Judge Derek P. Pullan

Bench Book

Updated August 2018

Discovery

What is your practice with respect to setting an initial case schedule, or modifying an existing schedule?

At any time, parties may request—and the court may require—a Rule 16 case management conference.

Not every case needs active judicial case management. For that reason, new Rule 26 created presumptive discovery limits and deadlines for each tier. These limits and deadlines are workable for most routine matters.

But some cases are complex, whether due to the issues presented, the number of parties, the amount of electronic discovery, or something else. These cases—and experienced counsel know them when they see them—can benefit greatly from early judicial involvement. In these cases, attorneys are encouraged to contact the court early on to hammer out a discovery schedule that is realistic, efficient, and case-specific

Has your district adopted any local rules with respect to resolving discovery disputes?

No.

What is your practice regarding discovery disputes? How do you handle status conferences and scheduling related to discovery?

Discovery disputes can be an expensive undertaking. So try to avoid two grave errors. First, when you want an "order regarding any discovery issue," do not file a motion to compel discovery or a motion for protective order. These motions died with the advent of the Statement of Discovery Issues under Rule 37—may they rest in peace. URCP 37(a). Second do not bury a request for sanctions in a Statement of Discovery Issues. URCP 37(a)(8).

I decide Statements of Discovery Issues promptly as soon as a request to submit for decision has been filed. Most statements are resolved on the papers. If I need to speak with you, the clerk will schedule a telephone conference. Remember, unless you file a request to submit for decision, the court will not know about your statement of discovery issues. It will lie there in the docket, a dead letter. The request to submit breathes life into the statement, moving it from the docket to my desk.

What is your approach to granting extraordinary discovery?

Motions or stipulations for extraordinary discovery must be filed "before the close of standard discovery and after reaching the limits of standard discovery." URCP 26(c)(6). Rule 26 contemplates that parties will be diligent in using the deposition hours, interrogatories, and requests for production permitted by rule before asking for more. Parties seeking extraordinary discovery should articulate a good reason why standard discovery has been insufficient.

In complex cases, repeated motions or stipulations for extraordinary discovery can be avoided by requesting a Rule 16 conference early in the case. These conferences allow the parties and the Court to craft a case-specific discovery schedule.

What is your practice regarding sanctions for discovery abuses?

Discovery is a tool to ensure the just, speedy, and inexpensive determination of every cause. URCP 1. These important objectives can be undermined when parties disregard court orders without substantial justification. When this happens, sanctions may be warranted. Discovery sanctions should be proportional to the degree of prejudice caused by the wrongful conduct.

While not adopted in the Utah Rules of Civil Procedure, federal Rule 37(e) is a good model for how to address the loss of electronically stored information, and for when to impose the "nuclear sanctions"—presumptions, adverse inference instructions, and dismissal or default judgment.

Are you generally available to hear disputes that arise during depositions?

When I am not on the bench, I am available to resolve these disputes. Contact the clerk if you need my help.

That having been said, resolving deposition disputes can place the judge in a difficult circumstance. He or she has not heard the deposition testimony that preceded the dispute, and often knows little about the claims, defenses, and theories. Context means everything, and the judge knows little of it when taking a cold call mid-deposition. For this reason—and as a concession to the shortness of our lives—counsel should confer with each other to resolve deposition disputes before contacting the Court.

What insights do you have for litigants with respect to discovery matters in general, especially in light of the November 1, 2011 amendments to the Utah Rules of Civil Procedure?

Be familiar with the problems the new rules sought to remedy and the theory underlying those rules. Both are set out in the Advisory Committee Notes. Here is a Reader's Digest version to help.

Civil litigators and judges have known for a long time that discovery takes too long and costs too much. This was a problem for litigants on both sides. Plaintiffs unable to meet the discovery cost threshold declined to bring meritorious claims. Defendants settled specious claims to avoid the discovery bill. This undermined public confidence in the rule of law and the judiciary. Despite the laudable objectives of Rule 1, few would have described civil litigation as just, speedy, and inexpensive.

Two realities combined to create the perfect storm. First, the scope of discovery under the former rule was almost limitless. Parties were entitled to discover anything reasonably likely to lead to the discovery of admissible evidence. Second, the volume of electronic information stored by individuals and entities had grown exponentially. Today—with smartphones, tablets, the internet of things, email, text messaging, snapchat, Facebook, and countless other electronic applications—the number of potentially relevant documents in even the smallest case can be staggering.

Utah's civil discovery reform effort sought to remedy this predicament in five ways.

- *Robust Initial Disclosures*. Parties who know more about each other's claims and defenses earlier are better able to focus discovery efforts and to settle. URCP 26(a)(1).
- *The Scope of Discovery: Proportionality*. The scope of discovery was narrowed. Today parties can discover "any matter, not privileged, which is relevant to the claim or defense . . . if the discovery satisfies the standards of proportionality." URCP 26(b)(1). Proportionality is defined and the burden of proving it always rests on the requesting party. URCP 26(b)(2)(3).
- *Three Tiers of Litigation With Presumptive Discovery Limits/Deadlines*. A one-size fits all construct was rejected. Civil litigation was divided into three tiers based on amount in controversy (an admittedly rough tool for determining complexity). Each tier was assigned presumptive discovery limits and deadlines. URCP 26(b).
- *Expert Discovery Reform*. The timing and methods for expert disclosure and discovery were redefined. You now must elect either an expert report or a deposition. Experts can only testify to opinions fairly disclosed in the report. URCP 26(a)(4).
- *Teeth to Address Failure to Disclose*. The reform would be ineffective without meaningful incentives to disclose. Parties who do not timely disclose witnesses and other evidence in support of their claims or defenses cannot use them. This is so unless the non-disclosing party proves good cause for its failure, or that the failure was harmless. URCP 26(d)(4).

Motions

Do you prefer that counsel provide copies of the cited authorities prior to a hearing? What about unpublished cases?

If a case—published or unpublished—directly addresses the issue before the Court, please provide a copy. But there is no need to provide copies of cases cited for well-known rules of law or procedure, i.e. the summary judgment standard, the requirement that fraud be pled with particularity, the elements of a breach of contract claim. This extends the useful life of your copy machine and the trees.

Do you appreciate courtesy copies of briefs being delivered to your chambers prior to a motion hearing? If so, how far in advance do you want them?

With my apologies to your copy machine and the trees, I do appreciate courtesy copies delivered to my chambers. Cooperate with opposing counsel to deliver one set of courtesy copies. Please deliver them 14 days in advance of the hearing.

What is your policy on allowing overlength memoranda? Extensions of the briefing schedule?

In most instances, the page limits for motions are sufficient. URCP 7(c)(3). In my experience, shorter legal writing is often more persuasive. While I do not espouse brevity for brevity's sake, writing is the discipline we bring to thought. Succinct and focused writing is evidence of clear thinking. And that takes work. As Mark Twain once said, "I would have written you a shorter letter but I didn't have time."

So, before asking for an overlength memorandum, look at what you have written with a critical eye. Ask yourself, "What is needed to persuade—more pages, or fewer?"

Do you schedule motion hearings automatically upon receipt of notices to submit, or do you prefer or require that counsel call to schedule hearings?

I schedule hearings automatically when a notice to submit is filed and one or both sides have requested a hearing. When a hearing has not been requested, I will generally rule on the papers.

The clerk will contact you to schedule a convenient time for the hearing. If you believe that the issue before the Court will require evidence to be taken, tell the clerk how much time you will need. Cooperate with opposing counsel on the amount of time requested. If you cannot agree, please contact my clerk and so that a telephone conference can be held to plan the hearing.

Under what circumstances have you declined to grant oral argument?

I generally allow argument when it has been requested. However, sometimes the issue before the Court has been clearly decided by the Utah Supreme Court or Utah Court of Appeals,

or is resolved by the plain language of a rule or statute. In these rare instances, I have denied requests for oral argument.

Do you have any recommendations or preferences regarding written advocacy that you would like counsel to be aware of?

Remember that writing is the discipline we bring to what we think. The best writing is focused, clear, and coherent—all of which take time and effort. Be willing to pay the price for clear thinking.

Your goal is to persuade. Persuasion requires a trustworthy voice, one that is respectful of the reader's intelligence and time. Trust is undermined when a writer uses uncivil or condescending language, engages in personal attacks, or starts name-calling. All of these things divert the reader's focus from the merits of your client's arguments. They suggest weakness on the facts, the law, or both.

Some of the most pragmatic advice I have received about effective legal writing can be found in *Thinking Like A Writer—A Lawyer's Guide to Effective Writing and Editing,* Armstrong, Steven V., Terrell, Timothy P., Third Edition, Practicing Law Institute, New York.

The principles in this book on "super-clarity" are particularly helpful. Principle one is that "readers absorb information best if they understand its significance as soon as they see it." Understanding this, effective legal writers provide focus. They make the structure of information explicit. They put old information before new.

Do you have any particular guidelines or preferences that you expect counsel to follow at oral argument?

Your client paid a lot of money for the brief you filed and is entitled to a judge who has read it. I read the briefs. So, you do not need to re-read them at oral argument.

I come to oral argument with specific questions. Those questions will often test the limits of the legal analysis you have put forward. This is especially true in cases of first impression. In asking difficult questions, I am not "taking a position" but rather inviting you to explain and to clarify your analysis and my thinking. Contrary to the views of some, oral argument does make a difference. So be prepared.

Do you have any guidelines or preferences that you expect counsel to follow regarding temporary restraining orders or preliminary injunctions?

Remember that Rule 65A creates a presumption in favor of notice to the adverse party. URCP 65A(a)(1); (b)(1).

Ex parte relief is available only when (1) "it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will

result to the applicant ***before*** the adverse party can be heard in opposition;" and (2) "the applicant or the applicant's attorney ***certifies to the court in writing*** as to the efforts, if any, that have been made to give notice and the reasons supporting the claim that notice should not be required."

Rule 65A dictates the form of temporary restraining orders. Make sure your proposed order meets these requirements. URCP 65A(b)(2).

If a temporary restraining order is granted, the preliminary injunction hearing must be scheduled "at the earliest possible time." Preliminary injunction hearings take precedence over all other civil matters. URCP 65A(b)(3). Tell your client that if he asks for extraordinary relief, he must be extraordinarily available to attend and participate in the next hearing. He must also be prepared to post security. URCP 65A(c)(1).

As a general rule, the Court will order that the preliminary injunction hearing last a certain number of hours. Each side will receive equal time. Time you spend in argument, direct examination, and cross examination counts against your total time. Direct testimony can be received by affidavit or sworn declaration, provided that the affiant is present at the hearing and available for cross-examination. Absent compelling circumstances, affidavits must be filed three days in advance of the hearing.

Extraordinary relief is just that—extraordinary. Motions for extraordinary relief require that complex legal work be undertaken in a short amount of time. In this high-pressure environment, more cooperation among counsel is required, not less. Please work together and grant each other reasonable accommodations when you can. Contact the clerk when my involvement will help.

Final Pretrial Conference

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

The purpose of the final pretrial conference is to eliminate uncertainty about how the trial will proceed. Eliminating this uncertainty allows attorneys to focus their trial preparation time on the substance of the case. See Form A for a Final Pretrial Order template.

What topics or issues should counsel come prepared to discuss at the final pretrial conference?

Counsel should come prepared to address:

- The number of potential jurors to be called given the nature of the case.
- The number of alternate jurors.

- Whether a substantial controversy exists among several plaintiffs or defendants such that additional peremptory challenges should be allowed. URCP 47(e).
- Whether a juror questionnaire will be used.
    - Counsel should cooperate in the preparation of a proposed questionnaire before the final pre-trial conference.
    - Disagreements about specific questions can be resolved at the conference.
    - Questionnaires should not exceed four pages.
- The deadline for submitting special voir dire questions.
- The deadline for filing proposed jury instructions.
- The number of "will-call" and "may-call" trial witness.
- Any stipulations to which the parties have agreed.
- The number of trial days needed. To arrive at this number, counsel should be prepared to address:
    - What will constitute a trial day—8:30 a.m. to 5:00 p.m. or something different.
    - The time needed for jury selection.
    - The time needed for opening argument.
    - Who will be called as a witness and the time needed to examine each witness.
    - The time needed to instruct the jury.
    - The time needed for closing argument.
- The deadline for filing pre-trial motions, including motions in limine.
- The deadline for making final pre-trial disclosures.
- The deadline for objecting to final pre-trial disclosures.
- The format in which final pretrial disclosures will be made?
- How trial exhibits will be marked.
- The deadline for filing a stipulated set of trial exhibits.

What steps do you take, if any, at a final pretrial conference to encourage settlement of the case?

I generally leave settlement to counsel. You know the facts and circumstances of the case best. You know the advantages and disadvantages of alternative dispute resolution. For these reasons, I do not order parties to mediate. If they want to mediate, I will set a deadline by which this must be done so that your trial days can be used by other litigants.

Do you require clients to be present at final pretrial conferences?

No. If you believe having the clients there will be useful, file a motion explaining why and I will consider it.

Do you typically hear motions in limine and other trial-related motions at the final pretrial conference or at another time?

Motions in limine are scheduled on a different date when there is more time to hear oral argument. The scheduling order will set a motion cut-off date so that motions in limine are resolved well before trial.

Do you appreciate or require pretrial briefs from counsel?

Pretrial briefs increase the cost of litigation and so I do not expect them. That being said, there are some cases in which a pretrial brief is very helpful. If you file one, do it five days before trial starts so I have time to read it.

Jury Trials

Jury Selection

How is voir dire conducted in your courtroom?

I begin with general questioning of the panel. Jurors introduce themselves—name, place of residence, occupation, what they do in their spare time. I address whether jurors know the parties, counsel, or witnesses. I ask whether they know anything about the case. I ask any special voir dire questions that have been submitted. In a criminal case, I ask about law enforcement connections and bias, the presumption of innocence, and willingness to follow the law as instructed. If a juror questionnaire has been used, general questioning is more limited.

After general questioning, we go into chambers where counsel can exercise any for cause challenges. The challenges can be based on answers given in court or in the questionnaire. We then identify jurors you want to speak with individually and invite them in chambers. At that point, the attorneys are free to ask the juror whatever follow-up questions are appropriate. The juror is then dismissed and the parties decide whether or not they pass that juror for cause.

I believe counsel play an important role in selecting the jury. In chambers, you are free to explore answers given in general questioning or in the questionnaire. Remember, the purpose of voir dire is "to determine, by inquiry, whether biases and prejudices, latent as well as acknowledged, will interfere with a fair trial if a particular juror serves in it." *State v. Williams*, 2018 UT App 96, ¶ 13. Voir dire is not a time to argue the facts of the case, use hypotheticals closely approximating those facts, pose rhetorical questions, give speeches, bolster witness credibility, pre-educate, or indoctrinate. *Id.*, at ¶¶ 26-40.

When do you require requested voir dire questions to be submitted?

Seven days before trial.

Do you allow or encourage the use of jury questionnaires? When should they be filed?

In complex cases, juror questionnaires can streamline jury selection. Be sensitive to jurors' time and privacy. The last thing you want is jurors who arrive on the first day of trial with a feeling of resentment about the process.

Before the final pretrial conference, counsel should cooperate with each other in preparing a stipulated questionnaire. Bring the proposed questionnaire to the pre-trial conference. Disagreements about specific questions can be resolved there. Questionnaires should not exceed four pages.

Unless you ask for a different process, the questionnaire will be mailed to each potential juror with the jury notice. A deadline is set to return the questionnaire. Jurors are instructed to answer the questions as if under oath and that their answers must be their own.

One week before trial, the clerk will provide to counsel an electronic copy of all returned questionnaires.

*Jury Instr*uctions

When do you require jury instructions to be submitted?

Counsel should cooperate with each other to prepare a stipulated set of jury instructions. If you cannot agree on certain instructions, file them under the caption "[Plaintiff's or Defendant's] Disputed Instructions." This document should contain citation to and an explanation of legal authority supporting each disputed instruction.

The stipulated and disputed instructions must be filed 14 days prior to trial.

Do you have a standard set of jury instructions that you use? If so, how can counsel get a copy?

Yes. The clerk will send you an electronic copy after the final pretrial conference.

What form do you prefer requested instructions to take? What authority should be cited in support of instructions?

Instructions should have the heading: "Instruction No. ____." A citation to MUJI is helpful. Citation to other authorities will be set out in your "Disputed Instructions" filing. This authority should not appear on the instruction itself.

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

Yes. Send a copy to my clerk at mykeld@utcourts.gov.

When do you prefer to hear disputes over jury instructions?

I prefer to resolve disputes about instructions toward the end of trial at a time when the jury is not waiting for us. Deciding disputes over instructions should not take long if counsel have made a good faith effort to craft a stipulated set of instructions before trial.

Trial Procedure

What is your preferred trial schedule? Are there any set days when you do not schedule trial time?

My preferred trial schedule is Monday, and Wednesday through Friday, 8:30 a.m. to 5:00 p.m. with a one hour lunch break and a 20 minute morning and afternoon break. A shorter trial day may be permitted in trials that will last longer than five days. For example, we could end at 3:00 p.m. each day to allow counsel to prepare and to attend to the needs of other clients.

My felony law and motion calendar is on Tuesdays. Trial time is generally not scheduled on that day.

Do you prefer to hear disputes over exhibits before or during trial?

Often, the best time to rule on admissibility is when the exhibit is offered. At that time, the exhibit can be seen in context. But if the admissibility of a particular exhibit presents a complex evidentiary or legal question, file a motion in limine well before trial.

What is your practice regarding the use of trial exhibits or demonstratives during opening statements?

Be certain that what you are using will be admitted. Tell opposing counsel and the court what exhibit you intend to use in opening statement before you use it.

What are your preferences and your clerk's preferences with respect to trial exhibits?

Counsel should file a stipulated set of trial exhibits by the deadline set at the final pre-trial conference.

Do you have any guidance or preferences regarding the use of technology at trial?

Make sure it works. Contact my clerk at mykeld@utcourts.gov before trial to schedule a time to test your technology in the courtroom.

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

Counsel should cooperate with each other to accommodate the schedules of trial witnesses. Calling witnesses out of order is permitted.

Do you allow counsel to move freely about the courtroom during trial?

You get a good record when you stay at the podium in front of the microphone. So do that. Ask to approach each witness one time, and then you don't need to ask again. As to allowing counsel to "move freely about the courtroom," interpretive dance is discouraged.

Bench Trials

Do you have any particular guidelines or preferences that counsel should be aware of regarding bench trials as opposed to jury trials?

No.

Post-Bench Trial Issues

Do you appreciate or require proposed findings of fact and conclusions of law from counsel?

Not in routine cases. In complex bench trials that last more than a few days, proposed findings and conclusions are helpful. That being said, the most useful thing counsel can do is present a stipulation of undisputed facts before trial. This allows me to focus on areas where the facts are really in dispute.

Do you appreciate or require post-trial briefs from counsel?

Not in routine cases. Where a case involves a legal issue of first impression or a legal issue that is otherwise complex, post-trial briefing can be helpful. However, ideally this would be identified early in a pre-trial brief so that the evidence can be viewed in legal context.

Technology In the Courtroom

To what extent do you allow the use of technology in the courtroom?

If you have electronic technology and it works, use it. While less prone to glitches than electronic technology, more cumbersome technologies—stone tools, spears, levers, printing presses, steam engines, etc.—are discouraged.

Do you find the use of any particular type of computer-assisted presentations effective or useful?

One that works—meaning it reliably and effectively presents information to the trier of fact. Do all you can to avoid those awkward "wait for it . . . wait for it" or "hmm, it worked this morning" moments. The technology you choose should effectively communicate information.

For example, I have seen counsel project the contract onto a screen in a font so small that no juror can see it.

Do you find the use of any particular type of computer-assisted presentations unhelpful?

Computer-assisted presentations that "take over" and make the lawyer disappear are rarely effective. Computer-assisted presentations—no matter how advanced—cannot mask bad facts or weakness on the law.

Criminal Matters

How do you handle requests for continuances on pre-trials, arraignments, or roll calls?

At the beginning of the felony law and motion calendar, I will ask to call matters that can be handled summarily. Stand up then if you have a stipulated continuance so you don't wait through the whole calendar.

How should counsel handle calling a case on a busy law and motion calendar?

See the answer to the preceding question. Once summary matters have been dealt with, I will call any case that is ready to be heard. Counsel generally line up and take their turn.

Please tell the clerk if your client suffers from a medical or mental health condition or disability that requires his or her case to be called early in the calendar.

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

The accused may address bail automatically one time. Usually, this occurs at the first appearance. URCrP 7(d)(5). After the initial order setting bail enters, a written motion is required to modify it. Utah Code Ann. § 77-20-1(6)(a). The motion must demonstrate "a material change in circumstances." Utah Code Ann. § 77-20-1(7). Each party is entitled to present additional evidence or information relevant to the modification. Utah Code Ann. § 77-20-1(5)(c).

What is your policy on pleas in abeyance?

I will consider any lawful plea bargain proposed by the parties.

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

By statute, the court is required to "receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence." Utah Code Ann. 77-18-1(7). The testimony, evidence, and information must be "presented in open court on record and in the presence of the defendant." *Id.*

If you believe that presenting the relevant testimony, evidence, or information will exceed the time generally allowed for a routine sentencing hearing, ask for a special setting. Be selective in calling witnesses to avoid cumulative testimony.

Are private pre-sentence evaluations useful or encouraged?

See the answer to the preceding question.

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

I have no standard sentences or probation conditions except those mandated by statute.

At sentencing, counsel should understand how any statutes or the Utah Sentencing Guidelines apply. For example, with the enactment of the Justice Reinvestment Initiative, courts have less discretion in imposing periods of incarceration for probation violations. Utah Code Ann. § 77-18-1(e)(iii) (requiring that a person be sentenced within the sentencing guidelines for probation violations unless certain conditions are met).

What advice do you have for prosecutors to be most effective in your courtroom?

The best prosecutors manifest no ill-will or disrespect toward the defendant personally. Prosecutors who in tone or verbiage demonstrate disdain for the accused damage their credibility and reputation with jurors and with the court. "[P]rosecutors have duties that rise above those of privately employed attorneys." *State v. Emmett*, 839 P.2d 781 (Utah 1992). As the United States Supreme Court observed:

> "[A prosecuting attorney] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and **whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer.** He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

Id. (quoting *Berger v. United States,* 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935)).

The best prosecutors are models of professionalism and civility. They work cooperatively with defense counsel to meet the State's discovery obligations early in the case. They do not let emotion or personal bias influence their strategic decisions or their public statements. They are willing to concede when the facts or the law do not support the charges. They define their effectiveness by the fairness of the criminal justice system, not the number of guilty verdicts obtained.

What advice do you have for defense counsel to be most effective in your courtroom?

The best criminal defense lawyers are those who care deeply for their clients. They are patient and understanding of those who are marginalized, troubled, homeless, addicted, and mentally ill. At the same time, effective defense lawyers are able to confront clients who manifest disruptive, threatening, or abusive behavior.

There is no substitute for hard work. The best criminal defense lawyers meet with the client before court. They review the State's evidence with the client. They present legal options clearly, answer questions, and allow the client to make reasoned legal choices. They know the criminal rules of procedure. They are on time and prepared for each hearing.

Effective criminal defense lawyers are models of professionalism and civility. They acknowledge and timely meet the defendant's discovery obligations.

What should counsel do to prepare for pre-trial conferences in complex criminal litigation?

Some criminal cases are complex. In these cases, the Court will schedule a pre-trial conference. This occurs after arraignment. Lead trial counsel must attend the pre-trial conference. See Form B for a Final Pretrial Order template.

The purpose of the pre-trial conference is to:

- Determine when the parties will be prepared for trial.
- Identify discovery that has not been provided, including electronically stored information and the status of crime lab testing.
- Set deadlines for the completion of discovery.
- Identify expert witnesses and ascertain their availability for trial.
- Set deadlines for expert disclosures and reports.
- Set deadlines for the filing of pre-trial motions, special voir dire questions, the juror questionnaire (if any), and jury instructions.
- Determine the number of potential jurors to be summoned.
- Determine the number of alternate jurors.
- Determine the length of trial (which is a function of the anticipated length of jury selection, length of opening statement, number of witnesses to be called and length of examination, and the length of closing statement).
- Determine the deadline for filing pre-trial motions, including motions in limine.

Domestic Matters

Are there any special issues that arise in domestic cases which you would like the bar to be aware of?

Every effort should be made to resolve issues when the facts can be ascertained through objective evidence. For example, the monthly incomes of the parties can often be reliably verified through tax returns, W-2's, and pay-stubs. The payment of child support/alimony/medical expenses and the amount of any arrears can be ascertained through bank records, cancelled checks, or other proofs of payment. Sometimes issues like this end up being tried unnecessarily and at significant cost to the client.

If your client wants joint custody, remember to file a proposed parenting plan. Utah Code Ann. § 30-3-10(c).

Domestic relations cases are difficult. Sometimes a client who has been hurt or betrayed by his or her spouse will expect counsel to reflect the client's anger and disdain for the spouse in written papers and in court. Quashing this expectation early in the representation is important. I would suggest reviewing with your client the Utah Standards of Professionalism and Civility

What documents do you want filed before appearing on a motion for temporary orders?

Follow the standards of the assigned domestic commissioner.

What documents do you want filed before appearing on a motion for a custody evaluator?

Follow the standards of the assigned domestic commissioner.

What are the special procedures for filing a Motion for Order to Show Cause?

Follow the standards of the assigned domestic commissioner.

Do you have any preferences for compelling and filing financial declarations? Any practice pointers for counsel as to how you would like these completed or filed?

No preferences for filing. I would note that financial declarations should not have to be compelled. The rules of civil procedure require that all initial disclosures be timely supplemented, including financial declarations. URCP 26(d)(4); URCP 26.1(c). Failure to timely supplement can result in exclusion of undisclosed evidence.

Do you appreciate courtesy copies of briefs delivered to your chambers before a motion hearing? If so, how far in advance do you want them? How do you want them assembled?

When a pre-trial motion presents an issue of first impression or is otherwise complex, I do appreciate courtesy copies. The copies should be filed 14days before the hearing. Cooperate

with opposing counsel to submit one binder containing all papers filed in support of and in opposition to the motion.

Is there any special way you would like proposed orders filed?

Comply with Rule 7. Seriously. So much heartache in this world could be alleviated by reading and complying with this rule.

How should discovery deadlines be handled on petitions to modify where a schedule is not automatically issued by the court*?*

Follow the standards of the assigned domestic commissioner.

Do you have any policy on child interviews with respect to custody?

The preferred method for receiving evidence is through sworn testimony. But in domestic cases, parties cannot require their child to testify "unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the child be heard and there is no other reasonable method to present the child's testimony." Utah Code Ann. § 30-3-10(1)(d).

One "other method" is an in camera child interview. To interview the child, the Court must find that the interview is "the only method to ascertain the child's desires regarding custody." Utah Code Ann. § 30-3-10(1)(e)(f). Even then, the Court may, but is not required, to conduct the interview.

As a practical matter, I disfavor child interviews for many reasons. The interview is damaging to the child because it places the child in the perceived role of choosing between parents. Custody will be awarded in some way, and the child will inevitably be blamed by the losing parent. Often the parent who insists on the interview is the one who has brought the most pressure to bear on how the child should testify.

Courtroom Protocol

Is lack of civility ever a problem in your courtroom? If so, what steps do you take to address it?

Rarely. In my experience, the best way to promote civility is for the judge to treat all participants respectfully. This sets the right tone and expectation for others.

What are your opinions regarding courtroom dress?

Dress professionally. Nothing you wear should detract from your credibility and the importance of your work.

Do you allow children in your courtroom?

Yes, but children must be removed if they become disruptive. The rule is the same for adults who act like children.

What is your practice with respect to attorney cellphones? Clients? Those in the gallery?

Please silence your cellphone or put it on "airplane mode" when you come into the courtroom. Tell your clients and observers with you to do the same.

I have heard that some judges impose sanctions when a cellphone rings in court. In my view, the sheer embarrassment of your personally selected ring tone—think of "Mission Impossible" or "So Happy Together"—blaring during court is probably punishment enough.

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

Being on time is an issue of courtesy and respect. It communicates to the court and clients that you take your work seriously. I recognize that there may be a time when being late is unavoidable. But being late should be the rare exception, not the rule.

Comments from Case Managers and Judicial Assistants

The name and phone number of my case manager is:

Norma Valavala-Ballard

(801) 429-1061

normavb@utocourts.gov

My case manager wants you to please do these things:

<u>E-filing Issues</u>

- Choose the correct Document Type.
- Remove the word "proposed" in the descriptive docket text. Eg. *Order (Proposed) Proposed Order of Dismissal*. When this order is signed, it will show on the docket as 'Order Proposed Order of Dismissal' which is a confusing title. Ideally, the document should be submitted as 'Order (Proposed) of Dismissal' so that the signed order on the docket reads as 'Order of Dismissal.'
- A Qualified Domestic Relations Order (QDRO) contains confidential information Attorneys should use Document Type "Qualified Domestic Relations Order - QDRO (Proposed)" that, once signed, will be a Private document. Some attorneys and their assistants are selecting "Order (Proposed)" to file QDROs for their client.

- If there is a monetary judgment to be entered against a party, the attorney/filer must select the Document Type "Judgment (Proposed)" and must enter the Judgment Details in the 'Edit Judgment Cause of Action' window in their eFiling account. These details include the type of judgment, all of the judgment amount information (Principal, Interest, Attorney Fees, Costs, etc., and the Total), and they must select the Creditor and the Debtor party roles. If the attorney/filer chooses the Doc Type "Order (Proposed)" instead of "Judgment (Proposed)", the eFiling system will not automatically enter the judgment.

Other Issues

- File a Request to Submit when a proposed order is submitted. (Note: This is not required for the following orders: fee waivers, Military Service Order, approval of alternative service, affidavit of indigency/impecuniosity, supplemental proceedings, orders to show cause, writ of garnishment, writ of replevin, approved as to form orders, order to permit overlength motion or memorandum, order to appear pro hac vice, order extending time if the motion is made before the time period has expired).
- Do not file final proposed order(s) at time of initial filing.

The name, phone number, and email address of my judicial assistant is:

Mykel Daley

(801) 429-1050

mykeld@utcourts.gov

My judicial assistant wants you to please do these things:

Prepare a Statement in Advance of Plea for all Class A and Felony charges listing the code sections violated. The clerk enters the violation code from the statement.

At the beginning of each hearing, state your name and bar number clearly. The clerk does not always know who the attorneys are. If you state your name and bar number, the clerk will not have to interrupt the hearing to obtain it.

When a Notice to Submit is filed on a motion, the judge has 60 days to rule. Please do not call the next day inquiring why the Order has not been signed.

Do not request a conference call with the judge unless all parties are aware of the request and have agreed to participate in the call.

Feel free to contact the clerk if you have questions regarding trial procedures.

Other Items

Judicial Biography:

www.utcourts.gov/judgesbios/showGallery.asp?dist=4&ct_type=D#2795

Form A

IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR UTAH COUNTY, STATE OF UTAH

[NAME], Plaintiff, v. [NAME], Defendants.	**Final Pretrial Order (Civil)** Case No. Judge Derek P. Pullan

The Final Pretrial Conference was held on [date]. The Court now enters the following:

1. The number of potential jurors to be called is [number].
2. The number of alternate jurors is [number].
3. [Number] additional peremptory challenges will be allowed.
4. A juror questionnaire [will/will not] be used.
5. The deadline for filing the juror questionnaire is [date].
6. The deadline for submitting special voir dire questions is [date].
7. The deadline for filing proposed jury instructions is [date].
8. The number of "will-call" trial witness is [number]. The number of "may-call" trial witnesses is [number].
9. The parties have agreed to the following stipulations: [list].
10. The trial is anticipated to take [number] days. Each day will go from [time] to [time].
11. The deadline for filing pre-trial motions, including motions in limine, is [date].
12. The deadline for making final pretrial disclosures is [date].

13. The deadline for objecting to final pretrial disclosures is [date].

14. Final pretrial disclosures will be made in [ ] format.

15. The deadline for filing a stipulated set of trial exhibits is [date].

16. Plaintiff's trial exhibits will be marked as [ ]. Defendant's trial exhibits will be marked as [ ].

17. Other Orders:

DATED this ____ day of _____, 20__.

_____
JUDGE DEREK P. PULLAN
Fourth District Court

Form B

IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR UTAH COUNTY, STATE OF UTAH

[NAME], Plaintiff, v. [NAME], Defendant.	**Final Pretrial Order (Criminal)** Case No. Judge Derek P. Pullan

The Final Pretrial Conference was held on [date]. The Court now enters the following:

1. The trial will be held on [date].
2. The trial is anticipated to take [number] days. Each day will go from [time] to [time].
3. The number of potential jurors to be called is [number].
4. The number of alternate jurors is [number].
5. [Number] additional peremptory challenges will be allowed.
6. A juror questionnaire [will/will not] be used.
7. The deadline for filing the juror questionnaire is [date].
8. The deadline for submitting special voir dire questions is [date].
9. The deadline for filing proposed jury instructions is [date].
10. The following discovery has not been provided: [list].
11. The deadline for discovery is [date].
12. The following expert witnesses are involved in this case: [list names]. [List names] is/are available for trial.

13. The deadline for expert disclosures and reports is [date].

14. The number of "will-call" trial witness is [number]. The number of "may-call" trial witnesses is [number].

15. The deadline for filing pretrial motions, including motions in limine, is [date].

16. Plaintiff's trial exhibits will be marked as [ ]. Defendant's trial exhibits will be marked as [ ].

17. Other Orders:

DATED this ____ day of _____, 20__.

_____
JUDGE DEREK P. PULLAN
Fourth District Court