

Judge David Hamilton

**QUESTIONNAIRE FOR JUDGE'S BENCHBOOK
Second District Court**

1. Discovery

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

A: Counsel can arrange scheduling subject to typical requirements.

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

A: N/A

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

A: Contact with counsel will be made for a telephone conference after receipt of appropriate notice.

Q: What is your approach to granting extraordinary discovery?

A: This is a case by case determination.

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

A: This is a case by case determination.

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

A: Yes, unless on the bench.

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: Counsel must thoroughly engage in the *meet and confer* process prior to contact with the Court.

2. Motions

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 What about unpublished cases?

A: I prefer copies of key published cases in advance of a hearing.

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, I prefer for these to be delivered one week in advance.

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

A: Overlength memoranda is frequently allowed with a reasonable explanation.

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: Counsel will be called about scheduling an agreeable and convenient date after the notice to submit is reviewed.

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

A: Where this is a clear basis to rule from the record.

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

A: Get to the point and do not take pot shots at opposing counsel.

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

A: Recognize that the filings have been read by the court in advance and get to the point.

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

A: Follow all the specific requirements of Rule 65A of the Utah Rules of Civil Procedure.

3. Final Pretrial Conference

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

A: To determine specific issues and the particular methods to be employed for presentation/resolution/decision.

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

A: Witnesses, exhibits, presentation methods, technology uses, often 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: Consideration as to ADR methods, including but not limited to mediation, judicial settlement conferences and, where appropriate, candid discussion with the court.

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

A: Yes, at least ready availability with a person having ultimate authority.

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

A: Final pretrial unless otherwise arranged.

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: Primarily by the court with counsel given the opportunity to direct voir dire.

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

A: Simultaneous with proposed jury instructions. See pretrial order form attached.

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

A: Allowed on a case by case basis.

Jury Instructions:

Q: When do you require instructions to be submitted?

A: Two weeks prior to trial. See pretrial order form attached.

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

A: In criminal cases.

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: Accompanied by supporting cases or citation to MUJI. See attached pretrial order form.

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: In advance as much as possible.

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: Jury trials: 8:30-5:00 with lunch from approximately 12:00-1:30.
Bench trials: 9:00-5:00 with lunch 12:00-1:30.

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

A: At the final pretrial if possible.

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

A: Case by case depending on the nature of the exhibits.

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

A: To the extent possible that counsel stipulate to the authenticity and use of copies. All exhibits or copies to be placed in tabbed and indexed three ring binders for the witness stand, the judge and each counsel, pre-marked prior to the beginning of the trial and without duplication. See pretrial order form.

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

A: Case by case.

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

A: Convenience for witnesses, parties, counsel and the court all should be considered.

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

A: Within reason.

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: There can be increased flexibility regarding methodology if agreed in advance.

6. Post-trial Issues

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

A: Usually no, although they can be helpful.

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

A: No.

7. Technology in the Courtroom

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

A: Determined 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: Those that are not overly complex.

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

A: Those containing excessive written text.

8. Criminal Matters

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

A: Submit written or oral stipulations, including new date.

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

A: When proper notice has been given.

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

A: Acceptable.

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

A: Employment details, educational information, specific plan on treatment, restitution payment etc.

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: Match statutory requirements.

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

A: Stand up when ready and indicate the calendar case number that is to be called.

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

A: Be a reasonable advocate.

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

A: Be a reasonable advocate.

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: When there has been no advance contact between counsel.

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

A: This is a matter addressed by Commissioners.

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

A: This is a matter addressed by Commissioners.

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

A: This is a matter addressed by Commissioners.

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: Accurate and complete.

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

A: E-filing usually suffices unless an unusual matter.

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: One week in advance in tabbed, indexed three ring binders.

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

A: Approved by all counsel.

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

A: This is a matter addressed by Commissioners.

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

A: Unlikely to undertake.

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: Instructions to stop the potshots.

Q: What are your opinions regarding courtroom dress?

A: No shorts, tank tops or bare midriffs.

Q: Do you allow children in your courtroom?

A: Rarely.

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

A: Avoid active and/or disruptive use.

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

A: Expect promptness unless advance notice of late arrival has been provided.

11. Comments from Case Managers and Judicial Assistants

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

A: Linda Osgood 801-444-4316

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

A: Avoid placing abbreviations on document titles. Utilize proper and complete mailing certificates.

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

A: Pamela Campbell; 801-444-4310
Rebecca Dunn 801-444-4330

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

A: Comply with the specific electronic filing guide, avoid multiple telephone calls on the same specific matter, pre-mark exhibits and advise of specific needs in advance of the trial or hearing.

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: AOC website.

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: Yes. A hyperlink has been provided herewith.