

Judge Robert P. Faust

## QUESTIONNAIRE FOR JUDGE'S BENCHBOOK

Third District Court

### 1. Discovery

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

A: The parties should follow the presumptive deadlines set forth in Rule 26.

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

A: Yes - Rule 4-502.

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

A: The Court follows Rule 4-502.

Q: What is your approach to granting extraordinary discovery?

A: It is determined on a case by case basis.

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

A: It is done on a case by case basis. Abuses may result in the denial of the use of documents or witnesses at trial.

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

A: Yes.

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: The parties should timely comply with the deadlines set forth.

## 2. Motions

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 What about unpublished cases?

A: Yes, it is appreciated.

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: Not unless requested by the Court.

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

A: Overlength memoranda are permitted routinely. Extensions of time for filing memorandums are approved when stipulated to by counsel.

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: The Court schedules the hearings automatically upon receipt of a notice to submit.

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

A: When it is not required by the rules and if it would not be helpful to determine the motion.

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

A: Being brief and to the point are helpful.

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

A: It is appreciated if they do not to repeat what was already briefed and read by the Court, especially in those cases where over length briefs have been permitted.

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

A: To complete all of the requirements of the rule regarding certification. The Court rarely grants ex-parte TROs without notice to the other side. Both parties generally must be present before the Court or on the phone at a TRO. The Court will hear a TRO at anytime, and counsel should contact the Court clerks for a date and time for a TRO and then provide notice to the other side of the TRO.

### **3. Final Pretrial Conference**

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

A: To address and complete any matters required before trial.

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

A: Any unresolved matters on trial preparation.

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

A: The parties should have already tried to settle the matter before the final pretrial conference.

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

A: No.

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

A: All motions should have already been heard and determined before the final pretrial.

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

A: I do not require them but on a particular case I may request them.

## 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: Voir dire is conducted by the Court but counsel may ask questions during follow up questioning with prospective individual jurors outside of the presence of the entire jury pool.

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

A: At the time of the final pretrial.

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

A: They are not encouraged.

### Jury Instructions:

Q: When do you require instructions to be submitted?

A: Either at the time agreed upon at the final pretrial or 28 days before trial. Counsels are to submit agreed upon jury instructions.

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

A: Yes. They may be obtained by contacting the court clerks.

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 Mull 1st or 2nd sufficient legal authority?

A: Counsel should follow MUII 2nd and if it lacks something, then use MUII 1st and then proposed instructions with supporting cases.

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

A: Yes - in Word format. The parties can email the instructions to the court clerks.

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

A: On a date set before trial.

### **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: The Court follows either schedule depending upon counsels' and the jury's preference.

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

A: Any disputes are heard before trial.

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

A: If stipulated to and agreed upon by counsel, then the Court has no objection.

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

A: The exhibits should be agreed upon and stipulated to before trial and then will be admitted all together at the beginning of trial. The exhibits should be tabbed and indexed and enough copies for the witness, all counsel, the clerk and the court. The Clerk should be provided with the original exhibits.

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

A: No guidelines except counsel is responsible for ensuring the proper equipment is in the courtroom since the court has very limited equipment.

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

A: Counsel should coordinate it between themselves to avoid any delays in the presentation of the evidence. A list of the potential witnesses to assist the clerks with the names for the record is helpful.

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

A: Yes as long as they can be heard on the record.

## **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: In jury trials, do not repeat or go over the same issue or point several times.

## **6. Post-trial Issues**

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

A: It is appreciated but not required unless requested by the court. It is handled on a case by case basis.

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

A: It is appreciated but not required unless requested by the court. It is handled on a case by case basis.

## **7. Technology in the Courtroom**

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

A: Generally, no limitations or restrictions but it is handled on a case by case basis.

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

A: No.

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

A: No.

## **8. Criminal Matters**

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

A: They are generally not granted except under the policy established by the bench.

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

A: When the opposing side has been given advance notice.

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

A: There is no standard policy.

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

A: Generally, the information that would be in presentence report.

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

A: No.

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: They should call the case when they are ready to have their matter handled.

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

A: None.

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

A: None.

## **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: They should have accurate and current financial declarations.

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

A: That is left up to counsel to determine.

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

A: That is left up to counsel to determine.

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

A: No special procedures.

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: No.



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

A: Binders are helpful, but the Court also uses e filing.

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: Ten to seven days is sufficient.

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

A: Not to be filed until a Notice to Submit has been filed. Further, counsel should follow the rules regarding sending proposed orders to the opposing side and waiting for any objections before sending them to the Court for signature.

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

A: Counsel should agree upon their own deadlines if not set forth by rule.

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

A: The Court does not conduct interviews with the children.

## **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: I speak with counsel about it on a case by case basis.

Q: What are your opinions regarding courtroom dress?

A: No tank tops or shorts.

Q: Do you allow children in your courtroom?

A: Yes.

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

A: Phones should be turned off as they interfere with the Courtroom's recording equipment. Previously, there have been numerous problems with electronic interference impacting the record in Courtroom N41.

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

A: Counsel is contacted by the Court if they are not present.

## **11. Comments from Case Managers and Judicial Assistants**

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

A: Nikki Bizek and her number is in the directory.

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

A: N/A

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

A: Shana Walters and Trisha Butterfield and their numbers are in the directory.

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

A: Trial exhibits should be originals in a binder which is tabbed and indexed and left with the Clerks. Counsel should use copies with the witnesses, 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.