

Judge David M. Connors

**QUESTIONNAIRE FOR JUDGE'S BENCHBOOK
JUDGE/COMMISSIONER: DAVID M. CONNORS –
Second District Court**

1. Discovery

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

A: Under the new discovery rules, I expect counsel to follow the guidelines depending on the tier of case involved. If either party requests a scheduling conference I will gladly set up a conference, which can usually be handled 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A: Yes, but our local rule is now superseded by the statewide rule on expedited resolution of discovery issues.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 the answer to the earlier questions above. I will deal with discovery issues under the new statewide rule; as for scheduling and status conferences, I will almost always grant requests for such conferences and will sometimes initiate those requests to nudge along a case that is languishing. We often handle these conferences 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 have no qualms about imposing sanctions for discovery abuses. On the other hand, if it appears to me that one side or the other is trying to game the system, I will take that into account. The goal is to have the evidence necessary to determine the truth.

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

A: My availability is dependent entirely on my in-court schedule. I have no philosophic objection to being asked to hear such disputes, although certainly it should only happen in rare circumstances.

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: If a cited authority is particularly important to the argument and if there will be significant discussion during argument of the cited authority then a copy can be helpful. If unpublished and you really want the Court to review it then you should probably submit a copy. The Court has WestLaw available; but not Lexis, at the present time.

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, particularly when the hearing is on a complex matter with significant exhibits. When courtesy copies are submitted I expect counsel to talk with each other and present a set of materials

jointly, rather than separately. If, for whatever reason, you can't get a response from the other side, make sure the courtesy copies you send me have the materials from both sides.

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, but I have no philosophic objection to requests for permission to file overlength memoranda where truly necessary. Same for extensions. I always expect the 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 do not schedule them automatically. However, if there is a clear request for a hearing in the Notice to Submit, I will generally ask my assistant to contact the lawyers to set up a time for argument.

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

A: Rarely will I deny a specific request for oral argument. But if it appears that oral argument will not be useful and the motion is not a dispositive motion, there are times when I have decided to go forward without oral argument even though one side or the other requested it.

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

A: Be brief and to the point. No personal attacks on adverse party or opposing counsel. Do not overstate your case.

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

A. Similar as to the answer in the prior question regarding written advocacy. Recognize that I will have read the memoranda and

the primary cases you have 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, then explain why the case is still helpful for your position.

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. Don't use a TRO as a substitute for a motion for temporary orders in a divorce case.

3. Final Pretrial Conference

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

A: Confirm readiness for trial; streamline issues if possible; in family law 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 we will have argument on those motions. If it is a jury trial we will discuss the process for finalizing 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 will have required the parties to have participated in

mediation. If requested by the parties and if another judge is available to do so, there is sometimes 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: Generally, yes. Also, it should be noted that while I am very willing to handle many scheduling and status conferences by telephone, generally I expect the final pretrial conference will be in court.

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

A: We 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.

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

A: In civil cases, I always appreciate them and often they are required. For example, our customary form of pretrial order in domestic cases 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 ask the voir dire questions. Occasionally I will allow a follow-up question from counsel. If there are particular areas of

inquiry desired by one party or the other, I expect advance notice of those requests to allow opportunity for input from both sides before I finalize my voir dire questions.

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 have allowed more extensive jury questionnaires if they are requested in advance and either agreed to by both sides or we have had the opportunity to have a hearing on any objections.

Jury Instructions:

Q: When do you require instructions to be submitted?

A: It depends. Often, in criminal cases there is little controversy over the instructions. If no one has filed a written request for any special instructions, I generally ask the lawyers to make contact with my law clerk a week or so in advance to review our customary instructions. In civil cases, I expect the lawyers to be talking 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. Usually by contacting my law clerk.

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: As to disputed instructions, it would be best to support your position with legal authority. Citations to MUJI are certainly among the citations that would be appropriate if the MUJI instructions are up to date on the issue.

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

A: It really depends on how much controversy there is and how much additional editing is going to be required. The preliminary instructions are almost always going to be prepared in advance by my law clerk and circulated to the parties. The same will be true as to supplemental instructions unless the parties have alerted us in advance to special requests or areas of disagreement. It would be best to inquire of the Court during any oral argument on such disputes as to whether an executable electronic copy would be useful.

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 trial. I recognize that some issues may come up during trial. If so, we will try to 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: Generally, my jury trials are scheduled to begin at 8:30 AM and will run to 5:00 PM, with brief breaks and an hour or so for lunch. Bench trials are the same except we usually start at 9:00 AM. We will be flexible as appropriate to make sure that the breaks coincide with natural breaks in the testimony or the requirements of the parties or witnesses. If requested in advance, other schedules can be arranged. My regular felony law and motion calendar is on Tuesday morning and my regular civil law and motion calendar is on Tuesday afternoon, so we do not schedule

trials on Tuesday except under the most unusual circumstances (e.g., five-day murder trial).

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 pre-cleared with opposing counsel, then generally they are permitted. The Court should be advised outside the presence of the jury so there is an opportunity to discuss any objections 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: Pre-marked, hopefully pre-cleared with opposing counsel. In binders if appropriate to keep them organized. A courtesy copy for the judge, clearly identified.

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

A: My only real preference is that counsel 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. It is significantly frustrating (for me or the jury) to wait while a lawyer tries to figure out how to make a slide show or video work in the courtroom.

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: “Freely” is probably an overstatement. I generally expect counsel to remain at counsel table or at the podium, and to ask permission to approach the witness. I will always grant permission, unless I feel a lawyer is trying to intimidate (or 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: Recognize you are making a presentation to the Court and not to a jury. No need to make a “jury” presentation to the Court, either as to evidence or argument. I am not offended if you ask me in advance whether I am familiar enough with a particular subject area that you might be able to streamline foundational or background testimony in a bench trial.

6. Post-trial Issues

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

A: Sometimes, but not often. Proposed findings and conclusions submitted in advance often are too argumentative to be very useful. Rather, I prefer a good trial memorandum in which you focus on areas of potential dispute.

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

A: Occasionally, but only when we have discussed the possibility of post-trial briefs during closing argument and have agreed on a set schedule for those briefs. If you request the opportunity to file a post-trial brief, I will consider it. Sometimes, I will specifically request a post-trial brief, generally on a narrow issue that became apparent during 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 and pre-cleared 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 particular preference.

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

A: When the presentation does not run smoothly it is always distracting. Otherwise, I don't have any particular types of computer-assisted presentations that offend me.

8. Criminal Matters

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

A: We make reasonable accommodations. I expect communication between counsel and as much notice to my staff as possible so we can adjust our calendar.

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

A: At the initial appearance on our Central Arraignment calendar; otherwise, whenever it becomes appropriate.

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

A: I will generally approve pleas in abeyance when the parties have agreed.

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

A: Any corrections to the presentence report; then any comments about recommendations in the presentence report.

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

A: I don't see them very often. When I do see them, they can be useful if appropriately objective and well-reasoned. I do not encourage them, but I am not offended by them.

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

A: I will generally pay attention to the guidelines set out by the Utah Sentencing Commission. If any side (prosecution, AP&P, or the defense) suggests a sentence that deviates materially from the guideline matrix I will ask for a clear explanation of why the deviation is being suggested. Obviously, where there are minimum mandatory sentences, I will be sure we comply with the minimums.

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

A: On a criminal calendar, we almost always allow private counsel to step up and request that we call their case out of order. Private counsel should not hesitate to coordinate with the public defenders and the prosecutors to let them know when private counsel is ready to call a case. On a civil calendar, we generally call cases in order, unless it is clear that a particular matter will require significant time. If requested we may be able to allow brief matters to be handled before lengthier matters.

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

A: Be reasonable in your requests; accommodating when you can on scheduling issues; don't overstate your case; don't take my rulings personally.

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

A: Same advice I gave to the 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: It is particularly frustrating when the parties, or their counsel, have not adequately prepared in advance; have not updated their financial disclosures; have not disclosed and discussed exhibits and witnesses in advance, etc.

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 in the first instance. 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 failing 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 your 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, particularly if the motion is complex and there are supporting exhibits. As to motions, I prefer a single binder in which both parties' memoranda and attachments are included. I prefer that the parties coordinate so I only get one such binder. If the exhibits are not voluminous they can probably be contained in the same binder; otherwise a separate binder for exhibits can be easier to use. 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 will hold them when 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: Yes, but not often. I will generally let counsel know when I believe behavior is inappropriate.

Q: What are your opinions regarding courtroom dress?

A: Appropriate business attire.

Q: Do you allow children in your courtroom?

A: Yes, but we expect parents/guardians to keep them in check.

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

A: Turn all ringers off.

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

A: We try very hard to start on time. 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: Ms. Kimberly Sheffield, 801-447-3822.

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) is:

A: Ms. Lee Cuellar, 801-447-3860.

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

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

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.
http://www.utcourts.gov/judgesbios/showGallery.asp?dist=2&ct_type=D#3045

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: Probably no need to hyperlink those things, but anyone could contact my law clerk and ask for copy of our current forms of standard instructions.

In domestic matters, our Commissioners have a standard form of pretrial order that is entered when they certify a case for trial before the District Court. That can be obtained from the Commissioners. Currently, Commissioners Dillon and Conklin are the two Commissioners who are assigned to cases on my calendar.