

Wyoming Judges' Benchbook

Name: Catherine E. Wilking

Court: District

Judicial District: 7C

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 upon receipt of a request for setting from counsel. Pretrial Conferences are conducted by me and are used to set the date of trial and establish deadlines. Out of town attorneys are usually allowed to participate by telephone. If more than two attorneys are calling in, the attorneys are responsible for setting up a conference call.

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

A. Each attorney should be aware of and able to answer questions regarding their calendar. Counsel should also be able to identify discovery and legal issues.

Q. Do you use multiple scheduling conferences? Why?

A. No, they usually are not necessary.

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. I prepare the order following pretrial conferences. The general form used includes the trial date, a dispositive motion hearing date, final pretrial conference date and general deadlines.

PROTOCOL

Q. What are your thoughts on courtroom protocol?

A. Counsel should abide by the protocols set forth in the Wyoming Rules of Civil Procedure, Wyoming Rules of Criminal Procedure, Uniform Rules for District Courts, and the pertinent statutory authority.

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

A. Use authority and evidence to support non-conclusory arguments and promptly follow-up on any questions or orders directed by the Court.

- Q. What things do lawyers do that are not helpful?
- A. Assert conclusory arguments without supporting authority and evidence.

MOTIONS PRACTICE

- Q. Do you require that submitted motions include a proposed order?
- A. No.

- 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. Yes. One copy to the Court when the brief is filed is sufficient.

- 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 an attorney would like a hearing on a motion, a request for setting should be submitted. The JA will contact counsel to schedule the hearing.

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

A. I seldom decline a request for oral argument.

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. No.

FINAL PRETRIAL CONFERENCE

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

A. To discuss procedures including jury selection, opening and closing arguments, witness schedules, and hear any motions in limine.

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

A. No.

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

A. None.

JURY TRIAL PRACTICE

Jury Selection:

Q. How is voir dire conducted in your courtroom?

A. Voir Dire is directed to a group consisting of the number of jurors required, including peremptory challenges, selected from the panel in attendance and seated for voir dire examination. A general voir dire is conducted. If a juror is excused for cause, another is added to the group. Peremptory challenges are exercised in writing and the jury is seated.

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

A. No.

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

A. N/A

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

A. N/A

Requested Jury Instructions:

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

A. Jury instructions are due the day before 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, etc.)?

A. Jury Instructions should follow Wyoming pattern jury instructions and are to be presented in both hard copy and via e-mail.

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

A. Counsel should exclusively rely on the pattern instructions unless a requested instruction is directly and materially supported by authority.

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

A. Yes.

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

A. Yes.

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. Criminal jury trials generally begin at 9:00 a.m. and civil jury trials at 9:30 a.m. I break an hour for lunch and plan a morning and afternoon break.

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

A. Any motions not previously argued will be heard at the final pretrial conference. I do not like to keep the jury panel waiting and will not hear motions the morning of trial.

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

A. My expectations are that counsel will have their witnesses waiting to be called without delay to the court and jury.

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. Upon stipulation, I do allow notebooks for the court and jurors.

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

A. Sometimes. The presentation should enhance the attorney's argument in order to be effective, not be a verbatim reading of it.

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

A. No.

BENCH TRIAL PRACTICE

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

A. There are none.

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. Yes. Proposed findings are to be submitted the day before the final pretrial conference, same as jury instructions.

THOUGHTS ON EFFECTIVE ADVOCACY

Q. What makes an effective advocate in jury arguments?

A. Cogent argument that identifies and simplifies the factual and legal issues.

Q. What makes an effective advocate in bench arguments?

A. Cogent argument that identifies and simplifies the factual and legal issues.

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

A. Repetitive, rambling remarks without addressing specific issues.

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

A. Asking the same thing and being argumentative do not work.
Prepared, succinct questions formatted to identify the elements pertinent to a particular witness do work.

CRIMINAL MATTERS

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

A. I will grant most continuances that are stipulated to and require a hearing on those that both sides do not agree to.

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

A. Bail may be addressed at most hearings.

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

A. Any objections or corrections to the pre-sentence report and specific plans for rehabilitation.

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

No.

A.

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

No.

A.

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 any novel issues arise, attorneys should be prepared with proposed solutions supported by statutory authority and case law.

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

A. As a general rule, I do not enter temporary orders. Self serving affidavits are not helpful. Counsel should present the issue and the solution, allowing opposing counsel time to respond.

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

A. I prefer not to do them. If counsel wish to call a child as a witness, the child will be questioned by counsel with follow-up questions from me, if I feel it is necessary.

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

A. In domestic cases, I will appoint a guardian ad litem upon stipulation of the parties. A guardian ad litem should represent the best interests of the child/children.

DISCOVERY PRACTICES

Q. What is your approach to resolving discovery disputes?

A. In resolving any discovery disputes, counsel are expected to seek a solution on their own before turning to the Court for assistance, pursuant to Wyo. R. Civ. P. 37(a)(2). Any failure to answer or comply with a discovery request should have a substantial basis in fact and law. Generic, repetitive, and delaying objections do not constitute a substantial basis. Compliance with the Wyoming Rules of Civil Procedure is expected.

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

A. If the abuse continues, it may be necessary to impose sanctions.

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

A. No.

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 is not a recurring problem. If there is an issue, a verbal warning will be issued. Any further violation will result in sanctions pursuant to 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. They are expected to follow the dictates of the Uniform Rules of District Court, particularly Rule 801.

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

A. Counsel may move about the podium, but must request to approach witnesses.

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

A. Anything in opposition to Rule 801 and the Code of Professional Conduct.

OTHER MISCELLANEOUS ISSUES

Q. What are your opinions regarding courtroom dress?

A. Professional attire is expected.

Q. Do you allow children in your courtroom?

A. Yes. They may be asked to leave if disruptive to proceedings.

Q. Do you allow cell phones in your courtroom?

A. No.

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

A. Verbal admonition is issued for tardiness without good cause or common courtesy.

CLERK'S/ADMINISTRATIVE ASSISTANT'S COMMENTS

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

There should be no ex parte communications with the law clerk.

A.

Communication with the judicial assistant should be professional and courteous.

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

The JA attempts to contact counsel via phone or e-mail to schedule hearings at a time convenient to court and counsel. It is beneficial if counsel is flexible in scheduling, especially for one day or longer hearings or trials. It is expected that counsel will contact the JA personally when a matter has been resolved and a hearing can be vacated, instead of relying on a motion or order being brought to her attention.

A.

Q. What is your protocol for scheduling hearings?

A request for setting must be submitted to the JA. She will then contact counsel to schedule a date.

A.

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

Call or e-mail the JA.

A.

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

We make every effort to schedule hearings as soon as possible. The earlier we are notified that a matter has been resolved, the more we are able to use that time to schedule other matters in. If we are not notified until the week or day before, that time is wasted.

A.

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

A. Pursuant to the Uniform Rules for District Court, pleadings and motions should be submitted on 8.5 x 14. Briefs and jury instructions on 8.5 x 11.