

Judge James Brady

QUESTIONNAIRE FOR JUDGE'S BENCHBOOK

JUDGE: JAMES BRADY – Fourth District Court

Provo, Nephi and Fillmore

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 prefer the parties follow the requirements of Rule 26 and Rule 26A. If either party feels it is necessary, they should request a scheduling conference. Scheduling conferences can be conducted in person or by phone.

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

A: All orders should comply with the rules. Mediation must be part of the case management order. I will allow extensions before the deadlines run, but I will seldom approve them after the deadlines have run.

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: Now that all documents are scanned and available, courtesy copies are not necessary.

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: I prefer that counsel to follow the requirements of Rule 7. I will schedule hearings upon receipt of a Request to Submit for Decision. If either party wants oral arguments, they need to request a hearing. (If an evidentiary hearing is required, counsel

needs to request an evidentiary hearing and adequate time for the hearing.)

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

A: If a request for hearing is not filed. I will also decline a hearing in the event the motion or opposition to the motion is frivolous, or if the issue has been authoritatively decided.

Q: What is your policy on allowing overlength memoranda?

A: Overlength memoranda are appropriate where the facts, law or issues are sufficiently complex. If an overlength memorandum is submitted, it must comply with Rule 7.

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

A: I find briefs that identify the facts, correctly state the applicable law, and clearly identify the action the party wants the court to take to be most useful. An unhelpful brief is one that only argues what is "fair" or "right". Discourteous and sarcastic briefs are unhelpful.

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

A: Yes, along with their brief.

Q: What makes an effective motions argument?

A: Be direct, concise, accurate, and compelling. Do not simply repeat what is in your brief. I will have read that. I will ask questions. Direct answers to my questions are appreciated and helpful.

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: Follow Rule 65A. The rule will be strictly enforced. Efforts to notify opposing counsel/party are required, and will be reviewed regardless of the imminent need for the relief sought.

3. Final Pretrial Conference

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

A: To address the procedural needs of the trial, discuss witness or evidentiary issues, and to confirm the substantive issues that are to be tried.

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

A: Length of trial, courtroom accommodations, jury selection, jury instructions, motions in limine and settlement .

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

A: Rule 4-510 UCJA requires mediation in most civil and original divorce cases and is enforced. Ultimately I leave it up to the attorney's to represent the best interests of their parties as they see fit.

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

A: Yes, unless the party lives outside of the state. In such instances, I usually allow the party to attend by phone.

4. Jury Trial Practice

Jury Selection:

Q: How is voir dire conducted in your courtroom?

A: I use a short questionnaire and questions by the bench including my stock questions and those suggested by counsel.

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

A: Yes. Counsel may submit requests for the questionnaire and voir dire questions to be asked in the courtroom. Once in chambers

counsel may ask direct questions appropriate to determining a juror's bias or lack thereof.

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

A: They must be submitted 10 days prior to trial

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

A: I use my standard questionnaire. I do not encourage or discourage additional questionnaires from counsel. If a questionnaire is requested and contains appropriate questions, I will consider it.

Requested Instructions:

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

A: Proposed instructions must be filed ten days prior to trial in most civil cases or when identified in the pre-trial order. Objections to the proposed instructions must be filed at least 5 days 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: Citation to MUJI is sufficient. However, if it is not a MUJI instruction, I require references to supporting cases and/or statutes.

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

A: Yes. A copy is available from my court clerks.

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

A: I require it. They may be emailed, or submitted on a disk or USB drive. And they should be in either Word or WordPerfect format.

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: Be on time for each court session. Trials will begin 9:00 am sharp and conclude each day by 5:00 pm, with a 50 minute lunch and two 15 minute breaks. This may change for trials of long duration.

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

A: Follow rule 26(a)(4)(C). All anticipated motions should be resolved before trial. Motions should be filed at least 20 days prior to trial. Opposition briefs must be filed at least 10 days prior to trial. No evidentiary hearings will be heard during trial. If a foundational question is not addressed prior to 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 up to the parties. Counsel should not unreasonably impose on witnesses, or jurors in its scheduling.

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

A: All parties should prepare an exhibit list for the court's use at trial. A binder of each party's exhibits for the courts use is also appreciated. Plaintiffs should list their exhibits by number; defendants should list their exhibits by letter. Standard forms for exhibit lists are available at the clerk's office, and questions regarding the preparation of these lists may be directed to the court clerk's office. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.

5. Bench Trial Practice

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

A: All evidentiary issues need not be resolved prior to bench trials, but in jury trials that is a priority.

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

A: I believe proposed findings of fact and conclusions of law are helpful to the Court, but I don't require them in all cases. Sometimes I will require them in lieu of closing arguments.

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

A: They are appreciated in complex cases but are only required if ordered in the pretrial order.

6. Thoughts on Effective Advocacy

Q: What makes an effective advocate in jury arguments?

A: Know and trust your audience. Tell them a concise, direct story consistent with the evidence admitted. Don't underestimate their ability to discern truth from fiction.

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

A: Overstating or repeating the point to be made.

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

A: Be specific and concise. Ask only what is needed to establish your point. Get the witness on and off quickly when possible. Do not repeat the witnesses' answer before asking the next question.

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

A: Sometimes. To explain technical concepts they may be helpful. However, they may be prone to either hardware or software malfunctions, and are often difficult to present so parties, jurors, witnesses and the court can see them. If you put too much reliance on them and they fail, you need to be prepared to proceed as I will not delay the trial for technical failures on counsel's presentations.

7. Criminal Matters

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

A: If presented in writing in advance of the hearing, with consent from the opposing party, they are usually granted. I am pretty lenient on continuances on criminal matters unless delay prejudices either side, or too many continuances have been requested. I will only grant the motion on the day of the hearing only if it is stipulated to, or for unforeseeable circumstances.

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

A: Bail is addressed according to the rules. I address it at the initial appearance on felonies or first appearance on allegations of probation violations. I will sometimes rehear bail following the preliminary hearing, or trial.

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

A: Any objections or exceptions to the PSI, and anything that counsel believes is relevant.

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

A: Mental health and substance abuse evaluations and treatment records are helpful. But carry limited weight. All information submitted will be considered.

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

A: None, except for mandatory sentences.

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

A: Notify my clerk before I come in the courtroom, or stand up between cases and request the matter be taken out of sequence.

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: I enforce the rules. Know the rules associated with the relief you are seeking. If you want an evidentiary hearing, notify the court or the clerk of the estimated time you believe it will need.

Everyone is frustrated when a hearing ends up on the law and motion calendar but the parties want/need a two hour evidentiary hearing.

It is not sufficient to allege the other parent is “bad”. Be sure to present evidence of the applicable standards and identify the specific relief you are seeking. Know the rules and the case law. They will trump the public policy arguments.

If you intend to present proffered evidence, submit an affidavit containing the testimony, and have the witness in court in case cross-examination is necessary. Without both, I will not accept the proffered evidence.

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

A: Follow the rules including Rule 106. I require a motion, affidavit and financial disclosures from both parties. Know the new Rule 26A. At the hearing proffers are accepted only if an affidavit is filed prior to the hearing and the witness is in the courtroom.

Anticipate you will have 15 to 20 minutes to present both sides. If you need more time, schedule more time with my clerk.

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

A: I only permit them if the case requires it. They are not encouraged. If necessary, interviews are performed in chambers, with counsel for both parties present to observe, but not to participate.

9. Discovery Practices

Q: What is your approach to resolving discovery disputes?

A: Attorneys should know and follow Rules 26 and 37 and the UCJA Rule 14-301. I assume most issues can be resolved by the attorneys knowing the content of these rules and realizing that case law is generally in favor of disclosure. I am generally pro disclosure too. However, under the new rules, I am more likely to look closely at the cost and proportionality of the requested information.

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

A: I will follow Rule 37. I will usually award attorney's fees if there is a prevailing party. Gradually stiffer sanctions are ordered if the abuse is intentional and for an improper purpose, or if it continues,

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

A: No. However, my clerks can reach me. The best approach is to reserve the issues, and either schedule a telephonic hearing with me, or submit the concern by motion. I do order sanctions for deposition misconduct. And attorney's loose points with for making a mountain out of a mole hill,

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 often. If warranted, I will speak with counsel about it.

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

A: Counsel do not need to ask to approach the witness to quickly hand the witness an exhibit. Counsel should never approach the jury without leave. Counsel needs to confine his movement to be reasonably close to the microphones in the courtroom so that the record can be complete.

11. Other Miscellaneous Issues

Q: What are your opinions regarding courtroom dress?

A: Counsel should dress professionally. Parties and witnesses should dress as if attending an important function or meeting. However, unless a party or witness is wearing clothing that is distracting or unhealthy, I will not call attention to it.

Q: Do you allow children in your courtroom?

A: Not if they are under eight years old, unless notified in advance that they are necessary to the case. I do not allow minor children of divorcing or divorced parents to be in the courtroom at all. However, adult children of divorcing or divorced parents are allowed in.

Q: Do you allow cell phones in your courtroom?

A: Yes if they are turned off, and not used for taking pictures.

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

A: I start on time. I also remind counsel of their need to be on time if they are late. At fifteen minutes after the hour, if counsel is not present, and has not called the court, I will either proceed, or strike the hearing as requested by the opposing party.

12. Other Suggestions, Thoughts, Concerns

If there is ever a doubt as to how to proceed, read and follow the rules. I will try to enforce them in nearly every instance. Avoid ex-parte contact with the court. Know your case well, including the facts and applicable laws. Relax and enjoy your work.

13. Clerk's Comments

Q: The names and phone numbers of my clerks are:

A: Nephi: Cindy and Taunya – 435-623-0901

Fillmore: Norma, Irene and Sherry – 435-743-6223

Provo: Robyn – 801-429-1177; Cora – 801-429-1012;

Mykel – 801-429-1150

Q: My clerks want you to please do these things:

A: If you need to see me, please contact my court clerk, to find out my schedule. She will suggest some times. Notify us early for continuances. Be polite and respectful I do not tolerate disrespectful treatment of my clerks.