QUESTIONNAIRE FOR JUDGE/COMMISSIONER BENCH BOOK

JUDGE/COMMISSIONER: Richard Pehrson – Third District Court

Date of Bench Book: September 24, 2025

1. Discovery

Q: What is your practice with respect to modifying an initial case schedule under Rule 26?

A: When scheduling of discovery is handled by stipulation of counsel I will almost always approve of their stipulation. If the parties cannot agree, I will set a scheduling conference, either by WebEx. Such conferences are generally unnecessary, but may be useful in more complex matters. I am typically willing to grant reasonable modification to the schedule.

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

A: No.

Q: What is your practice regarding statements of discovery issues ("SODI") disputes? Do you ordinarily set a telephonic or in-person hearing?

A: Discovery disputes are resolved through the Statement of Discovery Issues procedure, as set out in Rule 37(a). After a Notice to Submit on a Statement of Discovery Issue is submitted, I review the materials and any objections to determine whether I can sign or modify a proposed order. I do appreciate proposed orders being filed by both sides. If a proposed order cannot be used, or if the record is insufficient, I am open to scheduling a short WebEx hearing with counsel before ruling.

Q: What is your approach to protective orders? Do you often use something similar to the federal court standard protective order?

A: I almost always grant stipulated protective orders. Even when disputed, I generally favor reasonable protective orders to protect sensitive information.

Q: What is your approach to granting extraordinary discovery?

A: Stipulated requests for extraordinary discovery are ordinarily granted. When opposed, I decide the matter on a case-by-case basis and weigh the request against the needs of the case in accordance with Utah Rule of Civil Procedure 37(a). I encourage counsel to provide specifics of what is needed and why, with reference to discovery that already has taken place, rather than an abstract or generalized argument about why the discovery is needed.

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

A: If I am convinced that one party is clearly at fault for a particular discovery dispute, I may order that party to pay the reasonable attorney's fees of the other party relating to the dispute. That is more likely after a second SODI is filed. Severe sanctions, such as dismissal or entering judgment, are only warranted in the most extreme cases. Usually reasonable and competent counsel will not need to resort to court intervention in the discovery process. I also believe in a vigorous meet and confer requirement before issues are brought before the Court. I routinely deny SODIs that fail to include facts related to using genuine efforts to meet and confer as proscribed in the rule.

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

A: Yes, if I am not on the bench. Counsel should seriously attempt to resolve the matter first, but I am willing to take important disputes if necessary.

Q: What insights do you have for litigants with respect to discovery matters in general?

A: The discovery rules are designed to streamline litigation and reduce cost. Counsel should not treat them as opportunities for gamesmanship. I enforce them so that cases move forward efficiently and fairly.

2. Motions

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

A: No.

Q: What about unpublished cases?

A: Yes.

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. 7 days in advance. I prefer the moving party provide a binder with all related filings (including exhibits).

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

A: I rarely deny motions for overlength memoranda. That said, brevity is usually more effective, and longer briefs are seldom more persuasive! Extensions of briefing schedules are generally allowed, particularly when

stipulated, provided they do not interfere with hearing dates or prejudice the opposing party.

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: Upon receipt of a Request to Submit, I review the motion to determine whether it can be decided on the papers. Procedural or uncontested matters are often resolved without hearing. Contested motions are usually (but not always) set for hearing, with scheduling coordinated through chambers. I appreciate notices to submit referencing all related motions and including the applicable docket numbers.

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

A: I may decline oral argument on uncontested or purely procedural motions. Substantive motions requesting a hearing usually receive one unless I feel the issue is clear and, due to the helpful briefing, I can decide the issue on the papers.

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

A: Effective briefs are clear, succinct, and focused on the strongest arguments. Brevity enhances credibility; longer briefs rarely do. Frivolous or make-weight arguments undermine otherwise sound points. Avoid hyperbole, excessive adjectives, and especially unnecessary disparaging remarks about parties, counsel, or the court. Persuasion comes from careful editing, logical analysis, and grounding in Utah law. I am most benefited from arguments that wrestle with the strongest facts and law from the other side rather than hiding from them. I am not opposed to charts, tables, timelines, select embedded exhibits, or other visual tools if they are not overused and are beneficial in your case.

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

A: I will have read the briefs, so oral argument should focus on clarifying the issues that matter most. Do not repeat your written submissions; instead, address the heart of the dispute, concede weak points, and be prepared to answer questions directly. Courtesy, candor, and preparation enhance credibility. I routinely interrupt and ask a number of questions. This helps me understand your points and gives you insight to what troubles me most about a particular issue. I am not trying to argue, but to better understand. Unless a party requests otherwise, oral argument will usually take place over WebEx. I welcome parties using key exhibits or focused PowerPoint slides and will allow you to share your screen if you desire.

Q: Do you have any guidelines or preferences that you expect counsel to follow regarding temporary restraining orders or preliminary injunctions? In particular, do you have any preferences regarding the presentation of evidence during these proceedings?

(For example, do you prefer exhibits to be marked in a certain manner, or for counsel to proffer affidavits with the witnesses present for potential cross examination rather than proceeding with direct examination by default?)

A: Ex parte TROs are strongly disfavored and will be entered only upon strict compliance with Rule 65A(b). Counsel must be prepared to address all of the required factors, particularly irreparable harm and the issue of security. I discourage attempts to use these procedures as tactical devices. For preliminary injunction hearings, I generally require direct testimony with witnesses available for cross-examination. My team will usually set you up for an initial scheduling conference where we will discuss the date and length of the impending evidentiary hearing.

3. Final Pretrial Conference

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

A: The purpose of the FPTC is to ensure the case is truly ready for trial and to resolve as many outstanding issues as possible. This includes deciding motions in limine, addressing trial disclosures and objections, and finalizing jury instructions and voir dire. I firmly expect counsel to have met and conferred in advance and made best efforts to narrow objections and stipulate where possible.

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

A: All motions in limine, trial scheduling, etc.

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

A: I confirm that genuine settlement discussions have taken place. I may remind clients directly of the risks and costs of trial and suggest further mediation or a judicial settlement conference where appropriate. To that end, I generally require natural parties to appear at the hearing with their attorneys.

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

A: Yes.

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

A: At final pretrial conference.

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

A: Yes.

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: Prospective jurors appear remotely and the parties and their attorneys appear in person. I expect the attorneys to have met before and agreed on any strikes for cause that can be stipulated to. I conduct the initial voir dire, using neutrally worded questions posed to the panel as a whole and follow-up questions to individual jurors where appropriate. Counsel should submit stipulated proposed questions in advance, and I will incorporate them as needed. In some cases, I allow counsel limited participation for follow-up. In civil cases, I will usually defer to counsel and ask any stipulated questions.

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

A: By the final pretrial conference. If parties hope to have a different questionnaire sent to the prospective jurors other than our standard one, they must have emailed that to the Court's JAs 30+ days in advance. Only stipulated questions will appear in the questionnaire.

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

A: Yes. 30+ days and emailed to my JAs.

Jury Instructions:

Q: When do you require instructions to be submitted?

A: By the final pretrial conference. Parties should file stipulated jury instructions along with any disputed instructions. I strongly disfavor last minute instructions, especially if I suspect that was a tactical move.

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

A: Yes. I strongly favor MUJI 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 1st or 2nd sufficient legal authority?

A: If an instruction is not MUJI, counsel should submit the instructions accompanied by supporting cases.

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

A: Yes.

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

A: In civil cases, at the final pretrial if possible.

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: My default is a full day with breaks (8:30am–5pm) with a 60-90 minute lunch. The parties must be prepared to take witnesses back-to-back to not waste the jury's time.

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

A: It depends on the dispute. Some disputes need the context of trial and others can be raised ahead of time. Of course, I'd rather decide complex issues ahead of time with briefing.

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

A: The case law allows parties to use exhibits in opening statements that they reasonably, in good faith, expect to come into evidence. However, there is always a risk that a case can result in a mistrial if an exhibit is shown to the jury in opening and is not later admitted. Great care should be taken to ensure only exhibits that will be admitted are shown.

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

A: Exhibits should be exchanged, stipulated (where possible) and pre-marked prior to trial. Non-stipulated exhibits must at least be pre-marked. Counsel

must provide a detailed exhibit index on the morning of trial for the clerks, along with copies for the court, opposing counsel, and the witness. Exhibits should be organized, clearly labeled, and published promptly so trial time is not wasted. In many cases, especially bench trials, four copies of exhibit binders will be required (one for the witness, the Court, the opposing party, and your copy). Parties should stipulate to the foundation of exhibits where that foundation is not in question.

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

A: Yes. Counsel are welcome to test technology in the courtroom in advance of trial. The court's built in equipment requires an HDMI hookup into your laptop which then allows you to project an image onto smaller screens in front of the judge, the witness and at counsel tables and then onto a larger courtroom screen for jurors. It is often more effective to use your own equipment. Where possible both sides should use the same computer to run the exhibits as going back and forth between sides can be cumbersome.

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

A: I expect counsel to have a witness ready at all times so trial is not delayed and the jury is not kept waiting. Counsel should meet and confer to coordinate witness schedules and accommodate necessary adjustments.

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

A: Yes.

Q: What is your preference or practice regarding witnesses appearing remotely at trial?

A: I am receptive to remote witnesses, but understand there are reasons that might be appropriate in certain cases. Often juries take remote witnesses less seriously, so I urge caution in using remote witnesses.

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: Bench trials tend to proceed more quickly and with greater flexibility than jury trials. I may ask questions directly of counsel or witnesses and encourage stipulations to streamline evidence. If the authenticity of an exhibit is not in question we need not waste time tediously laying foundation. I will issue a pretrial order that will discuss my orders in

more detail. Noncompliance with that order may result in serious consequences including default. I appreciate trial briefs filed 7 days before trial, which may take the place of opening statements. I often request proposed findings of fact and conclusions of law from both sides after a bench trial.

6. Post-trial Issues

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

A: Yes.

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

A: No.

7. Technology in the Courtroom

Q: Do you have recommendations or requirements for counsel who will be participating in a remote hearing? (E.g., use of headphones, providing chambers with physical copies of all exhibits in advance, certain practices to avoid when appearing remotely, etc.)

A: Please have a good connection and sign on early to test the system.

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

A: I love technology and welcome it in the courtroom, but counsel should test it in advance.

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

A: Projecting exhibits and using PowerPoint in closings can be effective in jury trials so long as the technology is smooth and not distracting. I am also open to projecting exhibits and using PowerPoint in oral argument, where that would be helpful.

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

A: Only if the technology does not work, the presentation is too rigid to allow for adaptability, or is gimmicky.

8. Criminal Matters

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

A: Continuance requests are generally granted if stipulated. Stipulated requests can be made to my team via email or off the record at a law and motion calendar. Absent stipulation, they are considered case by case and granted only for good cause or emergencies. However, last minute continuances of trial (even stipulated) are highly disfavored.

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

A: I prefer to have the benefit of a pretrial services evaluation, but I will hear arguments upon proper notice.

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

A: I don't have a specific policy.

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

A: I want counsel's recommendation, including whether they agree or disagree with the presentence report. I am attentive to what the defendant wishes to say and want to know the position of the victim, if any. Counsel should be prepared to tactfully acknowledge what is in the client's best interests which may occasionally diverge from the client's preferred outcome.

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

A: Yes.

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

A: No.

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

A: When ready, and once the lectern is free, counsel should approach, state their appearance, call the case (ideally by defendant's last name and docket number), introduce me to your client, and, if not obvious, let me know how to refer to your client (he/him she/her etc.). Please help me with the pronunciation of less common names.

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

A: Be reasonable. Not every hill is worth dying on. If you shoot for the moon on every case I'll be less willing to take as credible your arguments on the issues/cases that matter most. Keep victims informed, and coordinate fully with defense counsel and probation so issues are addressed in advance. Don't spring discovery or witnesses on the defense near trial. Such tactics may result in having those things suppressed. Credibility goes a long way for me trusting your representations in future cases. I find the best prosecutors are always civil with defense counsel and court personnel.

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

A: Be prepared and focus your arguments on what really matters. Ensure your client is ready and that potential issues are anticipated and addressed before the hearing. Credibility goes a long way for me trusting your representations in future cases. I find the best defense counsel are always civil with prosecutors and court personnel.

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: N/a

For Courts without Commissioners:

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

A: N/a

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

A: N/a

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

A: N/a

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

A: N/a

For Courts with Commissioners:

Q: What is your practice with regard to setting hearings on Objections to Commissioners' recommendations?

A: See the Commissioner first and only object to their recommendations when necessary. While I follow Rule 108 and make independent findings - my experience is that the Commissioner generally has gotten it right. Most financial issues can be trued up at trial, and if a trial can be set, I am unlikely to hold a long alimony hearing just to have to hear the same issues a few months later at trial. I require a transcript of the hearing with the Commissioner before I will hear an objection to their recommendation.

For all Courts:

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

A: On complicated legal issues, I appreciate a hearing binder delivered 7 days before trial.

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. 7 days in advance.

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

A: Use the e-filing system.

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

A: No. They are considered case by case, and I am reluctant to order them absent a compelling reason, given the potential stress on the child.

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: Yes. Counsel and parties generally act appropriately, and professionalism is rarely a problem. On occasion I may call a recess to allow tensions to ease. I find unprofessional conduct distracting, unpersuasive, and hurts the credibility of the unprofessional party. Fortunately, this is rarely an issue.

Q: What are your opinions regarding courtroom dress?

A: I encourage attorneys to dress professionally.

Q: Do you allow children in your courtroom?

A: Yes.

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

A: Cell phones should be silenced.

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

A: I try to begin proceedings on time and appreciate it when counsel do the same. If you are delayed, a quick call to my judicial assistants is helpful. Occasional lateness is understandable, and a simple apology to the court and counsel is usually sufficient.

11. Comments from Case Managers and Judicial Assistants

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

A: Case managers occasionally change so please email: 3rdpehrsonteam@utcourts.gov

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

A: Please be polite to them. Unprofessionalism with them destroys your credibility with the court.

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

A: JAs occasionally change so please email: 3rdpehrsonteam@utcourts.gov

Q: My judicial assistant wants you to please do these things:

A: Please be polite to them. Unprofessionalism with them destroys your credibility with the court.

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: Yes. https://www.utcourts.gov/en/about/courts/judges-bios/district-courts/third-district-court/richard-pehrson.html

Q: Do you have any stock jury instructions, verdict forms, articles, standing orders, checklists, remote hearing protocols, 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.

A: No.

Q: Is there anything else that you would like attorneys or parties to know about case management or proceedings in your courtroom?

A: I sincerely appreciate all your hard work and I am routinely impressed by the caliber of advocacy in my court.