

JUDGE: Anthony L. Howell - Fourth 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: *Scheduling conferences are only held when requested, otherwise the court anticipates that a case management order will be filed and entered consistent with Rule 26. If a case is exempt from Rule 26, or the parties are unable to agree to a case management order, then a scheduling conference will be held. If only two parties are involved, then telephonic hearings are generally allowed for hearings that do not require presentation of evidence or arguments. When more than two parties are involved, telephonic appearance is only allowed if a commercial conference provider is used with the party requesting the telephonic hearing arranging the conference and sending notice with instructions for calling in to all parties. Otherwise, in person attendance is required.*

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

A: *I prefer realistic deadlines. ADR must be addressed and the CMO/Scheduling Orders should comply with the rules.*

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. At least 10 days prior is best. I really appreciate those which come in binders.*

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: *Upon receiving a notice to submit where a hearing is requested, my clerks will call counsel to schedule a hearing.*

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

A: *When oral argument will not be helpful, such as simple or well settled issues. Oral argument is always allowed on dispositive motions. As a matter of preparation though, I generally come to arguments prepared to rule, so those issues that are important to the parties should be well briefed.*

Q: What is your policy on allowing overlength memoranda?

A: *Usually allowed, but should not be abused. Overlength memos must comply with rules—a table of contents and a table of authorities. Rule 7(c)(3)(C).*

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

A: *One that is succinct and straight-forward. Counsel should be clear as to the relief sought. On summary judgment, Rule 7 should be complied with, both by the movant and the opposing party. I read everything that is submitted as part of a motion, and I believe counsel is most persuasive in his/her pleadings rather than in oral arguments.*

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

A: Yes, if dispositive or very on point and submitted with the courtesy copies.

Q: What makes an effective motions argument?

A: Preparation and real answers to questions. If I interrupt it is because I am trying to understand your argument. I read all papers submitted so please do not simply repeat what is in your memoranda. Rely more on your pleadings than oral argument.

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: I enforce the rules. For example, if real efforts to apprise the other side of a TRO are not made and supported by affidavit, it will be denied.

3. Final Pretrial Conference

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

A: To focus on the anticipated issues of the trial, both procedurally and substantively, and resolve as many outstanding issues as possible.

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

A: Length of trial, jury selection procedures, jury instructions, witness and exhibit list exchanges and objections, other pretrial disclosures, and motions in limine. Pretrial motions should be briefed in advance so that complete briefing can be completed and my decision prepared prior to the final pretrial conference.

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

A: If I can help the parties resolve the case I will, otherwise I assume the parties know their case far better than the court. I always encourage the parties to resolve their case without trial.

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

A: No. But they should be available by phone.

4. Jury Trial Practice

Jury Selection:

Q: How is voir dire conducted in your courtroom?

A: A short standard questionnaire is used, a copy which is available from my clerk. Then the court conducts all in court voir dire. When individual jurors are interviewed in chambers counsel will pose almost all questions. I also use a standard set of voir dire questions, a copy of which is available from my clerk, which is supplemented by counsel in writing prior to trial.

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

A: Only in chambers when individual jurors are being questioned. Once in chambers where the venire cannot be tainted I give wide latitude to counsel so long as questioning remains aimed at discovering prejudice and neutrality and questions did not attempt to litigate the case through the voir dire process.

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

A: At the final pretrial or the date set in the pretrial order.

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

A: Within reasonable limits and I willing to incorporate suggested voir dire questions into my questionnaire.

Requested Instructions:

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

A: At the final pretrial in both hard copy and electronic format.

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: I ask that counsel confer and submit a set of agreed-upon instructions and a set of disputed instructions. Disputed instructions should have citations. As to whether a cite to MUJI is sufficient, I guess that depends on how badly you really want me to give the instruction. While MUJI is helpful, citation to reported case law is always more probative in ascertaining the true status of Utah law.

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

A: Yes. A copy if available form my clerk.

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

A: Yes, in Word if possible. Having instructions in electronic format allows for quick editing and shorter delays at trial.

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: 8:30 a.m. to 12 noon, 1 p.m. to 5 p.m. I am fairly flexible as long as the trial is moving expeditiously. Trials longer than four days will begin each day at 8:00 a.m. and end at 3:00 p.m., with 45 minutes for lunch.

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

A: Follow rule 26(a)(4)(C). They should be filed so that they can be heard prior to trial. No evidentiary hearings will be heard during trial. If foundation is at issue and no attempt has been made to address the issue pre-trial, the witness will be allowed to lay the foundation in the presence of the jury and then the arguments regarding admissibility will be heard outside the jury's presence.

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

A: I leave that to the attorneys with the understanding that the case must proceed as expeditiously as possible. If the trial is scheduled for more than four days counsel should be prepared to discuss a witness schedule which will be reasonably enforced.

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

A: If possible, they should be marked prior to trial.

5. Bench Trial Practice

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

A: The jury. Admissibility of evidence is treated identically, except that speaking objections are allowed.

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

A: Not usually, unless the case is complex. They are however, always welcome and appreciated, and they help give me roadmap.

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

A: Always appreciated, rarely required.

6. Thoughts on Effective Advocacy

Q: What makes an effective advocate in jury arguments?

A: Concise and professional. Give the jury credit. They just watched the whole trial.

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

A: Too much repetition and not sticking to your theory of the case by addressing every red herring the opposition threw your way.

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

A: Short examination are always more effective. Preparation is key. Do not interrupt the witness.

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

A: Rarely. In motion practice, questions from the bench seem to be an annoyance to power-pointers, even though they should be interested in where the judge's questions are.

7. Criminal Matters

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

A: If the case has not been continued often, then I am pretty lenient. However, all cases must end. Motions within 5 days of a hearing are only granted off-record if agreed to by opposing counsel.

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

A: As provided in the rules and the code. See UCA § 77-20-1.

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

A: Exceptions to the PSI. The more information the better.

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

A: Depends on the case. Psychological testing and drug treatment information is often helpful. The more information the better.

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

A: No. Mandatory DUI sentences are imposed and viewed as a minimum. I am generally follow agreements between parties regarding sentencing, but counsel may need to explain why the court should follow an agreement.

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

A: If you are ready, call your case at the beginning. A simple request to the public defenders who have the majority of cases on the calendar will often push you to the front. At the beginning of the calendar I always ask if any case needs to go out of order. In other words, if you want to go fast, come early. I am happy to take cases out of order, and I like to handle summary matters quickly. I try my best to be efficient with everyone's time.

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: Evidence should be submitted in written form (where possible) in advance of hearing.

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

A: The case should require it, being sensitive to age and circumstances. Counsel can be present if they do not interrupt.

9. Discovery Practices

Q: What is your approach to resolving discovery disputes?

A: If parties truly need the court's help, then that is what we are here for. However, every effort should have been made to avoid bringing it before the court. It should be remembered that the discovery rules and case law are pro-disclosure.

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

A: They are appropriate in cases of serious abuse or significant dilatory conduct.

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

A: Yes, but I prefer that counsel make a good record and present the issue by motion, with the understanding that if the objection is overruled, the objecting party will be paying to reconvene the deposition including costs, reporter fees, and attorney fees.

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: Not usually. The Standards of Professionalism apply. Counsel should not direct uncivil comments at each other.

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

A: Yes, I impose some limitations. Counsel should ask to approach a witness, but I usually grant continued permission to approach witnesses to hand exhibits.

11. Other Miscellaneous Issues

Q: What are your opinions regarding courtroom dress?

A: Professional attire should be worn by all attorneys and staff. Clients should be encouraged to dress appropriately, but no criminal defendant will be excluded based on attire. I would also rather have attorneys and parties show up on time in less-professional attire than show up late.

Q: Do you allow children in your courtroom?

A: Under eight, only if needed.

Q: Do you allow cell phones in your courtroom?

A: Yes, when silenced.

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

A: I expect to start on time. I expect to be notified if attorneys are running late. Cases that are late to be called may be stricken from the calendar, continued, or decided in default. Please do not be late. I do my very best to start on time and be efficient.

12. Other Suggestions, Thoughts, Concerns

I like to be taught. The more precedent you can point me to the better. I invite anonymous notes telling me how to be a better judge. I am much more teachable when reading pleadings than in oral argument because I can reread and compare important positions and arguments. Counsel should focus on making clear arguments in pleadings and rely primarily on pleadings rather than oral argument.

13. Clerk's Comments

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

A: Let us know if a matter settles ASAP, especially if a motion is pending or a trial is scheduled.