

First District Court

QUESTIONNAIRE FOR JUDGE/COMMISSIONER BRIAN G.
CANNELL BENCH BOOK

1. Discovery

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

A: The initial case schedule in civil matters is set by Rule 26 and should be followed. I will only consider discovery beyond the designated limits of Rule 26 (either as to time or amount) if properly and timely requested under the rules. If a review of the case indicates that discovery or other deadlines have passed, it is often my practice to set a telephonic status conference to determine appropriate timetables and procedures to move the case forward. I encourage stipulations regarding reasonable changes to scheduling orders, or to address unique scheduling issues not expressly governed by the rules. If a case sits inactive for too long, I will initiate an Order to Show Cause proceeding and may dismiss a matter for lack of prosecution.

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

A: The expedited procedures which are initiated by filing a Statement of Discovery Issues are generally followed in the First District.

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

A: After a Statement of Discovery Issues is filed, I will review the matter and conduct a telephone conference, as contemplated by the rules. It is my expectation and experience that most discovery disputes are resolved at or before the phone conference. A hearing may be set if necessary.

Q: What is your approach to granting extraordinary discovery?

A: I strongly support the policy and requirement of limiting discovery consistent with Rule 26. I will consider requests for extraordinary discovery only when they are made in compliance with the Rules, and where extraordinary circumstances are demonstrated.

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

A: Under Rule 26, the most common sanction for discovery abuses or failures is a limitation on the admissibility of evidence. I will also consider striking pleadings and entering default in circumstances

where disclosure or discovery obligations are ignored. I may also impose attorney fees and costs.

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

A: Yes unless I am on the bench or in another proceeding on the record. Any such request must be scheduled through my judicial assistant.

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?

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A: I strongly support the policies underlying the current rules, and believe that discovery should be carefully prepared, narrowly focused on relevant issues, and not used to harass or overburden an opponent. I do not support, condone, or tolerate any form of gamesmanship in the discovery process.

2. Motions

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

A: Copies of unpublished opinions can be helpful (and I assign proper precedential value), but copies of other authorities need not be provided. Anything provided to the court should also be provided to opposing counsel or parties before the hearing. This should be a rarity, but if you intend to argue a newly published opinion that was not cited in your pleadings, please submit a supplemental brief ahead of the hearing so there are no surprises to opposing counsel or the court.

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: With our current electronic filing system, I generally do not need courtesy copies of memoranda or other documents. I do find it helpful, however, for hearings that involve multiple motions or voluminous documentation. In such cases, I prefer that the documents be provided in a tabbed binder, grouped by motion, and organized chronologically.

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

A: I generally grant such requests, but my experience has been that such requests are often the result of inadequate preparation. I will deny such requests if they appear to indicate a pattern of inattention in a particular case.

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 an appropriate notice to submit (including a request for hearing), I will schedule a hearing with the aid of my judicial assistant and do not require a phone call. If a hearing is not requested, I may still require one and will schedule it through my judicial assistant and provide notice. My judicial assistant may initiate contact with counsel when scheduling issues arise.

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

A: I rarely decline a request for oral argument, but will do so when the issue is not dispositive of the case and the written memoranda thoroughly address the matter.

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

A: Be focused, concise, and accurate as to the asserted facts and application of the law.

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

A: Again be focused, concise, and accurate as to the asserted facts and application of the law. I expect counsel to stand and deliver their argument from the lectern, and generally permit only opening argument, response, and reply unless I have additional questions. You don't need to ask me if I have any questions I will let you know. And please understand that I will have read everything so don't stand and regurgitate what I already reviewed in writing.

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

A: I require full compliance with the form and substance of the rules.

3. Final Pretrial Conference

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

A: To confirm that the matter is ready for trial, identify the issues to be tried, and to set a schedule for final pretrial disclosures and briefing. The court may also discuss the basis for resolution, but not in great detail leaving such negotiations to counsel and the parties.

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

A: Same as above.

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

A: I invite discussion and will request a progress report, but I do not attempt to dissuade a trial setting to force further settlement discussions and I do not insert myself directly in the negotiations. I routinely require mediation prior to the final pretrial conference.

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: Generally I prefer another hearing time, unless sufficient time has been requested and scheduled to hear such matters at the final pretrial conference.

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

A: Depending on the complexity of the case, I may require pre-trial briefs often followed by post-trial briefs including proposed Findings of Fact/Conclusions of Law that cite back to the record created at trial.

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?

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A: I will conduct the initial questioning and then will allow counsel to ask appropriate questions.

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

A: I generally do not require that questions be submitted in writing, but may discuss the subject matter of any anticipated questioning as needed in a chambers conference with counsel one-half hour prior to the scheduled start of jury selection.

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

A: I usually limit the use of jury questionnaires to very sensitive or complex matters.

Jury Instructions:

Q: When do you require instructions to be submitted?

A: Generally, two weeks before trial. I prefer counsel to submit their stipulated instructions leaving those that remain at issue for evidentiary determinations to be resolved at trial.

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

A: My judicial assistant will provide a standard set of jury instructions upon request. These will be supplemented with further instructions as submitted or requested by counsel or as deemed necessary by the court.

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: Any requested instructions should include a reference to legal authority. A MUJI reference is sufficient, if applicable. Otherwise, a case reference is appropriate.

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: I prefer to resolve disputes as soon as the issues are identified and to the extent possible before trial. If that cannot reasonably occur, then at breaks during trial in such a way as to minimize having the jury wait.

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: Generally, 9 to 5, with 15-minute breaks mid-morning and mid-afternoon, and a 90-minute break for lunch. I

try to avoid setting trial over multiple Tuesdays as that is my current criminal law and motion day in Cache County in the morning as well as Mental Health Court in Box Elder County in the afternoon.

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

A: As soon as the issues are identified and preferably before trial.

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

A: I prefer that demonstratives are not used during opening statement, and do not permit the use of exhibits either unless a prior determination has been made as to their admissibility.

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

preferences of your clerks with respect to trial exhibits?

A: Unless there are few exhibits, I request that trial exhibits be assembled in binders (one for each side) and that each exhibit in the binder be separately tabbed, either numerically or alphabetically. Copies of the binders should be provided to the court and to opposing counsel. Each binder of original exhibits should be marked by my judicial assistant (e.g. P-1, D-1, etc.) prior to the start of trial. Exhibits should be referred to, for purposes of admission or discussion, by exhibit/binder marking and tab reference (e.g. Exhibit P-1/tab1, etc.). Any review or discussion of exhibits by witnesses must be with the originally marked exhibits.

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

A: The use of technology can be very helpful, but please follow all applicable rules. The courtroom has a media cart available, but may not be sufficient for your needs. Please bring all necessary equipment with you for the technology you intend to use. It may prove beneficial to set a time with my judicial assistant ahead of trial to test the equipment in the courtroom.

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

A: I will usually defer to counsel on witness scheduling, and appreciate it when counsel accommodate each other by permitting witnesses to

be called out of order or by permitting direct examination of a witness by both counsel the first time a witness is called.

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

A: I require that counsel seek leave of court before approaching a witness, the bench, or the jury. I may instruct counsel to move freely from the lectern as circumstances arise.

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: Again be focused, concise, and accurate as to the asserted facts and application of the law. I may require a pre-trial brief outlining your case and depending on complexity, request that you submit a post-trial brief with proposed

Findings of Fact/Conclusions of Law tied back to the record at trial.

6. Post-trial Issues

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

A: Yes per the answer to the above question, but only when requested.

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

A: Yes per the answer to the above question, but only when requested.

7. Technology in the Courtroom

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

A: All technology that can be presented in conformity with the rules is permitted.

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

A: I have no preference to any particular type of computer-assisted presentations. Make sure that when used such assists the trier of fact and is not a distraction.

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

A: Only such that are irrelevant, duplicative, not supported by the facts in evidence, etc., or when equipment does not work properly. Bottom line make sure the presentation conforms to all applicable rules and actually assists the trier of fact.

8. Criminal Matters

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

A: I prefer that such requests be submitted in writing by stipulated motion before 5pm the Friday ahead of the scheduled hearing.

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

A: At an initial appearance, or after a proper motion has been filed and fully briefed.

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

A: I generally defer to the prosecution and routinely grant them. I will often request an explanation on the record if a charge is being amended from a felony to a misdemeanor.

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

A: I rely on the information provided in the presentence investigative report and expect counsel to tell me why a recommendation should or should not be followed. I intend to rely on accurate information and expect counsel to advise if any corrections need to be made to the report.

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

A: Such are not encouraged, but will be considered.

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

A: No. All statutory requirements are followed on a case by case basis.

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

A: Please step forward and introduce yourself and request that your case be called both by the defendant's name and docket sequence number on the court's calendar. Please do not monopolize the

prosecutor's time trying to negotiate your case. It is disruptive. Please contact the prosecutor ahead of the hearing for negotiations.

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

A: Be focused, concise, and accurate as to the asserted facts and application of the law. Don't let defense counsel monopolize your time during the hearing and handle negotiations ahead of time.

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

A: Be focused, concise, and accurate as to the asserted facts and application of the law. Please see my response to the above questions.

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: Parents generally do not have the right to waive child support, and such proposals must be supported by appropriate evidence which addresses the best interest of the child. Use protective order proceedings appropriately (i.e. for protection) and not to gain unfair advantage in other proceedings.

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

A: Our commissioner handles these matters so I defer.

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

A: These matters should also be addressed to our commissioner.

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

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A: An order to show cause may only be sought to address the alleged violation of an existing court order and for no other purpose. Please do not seek affirmative relief with an OSC unless an existing order specifically requires such.

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: Again these matters are usually addressed by our commissioner.

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

A: Motion binders are generally not necessary unless the issue(s) before the court are lengthy and complex.

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: My preferences are the same as with any civil matters as previously indicated.

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

A: In compliance with Rule 7 and consistent with any other instructions I may give.

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

A: I apply Rule 26 deadlines and expect counsel to follow the same.

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

A: I strongly discourage them.

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: Civility is rarely a problem in my courtroom. If a problem arises, I may address it in chambers or on the record depending on the circumstances.

Q: What are your opinions regarding courtroom dress?

A: I expect attorneys to dress professionally and wear jackets and ties, or their equivalent. Other participants should dress as they would for an important business meeting.

Q: Do you allow children in your courtroom?

A: I allow children if their presence is required and they are not disruptive.

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

A: Cell phones are permitted in the courtroom, but they may not disrupt the proceedings, and may not be used to record or transmit the

proceedings to any other location without express approval of the court. There is absolutely no photography, videography or audio recording allowed in the courtroom without the prior express approval of the court.

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

A: I start on time and will strike or dismiss matters in which no appearance is made within a reasonable time thereafter (generally 15 minutes).

11. Comments from Case Managers and Judicial Assistants

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

A: Janet Reese (435)750-1303

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

A: Be polite and don't ask for ex parte legal advice. Please direct questions regarding specific pending cases to my judicial assistants.

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

A: Myra Durrant (Civil-Cache County) (435)750-1292

Toni Little (Criminal-Cache County) (435)750-1311

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

A: Be polite and don't ask for ex parte legal advice. Also, please don't have your staff make multiple calls about pending documents that are submitted for signature or to track down other matters not assigned to me.

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. The link to the Utah Courts webpage is:

http://www.utcourts.gov/judgesbios/showGallery.asp?dist=1&ct_type=D

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.