

Commissioner Catherine Conklin

QUESTIONNAIRE FOR JUDGE'S BENCHBOOK
JUDGE/COMMISSIONER: Catherine Conklin
Second District Court

1. Discovery

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

A: Because I typically see cases fairly early for temporary orders hearings, I will set a schedule from that point for mediation, custody evaluation, pretrial, or whatever is the most logical next step. A separate scheduling order usually isn't required, and the parties will either follow the discovery timelines in Rule 26 or have a deadline set when they come to pretrial.

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

A: To the best of my knowledge, all of the districts have adopted the local rule permitting a Statement of Discovery Issues to be filed in lieu of a Rule 37 motion to compel.

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

A: If a motion to compel is filed, it's set on my regular calendar. If a Statement of Discovery Issues is filed along with a request for a phone conference, it's scheduled for a phone conference.

Q: What is your approach to granting extraordinary discovery?

A: It depends on the case, but unless there are parties who have interests in multiple businesses, it's difficult to envision a case that would require more than the normal allocation.

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

A: Attorney fees are the first step, and Rule 37 says that the prevailing party shall be awarded attorney fees. I'm very reluctant to impose outcome-determinative sanctions, but if

parties just will not do what they need to do to preserve a claim, it isn't fair for the other side to have to try to litigate in the dark.

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

A: No. I'm usually on the bench all day, so although I'm willing to try to be of assistance, I think the parties would have better luck reaching their judge.

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: I greatly dislike gamesmanship in discovery. Discovery is to get information about the case, not to run up the cost or harass the other party.

2. Motions

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 What about unpublished cases?

A: For an unpublished case, a copy would be helpful. Otherwise, I know how to use Westlaw.

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: The only courtesy copies I like are financial declarations. I usually print these documents so I can take notes on them, so having a courtesy copy is helpful. I don't need all of the attachments required by Rule 26.1, though.

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

A: As there really isn't a page limit on motions before commissioners (yet), this doesn't apply to me. With respect to extensions, if a party objects and would suffer prejudice by the

consideration of whatever was late, I won't consider it or will grant a continuance to cure the prejudice.

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: Hearings are scheduled upon receipt of the motion for commissioners.

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

A: Commissioners get to hear argument on everything. Lucky us.

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

A: Brevity is an unsung virtue. Also, be mindful of the importance of professionalism. An argument can lack merit without being ridiculous or disingenuous or a lie.

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

A. I read everything before hearings, so oral argument that merely reiterates what was filed is rarely helpful. Focus on the areas that are most contested rather than giving me a history of the case. Don't interrupt each other, and be prepared for questions.

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

A: In the 2nd District, commissioners conduct the 10-day hearing following the issuance of a TRO. These hearings are set for either 15 or 30 minutes, so do not anticipate that witnesses will be called. If you are attempting to modify a prior decree, Rule 106 requires that a petition to modify be filed even if your motion to modify is filed as a TRO.

3. Final Pretrial Conference

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

A: I'm going to answer these questions as they pertain to the final pretrial conference that I hold, not the conference with the judge. For me, a pretrial conference is to identify what issues are resolved, what issues are in dispute, and what needs to be done to get the disputed issues to trial.

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

A: The nature of the disputed issues and how to prepare them for trial.

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

A: If counsel are involved, I generally defer to them as to whether settlement is possible. With pro se parties, I talk through the issues and what the possible outcomes are.

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

A: I prefer it because the parties can't negotiate before the hearing if they aren't there, but I don't require their presence.

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

A: Those motions would go before the judge.

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

A: No.

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: N/A

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

A: N/A

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

A: N/A

Jury Instructions:

Q: When do you require instructions to be submitted?

A: N/A

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

A: N/A

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: N/A

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

A: N/A

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

A: N/A

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: When I conduct evidentiary hearings or informal trials, I generally set in half-day blocks. When the available times are depends on whether it's a Farmington or Ogden case.

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

A: Before.

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

A: They're usually not necessary in my cases.

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

A: If possible, counsel should stipulate to one set of exhibits and have them in a binder, with a courtesy copy of the binder for me. All exhibits should be marked before the hearing begins with copies for opposing counsel and a courtesy copy for me.

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

A: No, except that counsel should keep in mind that anything used as an exhibit becomes the property of the court. We can't look at photographs or videos on people's cell phones unless they want to give up the phone.

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

A: I defer to counsel, and I have no problem taking witnesses out of order as needed.

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

A: 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: No, with the possible exception of parenting plans.

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

A: Not unless specifically requested on a particular issue.

7. Technology in the Courtroom

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

A: No one's ever asked, but I don't anticipate a problem as long as we can accommodate what's requested.

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

A: Not really.

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

A: See above answer.

8. Criminal Matters

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

A: N/A

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

A: N/A

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

A: N/A

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

A: N/A

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

A: N/A

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

A: N/A

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

A: N/A

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

A: N/A

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

A: N/A

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: I'm not sure how to define special in this context. I think I hear the same type of issues that the rest of the commissioners do.

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

A: An affidavit from the moving party and a financial declaration with income verification if there are any financial issues involved. If the motion is opposed, the same documents should be filed by the opposing party.

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

A: Information on which evaluators are proposed and their availability; financial declarations to demonstrate the parties' respective abilities to pay the fee.

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

A: I assume the question means filing rather than failing. The motion should be filed along with an affidavit in support and a proposed order to show cause. Both the motion and the proposed OSC should state specifically the contempt allegations, not just refer to the affidavit. The OSC will then be issued with a court date, and all documents should be served on the opposing party (unless it's an ongoing case and the opposing party is already represented by counsel).

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: As noted above, financial declarations are required for any motion that addresses child support or alimony. Financial declarations should be complete (meaning, include payments for credit cards, add up the numbers in the budget, etc.) and I really prefer them to be typed so I'm not struggling to read someone's handwriting. I prefer financial declarations to be filed separately rather than as an exhibit to an affidavit or motion. They're much easier to find in the docket that way. Other than income verification, I don't see any reason to file the other documents

required by Rule 26.1 unless there's a dispute on a particular item.

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

A: With e-filing, the only thing I'd like is a courtesy copy of the financial declaration.

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: Financial declarations only, please. Although I am in Farmington as well as Ogden, I prefer courtesy copies to be delivered to Ogden, and if they're not here at least 2 business days before the hearing they won't do me any good.

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

A: Nope.

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

A: Treat it as a newly filed complaint and have your secretary do the math on the deadlines.

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

A: I rarely interview children because I think it's traumatic for them and because I don't have the training to really do it well. If the child is in his/her late teens and the child's opinion is likely to be dispositive of the matter, I'll do it.

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: If there's an issue with lack of civility, I'll stop the hearing and caution counsel. If there is a severe issue, I'll ask counsel to meet with me in chambers to talk about it off the record. Fortunately, this has only happened twice in the seven years I've been on the bench.

Q: What are your opinions regarding courtroom dress?

A: I may be old-fashioned, but I think all attorneys (male or female) should wear jackets. Men should wear ties. I don't care if women wear skirts or pants, but no one should wear jeans. For parties, no shorts or tank tops or anything too revealing or risquÃ©.

Q: Do you allow children in your courtroom?

A: No.

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

A: Anyone can bring a cell phone in as long they aren't using it. Attorneys are welcome to use their electronic devices to assist them in the hearing, schedule, etc.

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

A: I ask that counsel check in with my bailiff when they arrive. When the hearing is to begin, my bailiff goes into the hall to see if counsel are ready. Counsel are encouraged to negotiate, but if there isn't time for whatever reason, the bailiff will notify them that the hearing needs to start. My hearings are typically set in 15-minute increments, so if necessary I will give counsel a time limit for argument.

11. Comments from Case Managers and Judicial Assistants

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

A: In Ogden, my in-court clerk is Tammy (801-395-1131), scheduling is done by Esmeralda (801-395-1065), and protective orders are managed by Michele (801-395-1084). In Farmington, everything is managed by Kiera (801-447-3819).

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

A: Call to let them know if you have e-filed something that requires immediate attention, and please be patient!

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

A: See above.

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

A: Please contact my judicial assistant with questions.