

QUESTIONNAIRE FOR JUDGE/COMMISSIONER BENCH BOOK

JUDGE/COMMISSIONER: Jennifer Valencia – Second District Court

1. Discovery

Q: What is your practice with respect to setting an initial case schedule? Modifying it once set?

A: I expect counsel to follow the guidelines to their applicable tier. If either party requests a scheduling conference I will gladly set up a conference, which is typically scheduled telephonically. I am always open to setting scheduling or status conferences at the request of the parties. We will schedule them on our own if the cases appear to be languishing.

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

A: Yes, but our local rule is now superseded by the statewide rule on expedited resolution of discovery issues. Rule 4-502 of the Rules of Judicial Administration.

Q: What is your practice regarding discovery disputes? How do you handle status and scheduling matters for discovery issues?

A: See above. I will deal with discovery issues under the statewide rule; as for scheduling and status conferences, I will almost always grant requests for such conferences and will sometimes initiate those requests if a case is languishing. They are typically scheduled telephonically.

Q: What is your approach to granting extraordinary discovery?

A: I will follow the rules regarding requests for extraordinary discovery. These should be reserved for extraordinary situations and should not become routine.

Q: What is your practice regarding sanctions for discovery abuses?

A: I will assess each case on an individual basis. I expect counsel to follow the rules and I will apply them if necessary and appropriate.

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

A: My in-court schedule dictates my availability. I have no philosophic objection to hearing such disputes, although it should only be necessary in rare circumstances and may not be practical in terms of anticipating availability.

Q: 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?

A: Don't play games; don't hide the ball; disclose all pertinent information.

2. Motions

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 What about unpublished cases?

A: Please provide copies in advance of a hearing if cited authorities are central to the issue(s) presented.

Q: 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?

A: Yes. Preferably at the time of filing.

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

A: Generally, attorneys should be able to present their cases within the page limits. I will weigh requests for both over-length memoranda and extensions of the briefing schedule on a case by case basis. I expect lawyers to accommodate each other's reasonable requests.

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

A: I don't require that counsel call to schedule hearings. If the Notice to Submit includes a Request for Hearing, my assistant will contact counsel to schedule one.

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

A: Generally, I won't deny a specific request for oral argument. However, I may if it appears that oral argument will not be useful and the motion is not dispositive.

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

A: Please do not personally attack an adverse party or opposing counsel. Please do address opposing counsel's arguments when possible. I will generally decline to speculate as to arguments which counsel fail to address.

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

A: Similar preference as noted above. Expect that I will have read the memoranda and the primary cases cited. Focus your argument on the important points. Don't overstate your case; don't misrepresent the holdings of your cited cases; acknowledge when there may be distinguishing facts and explain why the case is still applicable. I will typically have questions and dialogue with counsel after their arguments are presented.

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

A: Follow the rules carefully, particularly as to the type of notice given or certification as to why notice cannot or should not be given. Please do not use a TRO as a substitute for a motion for temporary orders in a domestic matter.

3. Final Pretrial Conference

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

A: Confirm readiness for trial and streamline issues if possible. For domestic matters, confirm compliance with pretrial order provisions regarding disclosure of information and updating of financial declarations, etc. I expect counsel to be encouraging continued settlement negotiations, and I will generally ask whether settlement negotiations are ongoing, but I do not generally use the final pretrial conference as a settlement conference.

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

A: If there are pending motions in limine, or other pretrial motions that still need to be addressed, I will anticipate argument on those motions. If it is a jury trial, I will anticipate setting dates for jury instructions and any special requests regarding voir dire questions, etc.

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

A: In civil cases, before setting a trial date and a final pretrial conference, I require the parties to have attempted some form of alternate dispute resolution. If requested by the parties and if another judge is available to do so, there is the possibility of a judicial settlement conference with a different judge. I will encourage counsel and the parties to continue to pursue settlement discussions. Otherwise, I do not generally view the final pretrial conference as a settlement conference.

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

A: Final pretrial conferences will be scheduled for an in-court hearing, not a telephone conference. Thus, clients and counsel are generally expected to be

present. If a client resides a significant distance from the courthouse, I may accommodate a request to appear by telephone if counsel is given final settlement authority.

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

A: I will try to decide any motions in limine at the final pretrial conference if they have not been decided earlier. If such motions would have a significant impact on trial preparation, I expect the lawyers to file them early enough in the process to avoid unnecessary efforts. I will also schedule a Trial Management Conference at 8:30 a.m. where trial is scheduled to begin at 9:00 a.m. or at 1:30 p.m. where trial is scheduled to begin at 2:00 p.m.

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

A: In civil and domestic matters, I always appreciate them and often require them. The pretrial order form completed in domestic matters requires the submission of a trial brief, as well as specific instructions regarding updating of financial disclosures, sharing of exhibits and discussions between counsel related to admissibility of exhibits.

4. Jury Trials

Jury Selection:

Q: How is voir dire conducted in your courtroom? Do you allow counsel to participate in voir dire? If so, to what extent?

A: Generally, I conduct voir dire and provide counsel an opportunity to conduct additional voir dire. Any unique issues should be addressed in advance where possible.

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

A: Early enough to allow notice to the other side and an opportunity to discuss any possible objections.

Q: Do you allow or encourage the use of jury questionnaires? If so, by when must jury questionnaires be filed?

A: I use a general jury questionnaire during the course of my voir dire, but it is not case-specific. I will allow more extensive jury questionnaires if they are requested in advance and either agreed to by both sides or after a hearing to address objections.

Jury Instructions:

Q: When do you require instructions to be submitted?

A: In most criminal cases, I will have my law clerk send the stock jury instructions to counsel after the final pretrial conference. Any special instructions or objections from counsel are to be submitted at least a week in advance of trial. In most civil cases, I expect the lawyers to talk to each other sufficiently in advance to identify disagreements they may have regarding instructions and to allow sufficient time to submit pretrial motions with appropriate briefing as to disputed instructions.

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

A: Yes. My law clerk will email stock jury instructions to counsel after the final pretrial.

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 1st or 2nd sufficient legal authority?

A: I generally defer to MUJI if the instruction is current. As to disputed instructions or MUJI instructions which are not current, it is best to support your position with legal authority.

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

A: Any special instructions or objections from counsel are to be provided to my law clerk and opposing counsel as soon as possible thereafter. I will generally set a date for special instructions or objections one week after stock instructions have been sent by my law clerk electronically.

Q: When do you prefer to hear disputes over jury instructions:

A: As soon as the parties are ready to discuss them, preferably in advance of the day of trial. I recognize that some issues come up during trial. If so, we will address them during jury recesses.

Trial Procedure:

Q: What is your preferred trial schedule (e.g., 9 to 5 with an hour for lunch, 8 to 2 with no lunch, etc.)? Are there any set days/times when you schedule other matters and not trial?

A: Trials are generally scheduled to begin at either 9:00 a.m. with a Trial Management Conference at 8:30 a.m.; or at 2:00 p.m. with a Trial Management

Conference at 1:30 p.m. My regular felony law and motion calendar is on Wednesday morning and my regular civil law and motion calendar is on Monday afternoon. If a half day is needed, it will be scheduled around the regular calendars except under the most unusual circumstances (e.g., 5-day murder trial). I am flexible to accommodate breaks to coincide with natural breaks in testimony or the requirements of the parties or witnesses. If requested, other schedules can also be arranged.

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

A: I prefer that the lawyers talk in advance and resolve as many disputes as possible. Otherwise, if the issue is known sufficiently in advance, I prefer addressing it in a pretrial setting. I recognize that some disputes will come up during trial, but those should be the exceptions.

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

A: If opposing counsel has been provided a copy and they do not object, then generally they are permitted. Please notify opposing counsel and my assistant outside the presence of the jury so that there is an opportunity to discuss any objections or concerns in advance.

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

A: They should be provided to opposing counsel with a courtesy copy provided to the court. They should be in binders, if appropriate, with an index and numbered tabs included. Please provide my assistant with an itemized list of exhibits which are anticipated to be presented and she will pre-mark them at the Trial Management Conference.

Q: Do you have any guidelines or preferences regarding the use of technology at trial?

A: Counsel should be familiar enough with the proposed technology, and have practiced enough in advance, to be sure that the technology glitches are eliminated or at least kept to a minimum. Do not presume your computer or other technology will be provided to the jury in order to play a video or audio recording during their deliberations.

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

A: I expect the lawyers to cooperate with each other and agree to reasonable accommodations regarding any need to take witnesses out of order, or other special arrangements regarding witness scheduling. On the other hand, I expect we will use trial time wisely and not waste it with unnecessary delays or dead time.

Q: Do you allow counsel to move freely around the courtroom during trial?

A: I generally expect counsel to remain at counsel table or at the podium, and to ask permission to approach the witness. I will generally grant permission when requested, unless it appears counsel is trying to intimidate or to inappropriately assist a witness.

5. Bench Trials

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

A: In general, please recognize that you and your client are addressing the court, not a jury. Streamlining foundational or background testimony is acceptable if opposing counsel does not object.

6. Post-trial Issues

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

A: Sometimes. I prefer a good trial memorandum in advance of trial which you focus on areas of potential dispute. I will ask counsel in appropriate cases to submit proposed findings of fact and conclusions of law, but I will generally incorporate them into my own ruling and order.

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

A: Occasionally. If counsel requests the opportunity to file a post-trial brief, I will usually allow it. Sometimes, I will request a post-trial brief, generally on a narrow issue that became apparent during trial. I still generally consider the issue(s) to have been taken under advisement as of the date of trial.

7. Technology in the Courtroom

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

A: I generally allow it when requested, but anticipate you will pre-clear it with opposing counsel.

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

A: I have no preference. However, counsel should not presume their computer or other technology will accompany the jury into the jury room.

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

A: No.

8. Criminal Matters

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

A: I will make reasonable accommodations. I expect communication between counsel and as much notice to my staff as possible so we can adjust our calendar. Otherwise, Arraignments and Roll Calls are not on a central calendar in Weber County. We schedule a case for Arraignment, then a Report on Counsel (if requested), and then a Decision to Prelim.

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

A: At the Arraignment; or thereafter upon notice to the state of substantial evidence hearing under 77-20-1(2).

Q: What is your policy, if any, on pleas in abeyance?

A: I generally will approve them if the parties agree. However, it is possible I would not accept such a plea. It is highly dependent upon the facts and circumstances of each case.

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

A: Generally, I will ask if there are any errors or corrections which need to be made to the presentence report. I will then ask for argument as to the recommendations. Please request a special setting for sentencings where testimony or argument is anticipated in excess of 15 minutes.

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

A: They are not commonly submitted, but if court and/or private probation is anticipated, it would be helpful. At sentencing, I will generally order a screening and assessment by a JRI Certified Provider and suspend the imposition of specific terms of supervision and treatment dependent upon the results. Offense-specific assessments (in addition to the general risk to recidivate assessed by the LSI-R), are also welcome if based upon a validated tool.

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

A: I am very familiar with the Utah Sentencing Guidelines. Argument is welcome as to the accuracy of calculation, placement on the matrix, the number and weight to be given to aggravating and mitigating factors, etc. Individualizing sentencing is important to me. I will comply with minimum mandatory sentences.

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

A: On a criminal calendar, private counsel should coordinate with the public defenders and the prosecutors to let them know when they are ready. I'm happy to take private counsel out of order based upon attorney readiness. Please check in with the bailiff and notify my clerk as well. On a civil calendar, I generally call cases in order, unless it is clear that a particular matter will require significant time. If requested, I may take brief matters before lengthier matters.

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

A: Please be prepared and make an effort to discuss potential resolution prior to law and motion. For anything other than scheduling another date, I would prefer counsel to stand and make argument.

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

A: Same advice I would have for prosecutors above.

9. 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: Please be prepared; update financial disclosures as required; disclose and discuss exhibits and witnesses in advance, etc. I am especially cognizant of the need for procedural fairness in domestic cases. However, the time and extent of your clients' testimony will not be unlimited.

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

A: In the Second District, motions for temporary orders are presented to the Commissioners first. Please check with your assigned Commissioner.

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

A: Please check with your assigned Commissioner.

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

A: Please check with your assigned Commissioner.

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

A: Follow the rules; submit them in a timely fashion; update them before trial.

Q: Do you want any type of motion binder delivered? Is this helpful, or does e-filing render these obsolete?

A: Courtesy copy binders are useful in complex matters and/or matters with significant exhibits, financial disclosures, etc. As for matters presented to the Commissioner, please check with the assigned Commissioner.

Q: 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, and how do you want them assembled (folder, binders, with or without exhibit tabs, etc.)

A: Yes. If the motion is complex and there are supporting exhibits, please provide in a binder with exhibit tabs. If I have them a week in advance, that is usually sufficient.

Q: Is there a special way that you would like proposed orders to be filed?

A: Follow the rules regarding circulation to opposing counsel. Whenever possible, have them approved as to form; it will significantly speed up the review process. If you are not the counsel preparing the proposed order, be proactive in the review process and be willing to take the time to approve as to form when you can (which should be most of the time).

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

A: By agreement of counsel and, if necessary, a scheduling conference with the Commissioner.

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

A: I would prefer not to conduct interviews in camera, except in a rare circumstance. I am more likely to appoint a Guardian ad Litem to represent the children if it appears to be warranted and appropriate.

10. Courtroom Protocol

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

A: Rarely. I expect counsel to be familiar with and to follow the Rules of Professional Conduct. I will notify counsel if their behavior is inappropriate.

Q: What are your opinions regarding courtroom dress?

A: Appropriate business attire for counsel. Best dress for clients. No hats, shorts, short skirts, tank tops, flip flops, etc.

Q: Do you allow children in your courtroom?

A: Generally, no. I may allow small children during a law and motion calendar if alternate arrangements cannot be made.

Q: What is your courtroom practice with respect to attorney cell phones? Clients? Those in the gallery?

A: Please turn ringers/sounds off.

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

A: I am always available to start on time, but I generally do not come into the courtroom until my assistant tells me the parties are ready to proceed.

11. Comments from Case Managers and Judicial Assistants

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

A: Malia Montag maliam@utcourts.gov (801) 395-1070

Q: My case manager wants you to please do these things:

A: Be courteous and respectful; follow the rules regarding timeliness and format of pleadings; don't let cases languish; be proactive in seeking scheduling or status conferences.

Q: The name and phone number of my judicial assistant(s) are:

A: Megan Morrell (in court/criminal) meganm@utcourts.gov (801) 395-1121

Baylie Judkins (civil) bayliej@utcourts.gov (801) 395-1085

Q: My judicial assistants want you to please do these things:

A: Be courteous and respectful; follow the rules; be accommodating when you are contacted by them to set up telephonic or in-court conferences; return calls/messages promptly; be prepared to pre-mark exhibits for an evidentiary hearing or trial; provide them with an itemized list of exhibits anticipated for introduction.

12: Other items

Q: Do you have a judicial biography that you would like hyperlinked to your bench book? If so, please advise us of the link to this information or provide us with a copy of the same so we may link it to your bench book.

A: Please see my biography on the Utah Courts public website.
https://www.utcourts.gov/judgesbios/showGallery.asp?dist=2&ct_type=D#3277

Q: Do you have any stock jury instructions, verdict forms, or other information you would like hyperlinked to your bench book? If so please advise us to the link to this information or provide us with copies of the same so we may link it to your bench book.

I don't have a hyperlink, but anyone could contact my law clerk and ask for copy of our current forms of standard instructions. My assistant would have a copy of my standard probation form, presentence order, progress report order and a list of Weber and Davis County JRI Certified Providers. The statewide list can be found at <https://dsamh.utah.gov/providers/justice-certification>. For domestic matters, please contact your assigned Commissioner for our standard pretrial order form and pretrial custody issue worksheet.