

Judge Noel S. Hyde

## QUESTIONNAIRE FOR JUDGE'S BENCHBOOK

JUDGE: Noel S. Hyde - Second District Court

### 1. Discovery

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

A: The initial case schedule in civil matters is set by Rule 26, and I generally do not consider separate scheduling orders in cases filed after Rule 26 went into effect. Discovery beyond the designated limits of Rule 26 (either as to time or amount) is only considered if properly and timely requested under the rules. If a review of the case indicates that discovery or other deadlines have passed, it is my practice to set a telephonic status conference to determine appropriate timetables and procedures to move the matter to a conclusion. I do encourage, and will generally approve, stipulations regarding reasonable changes to scheduling orders (in cases in which they still exist), or to address unique scheduling issues not expressly controlled by the rules.

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

A: The expedited procedures which are started by a Statement of Discovery Issues are generally followed in the 2nd District.

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

A: After a Statement of Discovery Issues is filed, I will review the matter and conduct a telephone conference, as contemplated by the rules. It is my expectation and experience that most discovery disputes are resolved at or before the phone conference.

Q: What is your approach to granting extraordinary discovery?

A: I strongly support the policy and practice of limiting discovery consistent with the current Rule 26. I will consider requests for

extraordinary discovery only when they are made in compliance with the Rules, and where extraordinary circumstances are demonstrated.

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

A: Under Rule 26, the most common sanction for discovery abuses or failures is a limitation on the admissibility of evidence. I will also consider striking pleadings and entering default in circumstances where disclosure or discovery obligations are ignored.

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

A: Yes, unless I am on the bench or on the record in another proceeding. When such issues arise, I expect that any request for my involvement will be made through my judicial assistant.

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 strongly support the policies underlying the new rules, and believe that discovery should be carefully prepared, narrowly focused on relevant issues, and not used to harass or overburden an opponent. The new rules signal an abandonment of the "scorched-earth" discovery practices of the past, and I neither support nor condone any form of gamesmanship in the discovery process.

## **2. Motions**

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

A: Copies of unpublished opinions are helpful, but copies of other authorities need not be provided. Anything provided to the court should also be provided to opposing counsel or parties.

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 generally do not need courtesy copies of memoranda or other documents. They are appreciated, however, for hearings that involve multiple motions or voluminous documentation. In such cases, I prefer that the documents be provided in a tabbed binder, grouped by motion, and organized chronologically.

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

A: I generally grant such requests, but my observation is that many such requests indicate inadequate preparation. I will deny such requests if they appear to indicate a pattern of inattention in a particular case.

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 will schedule the hearings automatically, and do not require a call from counsel.

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

A: I rarely decline a request for oral argument, but will do so when the issue is not dispositive of the case and the written memoranda thoroughly address the matter.

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

A: Brevity and focus are greatly valued.

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

A: I expect counsel to stand and deliver their argument from the lectern, and generally permit only opening argument, response, and reply.

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

A: I require full compliance with the form and substance of the rules.

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

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

A: To confirm that the matter is ready for trial, identify the issues to be tried, and Confirm a schedule for final pretrial disclosures and briefing.

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

A: The issues identified in the prior response.

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

A: I invite discussion and any progress report, but I do not attempt to dissuade a trial setting to force further settlement discussions.

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: Generally at another time, unless specific time has been requested and scheduled to hear such matters at the final pretrial.

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

A: Only if there are unique or complex matters that need to be presented.

## 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 conduct the initial questioning, and then permit counsel to ask additional questions.

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

A: I generally do not require that they be submitted in writing, but do discuss the anticipated subject matter of any anticipated questioning in a chambers conference with counsel one-half hour prior to the scheduled start of jury selection.

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

A: I only use jury questionnaires in very sensitive or complex matters (very rarely).

### Jury Instructions:

Q: When do you require instructions to be submitted?

A: Generally, two weeks prior to trial.

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

A: I will prepare a complete proposed set of instructions and have a clerk set it to counsel by e-mail approximately 3-4 weeks prior to trial. Additional or modified instructions may then be requested by counsel.

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: Any requested instruction should include a reference to authority. A MUJI reference is sufficient, if applicable. Otherwise, a case reference is appropriate.

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

A: It is helpful, but not required.

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

A: As soon as the issues are identified, either before trial, or at breaks during the 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: Generally, 9 to 5, with 15-minute breaks mid-morning and mid-afternoon, and a 90-minute break for lunch.

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

A: As soon as the issues are identified, either before or during trial.

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

A: I do not prefer the use of demonstratives during opening statement, and do not permit the use of exhibits unless a determination has previously been made as to their admissibility.

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

A: Unless there are very few exhibits, I request that trial exhibits be assembled in binders (one for each side) and that each exhibit in the binder be separately tabbed, either numerically or alphabetically. Copies of the binders should be provided to the court and to opposing counsel. Each binder of original exhibits is

marked by the clerk (e.g. P-1, D-1, etc.) and individual exhibits are referred to, for purposes of admission or discussion by exhibit/binder marking and tab reference (e.g. "Exhibit P-1 tab1" etc.). Any review or discussion of exhibits by witnesses must be with the originally-marked exhibits.

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

A: Technology may be very helpful, but those using technology must comply with all applicable rules, and should be prepared to bring all necessary equipment with them for the technology they intend to use.

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

A: I will usually defer to counsel on witness scheduling, and appreciate it when counsel accommodate one another by permitting witnesses to be called out of order or by permitting direct examination of a witness by both counsel the first time a witness is called.

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

A: I do required that counsel seek leave of court before approaching a witness, the bench, or the jury.

## **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: Bench conferences should be requested before raising issues or arguments that Should be considered outside the hearing of the jury.

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

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

A: I do not require them before a hearing or trial, and will make a specific request of counsel if I want them.

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

A: Not unless specifically requested in a particular case.

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

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

A: All technology that can be presented in conformity with the rules is permitted.

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

A: I do not favor any particular computer-assisted presentations, and believe that such presentations can be overused, to the point of distraction.

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

A: Any presentation in which the equipment does not work correctly.

## **8. Criminal Matters**

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

A: I will hear from all parties and consider each case individually.

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

A: At an initial appearance, or after a proper motion has been filed and briefed.

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

A: I defer to the prosecution, but will consider them if requested.

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

A: Evaluation and recommendation based on the presentence report, or why the presentence report and recommendation should not be followed.

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

A They are not encouraged, but will be considered.

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

A: All statutory requirements are followed; otherwise, no.

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

A: Step forward and request that the case be called (by name and docket sequence number).

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

A: Negotiate agreements before the proceedings begin and focus on each case as it is called.

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

A: The same as the advice to prosecutors.

## 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: Parents generally do not have the right to waive child support, and proposals to do so must be supported by appropriate evidence which addresses the interest of the child.

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

A: Temporary orders are heard by commissioners, so this question should be directed to them.

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

A: These matters are also addressed to the commissioners.

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

A: An order to show cause may only be sought to address the alleged violation of an existing court order.

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: These matters are usually addressed by the commissioners.

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

A: Motion binders are usually not needed, except in circumstances previously discussed relating to civil cases generally.

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: The standards are the same as in other civil matters.

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

A: In compliance with Rule 7 and any specific instruction from the court.

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

A: I apply Rule 26 deadlines to petitions to modify.

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

A: I strongly discourage them.

## **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: Order in the court is always emphasized, and civility is rarely a problem.

Q: What are your opinions regarding courtroom dress?

A: I expect attorneys to wear jackets and ties, or their equivalent, and for other Participants to dress as they would for an important business meeting.

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: Cell phones are permitted in the courtroom, but they may not disrupt the proceedings, and may not be used to record or transmit the proceedings to any other location without express approval of the court.

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

A: Start on time and strike or dismiss matters in which no appearance is made within a reasonable time thereafter (generally 15 minutes).

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

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

A: Kristy Martinez, phone: (801)395-1099

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

A: Direct initial questions regarding pending cases and scheduling to my judicial assistant.

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

A: For Weber County cases: Danelle Zuech, phone: (801)395-1151  
For Morgan County cases: Pam Allen, phone: (801)845-4020

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

A: Please be professional and courteous.

## **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: Yes. The link to the Utah Courts webpage is

[http://www.utcourts.gov/judgesbios/showGallery.asp?dist=2&ct\\_type=D#3120](http://www.utcourts.gov/judgesbios/showGallery.asp?dist=2&ct_type=D#3120)

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.