

Judge Joseph M. Bean

QUESTIONNAIRE FOR JUDGE'S BENCHBOOK

JUDGE: Joseph M. Bean - Second District Court

1. Discovery

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

A:The court clerks send out the discovery deadlines and then counsel should file a Notice of Readiness when the case is ready for a pretrial. At the Pretrial Conference the court will set several Rule 26(a)(5) deadlines for pretrial disclosures, motions in limine and set a trial date. Modifications would be granted as parties stipulate and after approval by the court.

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

A:Not that I am aware of.

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

A:I follow Rule 4-502 URJA and Rule 37 URCP as applicable.

Q:What is your approach to granting extraordinary discovery?

A:I do my best to follow Rule 26. There may be very rare exceptions.

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

A:It would depend on the scope and nature of the abuse.

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

A:I have been available by telephone in several cases. My availability would depend on my calendar.

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:Obtain reliable case management software and reliable legal assistants.

2. Motions

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 What about unpublished cases?

A:No. With today's technology, I will look up pivotal cases as needed, even during oral arguments. Unpublished cases should be provided by counsel.

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:Courtesy copies may be helpful in complex cases, however, I would use them more for quick reference to exhibits (which may be cumbersome with Judicial Workspace) than for referencing or making notes on the memoranda.

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

A:I frown heavily upon overlength memoranda. The best memoranda stay well within the limit set by Rule 7 URCP. More often than not, cases are not as complex as counsel might think and very rarely would the Rule 7 limits need to be exceeded.

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:My court clerks will generally place the Notice to Submit in my signing queue. I review the pleadings to see if a hearing has been requested and to see if the issues are complex enough for a hearing even if not requested. I will then instruct the court clerk whether a hearing is necessary.

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

A:I have not declined a request for oral argument yet. I think such would be very rare. Sometimes a party will file multiple motions requesting the same relief, bordering on vexatious pleadings. I may decline oral arguments in such cases.

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

A:Avoid multiple motions. Be brief. Be succinct.

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

A:Demonstrate the dignity and integrity incumbent in the profession.

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

A:Follow Rule 65A. Sometimes counsel will neglect to comply with the Rule 65A certification. I will not address the TRO unless the certification is made, presumptively in good faith.

3. Final Pretrial Conference

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

A:To set a timeline for pretrial motions, Rule 26 pretrial disclosures and objections and to let the parties know the court's trial procedures (start time, breaks, jury instructions, etc.).

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

A:All of the Rule 16 and Rule 26 URCP issues.

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

A:I would check to see if the parties have engaged in mandatory ADR. Unless the parties requested court intervention with appropriate waivers, I would not likely require the parties to do more than their ADR requirement.

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:I will generally set a cut-off date for motions in limine well in advance of trial. I would hear the motions on my civil law and motion calendar, however, if there are several motions, I will generally schedule a special setting for oral arguments.

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

A:It is oftentimes helpful to have pretrial briefs, but the court is conscious of the extra expense to the client. It would depend on the case.

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: The court conducts most of the voir dire, but does allow counsel to ask voir dire questions directly to the jury. Counsel should avoid asking anything other than juror qualification questions. Sometimes I have observed counsel disguising closing argument as series of jury voir dire questions. I will terminate the questioning if it goes that far.

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

A: Two weeks prior to trial.

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

A: I don't have a position yet.

Jury Instructions:

Q: When do you require instructions to be submitted?

A: Generally, at least one week prior to trial.

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

A: I use the MUJI stock instructions. I require counsel to submit any special 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: Special instructions should be accompanied by supporting legal authority.

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

A: Both written and electronic.

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

A: It would depend on the extent of the disputes. Oftentimes it can be done during a break at trial. If the dispute is substantial, the court would set aside sufficient time to resolve the issues.

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: Trial begins at 9:00 a.m. and ends as close to 5:00 p.m. as possible. The court will take 10-15 minute breaks at 10:30 a.m. and 3:30 p.m.

Lunch break is as close to 12:00 noon to 1:30 p.m. as possible to give jurors sufficient time to drive home and return from lunch.

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

A:I follow Rule 26 so far as pretrial objections are concerned. Significant motions in limine would be heard in the weeks leading up to trial. Objections during trial are ruled upon as made.

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

A:It generally should not be done if admissibility has not been stipulated.

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

A:Parties are often able to stipulate to the manner that exhibits are numbered. The default in my court is to number plaintiff's and defendant's exhibits separately. Large binders should have each relevant exhibit numbered (or lettered) separately.

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

A:The court has limited technology resources. Parties will want to provide their own resources and be as self-sufficient as possible. Admissibility of technical or media evidence should be resolved prior to trial. Make certain that your technology works prior to trial. Also keep in mind the layout of the courtroom and the number of monitors needed for jurors, counsel and the judge.

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

A:The court will attempt to accommodate a witness's time schedule so long as it is not too disruptive to the flow of trial.

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

A:Generally, yes.

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:No.

6. Post-trial Issues

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

A:Rarely. There may be some complex cases where it would be helpful, but generally the cost to the client is not outweighed by the benefit to the court.

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

A:Rarely. There may be some complex cases where it would be helpful, but generally the cost to the client is not outweighed by the benefit to the court.

7. Technology in the Courtroom

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

A:I am generally very liberal regarding its use.

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

A:I will leave that up to the parties. I would not pre-judge the qualitative nature of proposed evidence here.

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

A:Not that I can discern at this time so long as it pertains to relevant evidence.

8. Criminal Matters

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

A:I would expect counsel to attempt to elicit a stipulation from opposing counsel for any continuance. If counsel cannot stipulate, then a telephone conference would be in order.

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

A:Bail should be set at the time of the probable cause determination. After that, it can be addressed for the first time at any stage of the proceedings.

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

A:I discourage pleas in abeyance except in domestic matters where the plea may assist in the preservation of a relationship.

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

A:Whether there is any legal reason why sentencing should not proceed. Whether there are any errors, omissions or corrections to the pre-sentence investigation report. Any other facts or legal principles pertinent to sentencing.

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

A:No, note when there is an AP&P Presentence Report.

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:Coordinate with the public defenders and prosecution as to when is best to jump in.

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

A:Uphold the highest standards of civility and professionalism. I have had very exemplary prosecutors and public defenders.

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

A:Uphold the highest standards of civility and professionalism. See prior answer.

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:No.

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

A:See Rules 26 and 26.1 URCP.

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

A:Nothing in particular. It would be rare for the court to deny such motion where custody is relevant

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

A:Follow Rule 101 and Rule 7 where applicable.

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

A:Follow Rule 101.

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

A:Exhibit binders delivered pretrial may be helpful in complex cases.

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:It is extremely helpful to the court when parties file their pleadings in a format that can be copied by the court. In complex cases, the court takes copious notes from the briefs. The ability to copy and paste relevant portions of the briefs has been very helpful to the court. When the briefs are filed in a “protected” format, the court cannot take notes as well.

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

A:See Rule 7 regarding changes in “proposed orders.” Final orders should be signed approved as to form or in the alternative have a full Rule 7(j) notice incorporated or appended to the mailing certificate. The court generally will not sign an order unless one of those two things have been done.

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

A:The parties may stipulate to a case management order. The parties should still follow Rule 26 and Rule 26.1 as applicable.

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

A:I will do them as I feel necessary.

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. Counsel in my courtroom have generally conducted themselves in a dignified manner.

Q:What are your opinions regarding courtroom dress?

A:Suits and ties for the men. Dresses or professional pantsuits for the women.

Q:Do you allow children in your courtroom?

A:It depends on the hearing. Not allowed in domestic relations matters unless they are witnesses. Most serious criminal matters would be inappropriate for children to be present.

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

A:Turn them off.

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

A:I have been known to strike pleadings, grant default, dismiss causes of action, etc. for failure to appear. I will generally give litigants and counsel fifteen (15) minutes to appear after the time set for the hearing.

11. Comments from Case Managers and Judicial Assistants

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

A:This may change from time to time so it is best to consult a court directory.

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

A:Follow the rules when filing your pleadings.

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

A:This may change from time to time so it is best to consult a court directory.

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

A:Be polite when you call on the phone, even when you don't get the answer you are hoping for.

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:No.

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.

A.No.