minimum of one hour and prefer to stop for the day around 5:00 p.m. unless we can finish with a witness shortly thereafter.

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

A. This would be addressed in the order setting the trial. If something not reasonably anticipated comes up after the deadlines established in that order, then this must be brought to the attention of the court as soon as possible.

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

A. This is the responsibility of the parties. There is some flexibility as to the order of the witnesses, but each party has to ensure that their next witness is on hand.

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. An exhibit notebook for the court could be useful but it would be an unusual case for the jury to be provided one.

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

A. No. Concise objections should be made.

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

A. Yes.

Bench Trial Practice

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

A.

CRIMINAL MATTERS

Q. Do you allow initial appearance to be entered by written filing?

A. Yes.

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

A. If we are not in jeopardy of exceeding the various timelines established for the type of case it is, we will work with counsel or self-represented litigants with these requests which, of course, must be in writing and must explain the need for the continuance.

Q. Do you allow attorneys to file written agreements on bond conditions?

A. If the State and the Defendant agree upon such conditions it is likely, but not automatic, that such an order will be entered.

Q. Do you have video arraignments of jail inmates? If so, where do you want counsel during the video appearance?

A. The technology is not available at any of the three county jails.

Q. What special considerations occur at sentencing (participation in a deferral program, supervised probation, treatment, etc.)?

A. The court will consider any argument, proposal or position from the State, from the Defendant, and from the victim. There are a number of statutory deferral programs and a great deal of discretion as to the terms of probation.

Q. Do you allow plea agreements in writing? If so, under what circumstances or types of cases?

A. Assuming the question asks whether the court will allow a written plea agreement and judgment approved as to form by the parties in lieu of appearance for the sentencing, the answer is a qualified “yes” In that it remains the court’s prerogative to require the Defendant to appear in person.

Citations

Q. Do you appoint the Public Defender if there is a possibility of jail sentence?

A. Yes, if the person demonstrates that they can’t afford an attorney.

Q. Do you accept credit card payments?

A. No, but payments can be made online. My clerks can provide further information about that.

Juveniles

Q. Do juveniles appear at a separate time than adults?

A. Yes.

Q. Do you insist juveniles appear with a parent/guardian?

A. This is preferred.

CIVIL MATTERS

Q. Does the court prepare the orders, or should the attorney prepare the order?

A. Usually the court does, but at times the court will request counsel to prepare and approve an order. For example, this might be best in complicated civil matters or orders resolving several pending criminal cases at one time.

Family Violence/Stalking Protection Hearing

Q. Do you encourage attorneys in these matters?

A.

Small Claims

Q. Do you think it is effective for attorneys to appear in small claims matters?

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. I have not seen a lack of civility.

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

A. Punctuality. Preparation. Respect for the court and everyone else in the courtroom.

Q. Do you impose limitations on courtroom movement (approaching witness, podium, etc.)?

A. Stay near a microphone.

Q. What kind of lawyer conduct is unacceptable in your courtroom?

- A. Don't be disrespectful. Don't make little off the record but still audible comments about a witness's testimony or opposing counsel's argument.

OTHER MISCELLANEOUS ISSUES

Q. What are your opinions regarding courtroom attire?

A. Attire should show respect to the court. It is not required that people purchase new clothes just to go to court. It is expected that clothes are neat and clean.

Q. Do you allow children in your courtroom?

A. I would prefer that children are not brought to court. That said, I realize that daycare can be an expense and inconvenience for some folks. Therefore, children are allowed in court, but it is expected that they remain quiet and well-behaved.

Q. Do you allow cell phones in your courtroom?

A. Yes, if they are turned off.

Q. What, if anything, do you do to enforce promptness in your courtroom?

A. In a criminal matter, an order to show cause or a bench warrant can issue for a failure to appear on time. If a party doesn't show up for a scheduled hearing or trial a default can be entered. None of this is preferred. If a problem arises such that an attorney or a party cannot make a scheduled matter contact the court and advise so immediately. Work with the court to get the matter rescheduled.

Specialty Courts

Q. Do you have a specialty court (drug court, DUI court, juvenile court)? If so, please describe.

A. Yes, in Big Horn and Washakie we have a treatment court for individuals in need of intensive court supervision due to their struggles with addiction to alcohol or another drug.

Q. What are the criteria for entrance in the program?

A. Successful completion of a treatment court program is a probationary condition in a sentence entered pursuant to a plea agreement.

Q. What is the judge's role in the program?

A. The Judge participates in the weekly staffing which occurs just prior to court. The Judge encourages and rewards participants with their successes but is also called upon to sanction a participant for lapses. A magistrate is utilized in Big Horn County. If the participant fails the program and needs to be sentenced for a probation violation another judge, of course, will be utilized to fulfill that role.

Q. Can an attorney petition for his/her client to participate in the program?

A. It would need to be a joint request to the court. The State must agree the Defendant is a good candidate.

Q. Must there be an adjudication or can there be participation from a form of deferral?

A. There must be an adjudication.