

**BENCH BOOK**  
**JUDGE KEITH A. KELLY**  
**Utah Third District Court**  
**Silver Summit Courthouse**  
**February 14, 2012**

**1. Scheduling Conferences**

Q: Are scheduling conferences needed or used in your court? If so, are they conducted in person or by telephone?

*A: I will set up a scheduling conference when I receive a certification of readiness for trial. Pretrial scheduling conferences are usually conducted by telephone, especially if the attorneys are located in another county. I may decline a request for a scheduling conference prior to submission of a certification of readiness for trial unless there is a reason why an earlier scheduling conference is necessary. In complicated, multi-party cases, I will use Rule 16 pretrial conferences as necessary to effectively manage the litigation.*

Q: What are your preferences regarding Case Management Orders/Scheduling Orders? Do you require that specific things be included in such orders?

*A: I require that scheduling orders comply with the applicable rules.*

**2. Motion Practice**

Q: Do you appreciate courtesy copies of briefs being delivered to your chambers prior to hearing on a motion? If so, how early do you want them?

*A: Yes, I use courtesy copies in preparation for hearings. My clerks' hearing notices will typically set deadlines for submission of courtesy copies by the moving party. If no other deadline is set, they should be submitted at least two weeks prior to the hearing. The moving party should include in the courtesy copies all papers supporting and opposing the motion, including exhibits. On complex motions to dismiss or for summary judgment, it is helpful to have the relevant pleadings included as well. They should be submitted in three-ring binders, with the case name and number, and date of hearing labeled on the cover and on the spine of the binder. (Courtesy copies are not kept with the rest of the case files, and if the binders are not clearly labeled – including on the spine – then it may be difficult for my clerks or me to find them when I begin preparing for the hearing.) When the notice of hearing specifies that courtesy copies are to be submitted, the hearing may be continued if they are not timely received.*

Q: Do you schedule hearings on motions automatically upon receiving notices to submit, or do you prefer or require that counsel call to schedule hearings?

*A: I schedule hearings on motions automatically upon receiving notices to submit. If a notice to submit is sent to the Court and counsel do not receive a notice of hearing within two weeks, counsel are welcome to contact the court clerks and inquire as to the status of the matter.*

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

*A: I generally grant requests for oral argument, unless oral argument appears to be unnecessary either (a) for non-dispositive motions where the issues are clear, or (b) for dispositive motions under Utah R. Civ. P. 7(e) because the motion or opposition to the motion is frivolous or the issue has been authoritatively decided. Discovery motions are governed by new Rule 10-1-306 of the Utah Code of Judicial Administration.*

Q: What is your policy on allowing over length memoranda?

A: I typically grant requests for over length memoranda, but I appreciate briefing that is concise and direct.

Q: What separates a useful brief from one that is unhelpful?

A: A useful brief is succinct, candid with the facts, properly supported by evidentiary materials, well reasoned, and supported by governing law.

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

A: Copies of key cases are helpful, especially when they are submitted with the courtesy copies.

Q: What makes an effective motion argument?

A: Discuss the controlling authorities and how they should be applied to the facts. Be sure to answer the questions posed by the Court. I spend substantial time preparing for hearings and typically come to oral argument with questions. The best advocates will address the Court's questions by either answering them or explaining why they are not relevant. Because I prepare heavily for hearings in advance and have read the briefings carefully, it is typically less helpful to the Court to restate those arguments in their entirety.

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: Be sure to focus on the requirements of Utah R. Civ. P. 65A, especially the notice requirement of Rule 65A(b)(1) for temporary restraining orders. Unless a movant meets the Rule 65A(b)(1) requirements for not giving notice to the opposing side, I will schedule a hearing on the TRO motion.

### 3. Final Pretrial Conference

Q: In your view, what is the purpose of a final pretrial conference? What topics should counsel be prepared to discuss?

A. In civil cases, I view the final pretrial conference as the time to resolve issues that can reasonably be resolved prior to trial, so as to save the time of the jury, court and parties during trial. Thus, when reasonable under the circumstances of a civil case, I will issue a pretrial scheduling order setting some or all of the following deadlines prior to the final pretrial conference:

1. Exchange Deadline: A deadline for counsel to exchange of (a) lists of witnesses to be called at trial, with a brief description of expected testimony; (b) actual exhibits to be used at trial (marked with exhibit letters or numbers, in a three-ring binder); (c) exhibit lists; (d) proposed voir dire (for jury trials) and (e) either proposed findings of fact and conclusions of law (for bench trials) or jury instructions (for jury trials).
2. Meet and Confer Deadline: A deadline for counsel to meet and confer regarding any objections to exhibits or witnesses, and to reasonably attempt (a) to stipulate to authenticity and admissibility of exhibits (and to avoid duplication of exhibits); and (b) to stipulate to jury instructions, voir dire, and/or undisputed facts.
3. Submission Deadline: A deadline (prior to the final pretrial) to submit to the Court (a) witness lists; (b) trial exhibits; (c) exhibit lists, indicating which exhibits are stipulated as to authenticity and admissibility; (d) any stipulated facts; (e) proposed voir dire; and (f) proposed jury instructions or proposed findings of fact and conclusions of law.
4. Motion in Limine Deadline: Deadlines for filing and briefing motions in limine.

5. Trial Brief Deadline: Deadlines for filing trial briefs (for bench trials).

Alternatively, for less complex civil cases, the pretrial disclosure requirements of Utah R. Civ. P. 26(a)(5) will be required.

At the final pretrial conference, I address motions in limine, anticipated witness testimony, admission of exhibits, factual issues to be tried, anticipated evidentiary issues to be faced at trial, legal issues, jury instructions, length of trial, allocation of trial time, and possibilities of settlement.

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

A: I ask whether the parties have attempted in good faith to settle and ask whether the Court might be helpful in facilitating further settlement discussions. If the parties agree that the Court can be helpful, I will explore settlement issues and encourage parties to settle.

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

A: Yes.

#### 4. Jury Trial Practice

##### Jury Selection:

Q: How is voir dire conducted in your courtroom?

A: Primarily by me; however, I may allow limited attorney voir dire as discussed below.

Q: Do you allow counsel to participate in voir dire? If so, to what extent?

A: The Court conducts the voir dire. When my questioning is completed, I generally give counsel an opportunity to submit follow-up questions for me to ask, or I may allow the attorneys to ask follow up questions. If an individual potential juror is questioned at side-bar (or otherwise outside the hearing of the panel of other potential jurors), I generally allow counsel to ask follow up questions to the individual potential juror for clarification.

Q: What is your due date for requested voir dire questions?

A: This is dealt with in the pretrial scheduling order, as discussed above.

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

A: Yes, in complicated or high-profile cases.

##### Requested Instructions:

Q: When do you require requested instructions to be submitted?

A: For civil cases, submission of proposed instructions is dealt with in the pretrial scheduling order, as discussed above. For criminal cases, at the time I schedule trial, I will typically set a deadline for submission of jury instructions.

Q: What form do you prefer requested instructions to take (e.g., do you prefer instructions accompanied by supporting cases, etc.)? Is a citation to MUJI sufficient legal authority?

A: For instructions that are not stipulated, I prefer submission of the proposed instruction, followed on the same page by brief references to supporting authority. I have a preference for instructions from MUJI, and generally a MUJI citation is sufficient.

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

A: *No. I ask counsel to submit all proposed instructions that they believe should be given to the jury.*

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

A: *Yes, in MS Word format, along with the hard copy.*

### **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: *For multi-day jury trials, I prefer trial to begin at 8:00 a.m. each day, and to end at 2:00 p.m., with two short breaks, but no break for lunch. This is designed to allow flexibility for jury service by professionals, business owners, and any others whose employment or personal responsibilities do not stop during jury service. This allows the jurors to address professional, business or personal matters in the afternoon. Bench trials generally go from 9:00 a.m. to 5:00 p.m. each day, with a one hour break for lunch.*

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

A: *Pretrial motions are dealt with in the pretrial scheduling order, as discussed above.*

Q: What are your preferences with respect to trial exhibits?

A: *Submission of exhibits is dealt with in the pretrial scheduling order, as discussed above.*

### **5. Bench Trial Practice**

Q: What are the major differences, in your courtroom, between bench trials and jury trials?

A: *There is no significant difference in the formality or handling of the trial. When I am the trier of fact in a bench trial, however, I may be more inclined to ask questions of counsel or of a witness.*

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

A: *Generally, I require proposed findings of fact and conclusions of law, in hard copy and in MS Word format, for bench trials. Careful preparation of proposed findings and conclusions is important. When I issue my own findings and conclusions, I generally use electronic copies of both sides' proposed findings and conclusions during the drafting process. My office computer has two screens. On the left screen I have both sides' proposed findings and conclusions. On the right screen, I draft my own findings and conclusions. Thus, both sides' proposed findings and conclusions will often be last documents I review at the time I draft a decision.*

Q: Do you appreciate or require trial briefs from counsel?

A: *I request trial briefs and proposed findings of fact and conclusions of law for bench trials, but not for jury trials.*

### **6. Thoughts on Effective Advocacy**

Q: What makes an effective advocate in jury arguments?

A: *An advocate who is credible, sincere, and well-prepared.*

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

A: *Overstating or misconstruing the facts.*

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

A: *An attorney undermines his or her case by being overly aggressive or demeaning to a witness.*

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

A: *They can be effective (i) if they help focus the jury on the key issues, (ii) if they simplify the presentation of evidence, and (iii) if there are no technical problems.*

## **7. Criminal Matters**

Q: How do you handle requests for continuance on pretrials, arraignments or roll calls?

A: *By stipulation or motion.*

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

A: *At any time with proper notice to the opposing side.*

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

A: *(i) input from the victim(s); (ii) criminal history; (iii) efforts at self-correcting the behavioral issues; (iv) family support; (v) restitution efforts; and (vi) mitigating/aggravating circumstances. I look for comments on and any corrections to the presentence report.*

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

A: *They would be considered.*

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

A: *No.*

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

A: *Coordinate with other counsel present and with the courtroom clerk.*

## **8. Special Issues for Domestic Cases**

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

A: *Except in unusual circumstances, I would not conduct an interview with a child.*

## **9. Discovery Practices**

Q: What is your approach to resolving discovery disputes?

A: *Counsel should always meet and confer in an attempt to resolve discovery disputes before submitting them to the Court. See Utah R. Civ. P. 37(a)(3). If counsel cannot resolve the dispute, they should comply with the requirements of new Rule 10-1-306 of the Utah Code of Judicial Administration when submitting the dispute to the Court.*

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

A: *I will impose sanctions in appropriate cases.*

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

A: *Yes.*

## **10. Thoughts on Courtroom Protocol**

Q: Is lack of civility ever a problem in your courtroom? If so, do you take steps to improve civility in your courtroom?

A: *Lack of civility has not been a significant issue in my courtroom. I expect counsel to comply with the Utah Standards of Professionalism and Civility.*

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

A: *My major concern is that counsel's statements are properly recorded and amplified, so I request that counsel stay reasonably near to the microphone. Counsel should request permission to approach a witness or the bench during trial.*

## **11. Other Miscellaneous Issues**

Q: What are your opinions regarding courtroom dress?

A: *Attorneys should dress appropriately, consistent with an attorney's role as an officer of the court. Witnesses and parties are not held to the same standard. However, under Third District Court policy, shorts, tank tops, gum and hats are not allowed in the courtroom.*

Q: Do you allow children in your courtroom?

A: *Yes.*

Q: Do you allow cell phones in your courtroom?

A: *Yes, if they are silent and hidden from sight. No calls should be initiated or accepted in the courtroom. Of course, attorneys and parties may use electronic calendars on their cell phones when the Court is scheduling hearings and trial.*

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

A: *While I am assigned to Summit County, I am often the only judge in the courthouse, and I often must deal with emergency matters that require my immediate attention, including ex parte cohabitant abuse protective orders, civil stalking injunctions, search warrants, and arrest warrants. Occasionally hearings may be delayed due to such emergency matters. I understand that these delays are frustrating to counsel and the parties, and I attempt to minimize such delays to the extent possible. However, I request that parties and counsel appear promptly at the time noticed for their hearing in order to assist the Court in staying on schedule.*