

QUESTIONNAIRE FOR JUDGE'S BENCHBOOK

JUDGE: Michael D. DiReda - Second District Court

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 generally conduct my scheduling conferences by telephone. They are typically not on the record unless counsel request to be on the record.*

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

A: *Since we typically prepare them, I put in the particulars plus a statement indicating that I expect that the Rules of Professionalism and Civility will be adhered to.*

2. Motions 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: *Absolutely. I can highlight, mark up, doodle, and make sarcastic remarks on courtesy copies. You can't do that on originals. It is also extremely difficult to flip back and forth in a file that is fairly voluminous. Depending on the complexity and number of issues, I like them at least a week to two weeks before the hearing.*

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: *Generally my clerk will make contact with counsel to set a hearing if one is necessary. Otherwise, I will simply look at the pleadings and make a decision.*

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

A: *If the issue is not dispositive of the case and oral argument will not add anything beyond what is contained in the memoranda.*

Q: What is your policy on allowing overlength memoranda?

A: *Very flexible.*

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

A: *A brief that cuts to the chase and addresses the issue. Some briefs waste a lot of time and paper addressing non-issues.*

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

A: *Yes.*

Q: What makes an effective motions argument?

A: *Argument that is on point. It does not have to be lengthy, just on point.*

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. I do worry that notice to the opposing side is rarely, if ever, provided. Sometimes, it makes sense based on the nature of the TRO and other times it does not.*

3. Final Pretrial Conference

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

A: *Last chance to settle case. Clean up any loose ends. Resolve any issues that have developed during the pendency of case not previously addressed.*

Q: What topics or issues should counsel come prepared to discuss?

A: *Proposed jury instructions, proposed voir dire, motions in limine etc...*

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

A: *In a bench trial setting, I usually make it clear to the parties that no matter how hard I try to be fair my decision will undoubtedly leave them unhappy. I explain to them that if each side can set aside the emotional part of the case and be practical and reasonable that their resolution will be much better than anything that I could do.*

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: *By the Court and the Attorneys.*

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

A: *Yes.*

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

A: *By the final pre-trial.*

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

A: *Only in complicated high profile cases.*

Requested Instructions:

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

A: *At least a week before trial.*

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: *If cases are necessary because the instruction is unique in some respect then yes, otherwise a MUJI cite is sufficient.*

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

A: *Yes, however, I expect the attorneys to submit definitions instructions and elements instructions.*

Q: Do you prefer to receive an electronic copy of requested 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: *9 to 5 with an hour for lunch.*

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

A: *I prefer them to be brought before trial, if possible, so that I have time to thoroughly consider them.*

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

A: *None.*

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

A: *If voluminous, I like them organized for my benefit in a binder with corresponding tabs. I always prefer that they be pre-marked for my clerk's convenience.*

5. Bench Trial Practice

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

A: *Yes.*

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

A: *I appreciate them very much, but don't always require them. It just depends on the case and issues. It is not helpful to be given them the morning of the hearing.*

6. Thoughts on Effective Advocacy

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

A: *Yes.*

7. Criminal Matters

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

A: *I am reasonably flexible unless I think the parties are taking advantage of me.*

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

A: *At the defendant's first appearance before me unless there is a material change in circumstances that justify it being brought at a later time. Most attorneys just*

need to read the rule and realize that it isn't a "multiple bites at the apple" type motion. There has to be a material change in circumstances.

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

A: *Relevant information.*

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

A: *No. I've never seen them. All of my PSI's are prepared by AP&P.*

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

A: *No.*

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

A: *Let my bailiff know that he or she is ready on a particular case and my bailiff will alert my clerk and/or me.*

8. 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: *No.*

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

A: *A concise statement that explains to me what the commissioner did wrong. Was it an erroneous factual finding? Are there new facts not presented to the commissioner? Did the commissioner apply the incorrect law? Simply disagreeing with the commissioner's recommendation is unhelpful.*

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

A: *No.*

9. Discovery Practices

Q: What is your approach to resolving discovery disputes?

A: *Telephone conference and encouragement to comply.*

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

A: *If they are warranted they should be imposed. I'm not a fan of gamesmanship.*

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

A: *Depends on my schedule.*

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: *I try to set the tone by how I interact with the attorneys and parties.*

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

A: *Just that counsel request permission.*

11. Other Miscellaneous Issues

Q: What are your opinions regarding courtroom dress?

A: *Individuals need to dress as though they were going to attend church, a wedding, funeral, or some other important event. We as a court staff dress respectfully for the public and the attorneys appearing before the court. The public and the attorneys should return the respect.*

Q: Do you allow children in your courtroom?

A: *Yes, but I would prefer that they not be brought in.*

Q: Do you allow cell phones in your courtroom?

A: *Yes. But they need to be on silent mode. I recognize that important messages are sent via text/e-mail to cell phones. I just don't want it to disrupt the court proceedings.*

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

A: *I take the bench on time and make those who come in late wait.*

12. Other Suggestions, Thoughts, Concerns

The time to try and resolve a case is before coming to court. Many attorneys come to court and expect the prosecutors to drop what they are doing in handling my calendar and engage in meaningful discussions. It is not only counter-productive and usually unsuccessful, but also disruptive.

13. Clerk's Comments

Q: The name and phone number of my clerk(s) is:

A: *Debbie George – (801) 395-1146*

Q: My clerk wants you to please do these things:

*1. **Notice to Submits** - Judge DiReda requires Notices to Submit on all motions and orders filed with the court. Please file these on the 1st floor to be held for opposing counsel to respond.*

*2. **Telephone Conferences** - Judge DiReda initiates his conference calls. These calls are not recorded; however, a minute entry is prepared and a formal scheduling order is sent to all parties. Please take the time to read these scheduling orders as there is important information relating to jury instructions and the marking of exhibits.*

*3. **Continuances for Criminal Cases** - If you are requesting a continuance of a criminal matter, please contact the county attorney's office prior to contacting the clerk. Judge DiReda will not consider any motion for continuance unless the county has been notified. They do not need to be placed in writing; only a phone call to the clerk shall suffice. Judge DiReda holds his criminal law & motion on Thursday mornings.*

*4. **Continuances on Civil and Domestic Cases** - If you are requesting a continuance on a civil or domestic matter, please contact opposing counsel. All civil matters for the civil law & motion calendar are held on Thursday afternoons and set by me. If opposing counsel is not stipulating to the continuance, then a written motion for continuance needs to be submitted at least 5 working days prior to the hearing date. Please follow up with a phone call to the clerk.*

*5. **Signing Documents** - Please allow at least one week from the filing of any judgment or decree for signature. When Judge DiReda signs an order, the document is normally entered by me within 2 days of receiving it from the judge.*

*6. **Notice of Intent to Dismiss** - Notices are mailed to the parties and are held for 30 days before determining if they may be dismissed. If counsel is requesting the case remain open, please file a written document requesting why.*

*7. **Other Information** - Please feel free to call me at any time. My number is 801-395-1146. If you are unable to reach me by phone, you are welcome to email me at debbieg@email.utcourts.gov. This is actually easier.*