

Judge Douglas Hogan

## 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: My expectation is that counsel will submit a stipulated case management order after having met and conferred. I will approve most stipulated case management orders, including modifications to the order. If attorneys are unable to agree, upon request, the matter will be set for a scheduling conference. The scheduling conference may be handled in person or telephonically.

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

A: None that I am aware of.

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

A: I expect the parties to follow Rule 37. Once a Notice to Submit has been filed, which brings the Statement of Discovery Issue to my attention, I will read the briefing and determine whether I will simply sign one of the proposed orders or schedule a telephone conference on the matter. On a rare occasion I might ask for additional briefing and/or set the matter for oral argument.

Q: What is your approach to granting extraordinary discovery?

A: If it is stipulated to by all parties, it will likely be approved. When a party objects, I will handle the request on a case-by-case basis, taking into account the nature of the request, the nature of the case, proportionality, etc.

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

A: I will impose them if I believe they are warranted. Fortunately, I have not seen many cases warranting the consideration of sanctions.

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

A: Unless I am in Court, I am available.

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: N/A.

## 2. **Motions**

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 What about unpublished cases?

A: It is nice but not necessary. I generally access everything that I can electronically, so if you want to submit something, emailing a pdf to one of my clerks would be better than a courtesy copy in paper form.

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: I do appreciate courtesy copies of briefs and exhibits in advance of the hearing, particularly if the briefing is lengthy.

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

A: I don't like overlength memoranda but I routinely allow it. I don't recall ever looking back on overlength memoranda and thinking "those extra pages made all the difference."

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: When I receive a notice to submit, I will make a determination as to whether to schedule a hearing. If I determine that a hearing is necessary or would be helpful, I will have my clerks schedule it. Unless I have pre-determined the date for some reason, I generally have my clerks reach out (phone or email) to counsel with several possible dates. I try hard to get a date that works well for everyone, but if a party is non-responsive, a date is set without that party's input.

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

A: When the motion is unopposed. There may be other circumstances but it would be rare.

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

A: I appreciate zealous advocacy, however, I do not appreciate the zealous advocate who writes with a "poison pen." Respectful arguments, when reduced to writing, are more persuasive than vitriolic passages. Make your brief as simple and direct as possible.

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

A: Please don't just read your brief/motion to me, I will have already read it. Concede arguments or points that should be conceded and spend your time on what you believe to be the heart of the argument. Acknowledging or conceding good arguments made by the other side will enhance your credibility.

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

A: It would be very rare for me to enter a Rule 65A(b) TRO without notice to the other side. If you want a TRO without notice, there had better be an exceptionally good reason. Be prepared to address all of the TRO factors, especially the irreparable harm

that is alleged. Also be prepared to address whether or not some sort of security should be posted.

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

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

A: To ensure that the parties are really ready for trial. Ideally pre-trial motions will be decided on or before that day. I usually inquire about the parties efforts to resolve the matter and offer suggestions/alternatives to allow the parties to reach a resolution if seems practical under the circumstances. At the FPTC, I am always happy to allow the parties time to speak with each other, outside of my presence, if they are inclined/willing to do so. In the case of a Jury Trial, I also use the FPTC to address as may issues as possible relative to requested voir dire and jury instructions.

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

A: I usually give my speech, more for the benefit of the clients than the attorneys, about why settlement is superior to trying the case and encourage the parties to take seriously any and all attempts to resolve the case (mediation or judicial settlement conference if either is yet to be held).

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

A: I think it is helpful to have them there if there is still a chance the case will be settled. I like them to hear my "final chance" speech, but attendance is not required.

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

A: I prefer to hear those motions as early as possible which, ideally, would be before the FPTC. This also allows adequate time for briefing the motions prior to getting focused on final trial preparation.

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

A: I do find them helpful but they are not required.

#### **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: I generally prefer to ask all the questions although I do consult with counsel (before and during voir dire) to ensure that I have covered everything. If counsel have specific questions they would like asked, I usually ask that proposed voir dire questions be submitted along with proposed jury instructions to ensure that each side has an opportunity to review and if necessary, object to what has been proposed.

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

A: Stipulated instructions need to be submitted by the FPTC. If they are not stipulated, they need to be submitted early enough for the other side to review and be prepared to discuss at the FPTC.

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

A: I allow it—questions will arise as to the length of the questionnaire and the logistics on when it will be filled out by prospective jurors. If the language of the questions has not been stipulated to, it will need to be discussed at the FPTC.

##### **Jury Instructions:**

Q: When do you require instructions to be submitted?

A: Far enough in advance to be discussed at the FPTC, understanding that there may be instructions that cannot be properly discussed or finalized until the evidence has or has not come in.

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

A: I have a standard set of preliminary instructions (criminal trial) that counsel can obtain from my team upon request. If counsel have stipulated to the use of a different set, I am happy to review and consider the stipulated instructions.

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: If the instructions are stipulated no citations are needed. Non-stipulated instructions should include citations—citing MUJI is sufficient.

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

A: In addition to e-filing the requested instructions, I want a copy of the requested instructions emailed to my clerk(s) in Word format.

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

A: At the FPTC or I am willing set a separate hearing to handle the dispute, if requested by the parties.

### **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: For trials that are scheduled to last 3-4 days I prefer the 9-5 schedule but for trials that will last longer than 4 days I may use the 8-2 schedule so that the rest of my calendar does not get completely ignored. I usually schedule trials Tuesday through Friday because I have Drug Court on Mondays. I may cancel Drug Court to accommodate a trial setting when/if necessary.

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

A: Before trial, if at all possible, because trial time is so precious.

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

A: If the exhibit has been stipulated to, go ahead and use it. If it has not been stipulated to, please raise the issue prior to trial so it can be dealt with without using up precious trial time.

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

A: They should be exchanged pursuant to the rules or pre-trial order to allow for any objections to be filed and considered by the Court on or before the FPTC. Ideally they are exchanged and stipulated to by the parties. On the morning of trial, please provide two copies of the exhibit list, one for me and one for my clerk.

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

A: Make sure you have tested it, preferable in my courtroom (which can be made available to you for this purpose) prior to trial. To the extent that you rely on technology to present your exhibits (video, audio, etc.), please consider how the jury will utilize said technology during deliberations. Will a laptop and/or projector be provided and sent back with the jury? Do you have better equipment for the jury to use than what the Court has available (typically the Court has a TV/Monitor display)?

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

A: I defer to counsel. My preference is that "down time" be minimized through good scheduling and that we are able to move along. I expect counsel to have their witnesses present and ready to go.

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: Be prepared for questions from the bench during closing arguments.

### **a. Post-trial Issues**

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

A: Yes, unless I am in a position to rule from the bench.

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

A: If I have taken the matter under advisement, I may ask for post-trial briefing.

## **6. Technology in the Courtroom**

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

A: As long as it doesn't run afoul of the rules, I allow it.

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

A: I think they are effective and useful, but that doesn't necessarily mean they are more effective than a simple overhead projector that displays exhibits. Consider how the jury and the parties will be able to view whatever it is you want to use and then plan accordingly.

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

A: Not yet.

## **7. Criminal Matters**

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

A: On case by case basis. If counsel have stipulated to the continuance I will almost always grant it. It is my policy to allow two scheduling conferences and then the matter will be set for a preliminary hearing. If there is a compelling reason to set more than two scheduling conferences I am happy to consider the request.

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

A: As long as the prosecutor has been given sufficient notice so that compliance with the victim's right statute can be achieved, bail can be addressed at any time.

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

A: A PIA is a very useful/helpful tool when it comes to resolving cases. I do not have a policy other than what is dictated by statute.

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

A: I am interested in hearing whatever counsel believes to be the most compelling reason to follow or deviate from the recommendation in the PSR. I read every PSR thoroughly and do not need counsel to read the PSR to me. If there is a stipulated recommendation from counsel as to sentencing, cut right to the stipulation and I will let you know if I have any additional concerns that need to be addressed. If the defendant has anything he/she would like to say, I am particularly

interested in hearing what the defendant has to say. I am willing to do “special set” sentencings upon request of the parties.

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

A: I prefer the reports from AP&P and SLCO when available; however, in the absence of a report from them, private PSRs or evaluations can be helpful.

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: When you are ready, get to the lectern and give me the defendant’s name.

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

A: Reasonable arguments are very persuasive. Get right to the point.

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

A: Reasonable arguments are very persuasive. Get right to the point.

## **8. 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: No.

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

A: Depends on the issues being raised—I will want to see what the Commissioner has done or recommended.

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

A: N/A

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

A: N/A

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 and none.

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

A: If there are lots of exhibits or if there has been extensive briefing a binder is helpful but not required.

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: I do appreciate courtesy copies but they are not required. If I don't receive them I generally print what has been e-filed to use prior to and during the hearing.

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

A: E-filed.

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

A: If counsel are unable to stipulate to a schedule, the parties should request a telephone scheduling conference.

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

A: No formal policy—I will handle it on a case by case basis.

## **9. Courtroom Protocol**

Q: Is lack of civility ever a problem in your courtroom? If so, what steps do you take to address it?

A: Rarely, I am very impressed with the members of the Bar that appear in my Court. I have observed that in domestic cases, there are occasions where the emotional nature of the hearing sometimes brings out the worst in litigants and sometimes this spills over to counsel. If this happens I will remind counsel that I expect better from members of the Bar than I do from the litigants.

Q: What are your opinions regarding courtroom dress?

A: Attorneys should be professionally dressed. I am less strict when it comes to litigants and witnesses.

Q: Do you allow children in your courtroom?

A: Yes, so long as they are not a distraction to the hearing.

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

A: They are allowed but I don't want to hear them ring.

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

A: I will take the bench promptly at the appointed time if the parties are present. I will generally wait 15 minutes before I call a case if a party is not present. If they are represented by counsel, I will have my clerk call their office to see if there has been a problem.

I appreciate counsel who call my clerks to let us know there has been an issue.

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

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

A: Jill Woodruff (801)233-9730

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

A: Call them if you have any questions.

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

A: Salome Tukuafu (801)233-9707

Kristin Ferguson (801)233-9710

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

A: Call them if you have any questions.

## **11: 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: [http://www.utcourts.gov/judgesbios/showGallery.asp?dist=3&ct\\_type=D#3214](http://www.utcourts.gov/judgesbios/showGallery.asp?dist=3&ct_type=D#3214)

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: Contact Kristin Ferguson for my stock preliminary instructions.