QUESTIONNAIRE FOR JUDGE/COMMISSIONER BENCH BOOK

Judge Barry Lawrence – Third District Court
QUESTIONS : 3rdLawrenceteam@utcourts.gov

1. Discovery

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

A. Although initial scheduling conferences and case management orders are not required under the current rules, I am always willing to schedule a Rule 16 Conference at the beginning of the case (or thereafter.) I find Rule 16 Conferences especially useful in complex Tier 3 cases where there will likely be more protracted discovery -- such as with commercial disputes and construction disputes.

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 Issue has been submitted for decision, I will review it and decide whether I can either sign or modify the proposed Order. (I find it helpful if, in this instance, both parties have submitted proposed Orders for this purpose.) If not, I will arrange a conference call to hear from the parties before ruling. In rare instances, I may require additional briefing.

Q: What is your approach to granting extraordinary discovery?

A: I generally grant stipulations for extraordinary discovery, but if the case is more than 18 months old, I may modify the Order to make clear that no further extensions will be permitted. If a request for extraordinary discovery is opposed, I apply the factors set forth in the Rule.

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

A: If one party is clearly at fault for a particular discovery dispute, I will often Order that party to pay the other side's attorneys fees. In particularly contentious cases, I will likely make clear, at the beginning of the case, that I will award fees to any prevailing party on any future discovery dispute as a matter of course. My view is that more severe sanctions are only warranted on very rare occasion; I find that counsel too often seek the ultimate sanction (i.e., dismissal of a case or the entry of judgment) and those sanctions are rarely warranted.

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

A: Yes; however, keep in mind that my clerks and I have busy schedules and so it may not be feasible. But if I am available, and the dispute is truly an important one, I am willing to moderate if time allows.

2. Motions

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 What about unpublished cases?

A: Not really. If there are important cases, I will likely read them on line and print them as needed. (I hate to waste paper!) The exception, of course, are unpublished cases that I might not be able to access on 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: As I have said, I hate wasting paper. **So, only send me courtesy copies if I have requested them** (either in the notice of hearing or in a phone call from my clerk.) Courtesy copies should be **double-sided**, and may contain more than one page per side. Please only include truly necessary exhibits; i.e., the contract at issue, important deposition testimony, etc. (I can always access the exhibits as needed online.)

As far as timing, I generally like to receive courtesy copies by Friday the week before the scheduled hearing. If the matter is fully briefed, feel free to send them to me further in advance.

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

A: I have rarely denied a motion to file an overlength memo. (But please make sure the Order expressly states the number of overlength pages sought.) Keep in mind, however, that most briefs are better if they are shorter and to the point.

I can't imagine not granting a stipulated extension of the briefing schedule. Nor can I imagine denying a reasonable request for an extension even when there is not a stipulation.

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: First, keep in mind that I won't know about a motion until we receive a Request to Submit for Decision. When I receive those, I look at the motion and supporting memoranda to determine whether I can decide the matter on the papers. (That is usually the case for unopposed motions and some purely procedural motions.) Otherwise, I will schedule a hearing. I will usually schedule the hearing for the amount of time it appears to me will be necessary given the issues in dispute, as soon as my schedule allows.

If the time scheduled is inconvenient, we are willing to re-schedule. It is your job to first contact opposing counsel to gather some mutually agreeable dates. Then, file a request to continue stating the dates and times that work for everyone.

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

A: If the motion is purely procedural and it appears I can decide the matter on the briefs, I may do so. I will almost always schedule a hearing on substantive motions – whether or not oral argument is requested – unless the matter has been authoritatively decided.

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

A: I have never read a brief and wished it were longer. Be succinct and get to the point.

Make your best arguments. Frivolous arguments not only take up room, but they cause me to question the credibility of the other arguments. (Arguments really are known by the company they keep.)

Get rid of unnecessary adjectives and adverbs! Make your point with the facts and the law. If you need to rely on hyperbole, it leaves the reader with the impression that the facts and law, standing alone, are not strong enough to make your case.

Refrain from making disparaging comments about a party, counsel or the Court. I have been known to strike filings that violate this rule.

Finally, remember, I am a Utah State Court judge. I am sworn to follow Utah law. Let me know what the applicable Utah law is. Reliance on law from other states is rarely helpful. The two exceptions are federal cases applying identical federal rules, and cases involving a true issue of first impression in this state.

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

A: Read Rules 64 and 65 and make sure that all of the requirements have been met before seeking any type of extraordinary relief. In most instances, I will try to schedule a TRO within a few days and require that notice be given to the other side. (Commissioners handle all domestic TRO's.) Too often, these Rules are used as vehicles to improperly short-circuit the litigation process, or to gain some tactical advantage. Extraordinary relief should only be granted in truly extraordinary circumstances.

3. Final Pretrial Conference

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

A: When I schedule the matter for trial I will enter a Jury Trial (or Bench Trial) Pretrial Order setting out the parties responsibilities leading up to trial; I will also

schedule a Final Pretrial Conference to take place about two weeks before a jury trial. Final Pretrials are extremely important to the Court; remember, that may be my first introduction to your case.

I expect the following things to be done prior to the Final Pretrial Conference (FPTC): 1) all motions in limine and related motions are to be filed and ready to be argued at the FPTC; 2) trial disclosures, and all objections thereto, are to be filed so we can address them at the FPTC; 3) designate all deposition testimony to be read at trial; 4) if the parties would like to use a questionnaire, they must present a stipulated questionnaire at the FPTC; and 5) if the parties would like any specific voir dire questions, that too must be filed prior to the FPTC.

Also, prior to the FPTC, I will expect the lawyers to have met and conferred to discuss exhibits and jury instructions.

I expect the parties to reach stipulations wherever possible regarding standard MUJI instructions.

I expect the parties to meet and confer prior to the PTC to reach stipulations wherever possible regarding the admissibility of exhibits. I require a Stipulated Exhibit List to be presented at the morning of trial, and separate lists for each parties' exhibits for which an agreement was not reached. **This is very important (for my clerks and me): On the morning of trial, we expect you to have well-organized exhibit binders and completed and detailed Exhibit Lists.**

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

A: See above.

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

A: Almost none. I will likely have addressed mediation months before when we scheduled the case for trial, and I assume that by the time of the FPTC, efforts to settle would have been undertaken and had failed.

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: More often than not, I handle all motions and jury instructions at the FPTC. However, in more complicated cases where there are important substantive legal issues that need to be addressed prior to trial, I have on occasion scheduled a

separate motion hearing date a month or so prior to the FPTC. That is especially appealing to me if resolution of those issues might aid the parties in settlement.

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

A: I hate to make counsel spend time and money on makeweight projects like trial briefs. However, for non-jury trials, if there are novel or complex issues, a trial brief, filed a week prior to trial may be helpful.

A Note About Pretrial Disclosures: The parties should be aware of some issues that routinely come up regarding pretrial disclosures, and the way in which I handle them. First, if a witness or exhibit is not identified in pretrial disclosures, they will not be permitted at trial. Second, if the witness or exhibit was not properly disclosed during the case, they might not be permitted at trial. (In other words, a witness or exhibit cannot normally be identified, for the first time, just prior to trial.) Third, the Court expects the parties to have properly designated non-retained experts under Rule 26(a)(4)(A), and will limit testimony to the specific opinions stated therein. Finally, if a party utterly fails to make a proper disclosure, the remedy is not to dismiss the case or enter judgment. The remedy is to strike all exhibits and all other possible witnesses; the party itself may testify on their own behalf.

A Note About Experts: Prior to trial, the Court requests copies of all expert designations, reports and depositions for any testifying expert. I hope to review those materials before an expert testifies at trial to make sure that he or she only testifies as to properly disclosed opinions. In the event one party suspects the other will attempt to use an expert for an undisclosed opinion, it would be good practice to raise that beforehand. Parties should recognize, however, that that can be difficult if the expert has been deposed versus a disclosed report.

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 do jury selection in three steps. First, each panel member stands up and introduces himself/herself and provides some background information – i.e., where they live, their occupation, marital status, spouse's occupation, children, source of news, and hobbies.

Second, I have a script with a series of neutrally worded questions to the panel overall. I typically ask these in yes or no format. (These include knowledge of the parties or the case; prior jury service; prior litigation involvement; legal philosophical questions; hardship questions, etc.) Panel members answer by a show of hands.

Third, we will retire to my chambers and I will ask follow up questions to certain panel members depending on their answers to the questions in court (and on responses to the questionnaire if there was one.) I may allow counsel to follow up with their own questions as well. We will handle for-cause objections as we proceed through this process, so that we will not need to ask any follow up questions with more people than are necessary.

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

A: At the Final Pretrial Conference.

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

A: I allow questionnaires, provided they are limited to two sides, are stipulated to by the parties, and are filed prior to the FPTC.

Jury Instructions:

Q: When do you require instructions to be submitted?

A: By the time of the FPTC, I expect the parties to have met and conferred to discuss jury instructions (and verdict form). I expect the parties to file a stipulated set prior to the FPTC, and any requested instructions for which they could not reach a stipulation.

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

A: I will take control of the jury instructions. (I find that it's helpful to have them on my computer so that I can make whatever adjustments are necessary during trial.) You do not need to submit any of the general instructions (MUJI 2nd, CV 100 series).

Note on Opening Instructions: Generally, I read about 20 or so instructions after the jury is empanelled and before evidence. All but one are general, standard MUJI instructions. The only instruction in this set for which I need the parties' input is the *Nature of the Case* instruction. I prefer a stipulated instruction succinctly setting forth the parties claims and defenses, to be submitted at the FPTC.

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: Only contested or unusual instructions require authority. MUJI is sufficient.

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

A: Yes, in Word form. At the FPTC, I will give you an email address to send them to. I will then incorporate them into my set of instructions.

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

A: In the perfect world, I would like to hear disputes at the FPTC. However, if we do not get to them, for whatever reason, the parties should be prepared to address them after the jury is sent home on the first day of trial.

A Note about Verdict Forms: Often times, especially in more complicated cases, not enough attention is paid to the verdict forms. Verdict forms should not be an afterthought. Give them the same attention you give to instructions.

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: My trial schedule 8:30 to 5:00, with a lunch break from 12:00 to 1:30 and with breaks in the morning and afternoon. Obviously, this is a guide and will likely vary depending on the circumstances of a given trial. I find that most people start to lose interest after about an hour and a half and so I like to take breaks to keep the jurors fresh. For multi-week trials I might consider an 8:30-2:30 trial schedule upon request; that should be raised at the pretrial conference when we schedule the trial.

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

A: I prefer to hear any dispute that can be anticipated at the FPTC. I also believe that most exhibits can and should be stipulated to prior to the FPTC and certainly prior to trial.

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

A: Any stipulated exhibit may be used in opening statements. If there is no stipulation, seek permission at the FPTC; the morning of trial may be too late.

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

A: Again, in the perfect world, all exhibits will be stipulated and pre-marked prior to trial. For non stipulated exhibits, they should be pre-marked. (There is nothing as annoying – to me or the jury -- as wasting time at trial managing exhibits). The parties must bring an index of exhibits on the morning of trial for my clerks. Keep in mind that my clerks have to manage the admissibility of exhibits along with a million other things they are doing. Please do whatever you can to accommodate them.

The parties are required to provide copies of the original exhibits for the witness, opposing counsel and courtesy copies for the judge.

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

A: Counsel are welcome to come in advance to test their equipment. The Court's technology is limited, so bear in mind it might be more effective to bring your own. We now have media carts available that connect to your device with either HD or VGA cable. They project to a large screen for the jury and separate small screens for the witness, counsel and judge. They need to be reserved as soon as you know your trial date. Test any technology, yours or the Court's, in advance. (Note: Make sure to bring your own cords; the Court does not provide them.)

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

A: First, if you are presenting your case, make sure that you have a witness ready to go at all times. I do not like to waste the jury's time and they want to plow through this stuff. Avoid unnecessary delays!

I expect that parties will cooperate with one another regarding the scheduling of witnesses, and taking witnesses out of turn, if necessary.

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: Remember your audience. If I am the fact finder, get to the point. I will likely engage with counsel during witness examinations if I think it is helpful, or to help

explain why a line of questioning is relevant, and to which issues. I will likely ask the witness questions – which I will not do during a jury trial.

To save time, I am amenable to stipulations designed to speed up the process. For example, allowing the parties to present evidence by proffer of secondary witnesses and relying on expert reports and deposition testimony (which the Court can review prior to trial.)

6. Post-trial Issues

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

A: I don't think they're particularly helpful prior to trial. Spend your time preparing for trial. If necessary, I may ask the prevailing party to draft them post-trial.

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

A: Only if absolutely necessary. If there are complicated legal issues, I'd like to know about them in a trial brief before the trial, and counsel can develop their arguments in closing argument. Only rarely would I require additional legal briefing post-trial.

7. Technology in the Courtroom

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

A: I generally allow it. But while it is helpful for jury trials, I rarely find it helpful in motion practice and in bench trials. If you use it, make sure you have full command of it.

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

A: I think the best uses of technology are to project exhibits to a jury and Power Point presentations used to accompany a closing argument. The use of technology is far more important in jury trials than in any other proceedings.

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

A: One problem with technology assisted presentations is that they can be too rigid. Lawyers need to be able to adapt and change course. Sometimes, a pre-scripted Power Point, doesn't easily allow that.

8. Criminal Matters

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

A: Ordinarily I require a stipulation, except in emergencies.

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

A: Generally I prefer to have pretrial services provide an evaluation, but I am willing to hear arguments on bond in first appearance court or upon notice pursuant to rule.

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

A: No special policy.

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

A: Whatever counsel thinks might be helpful to the case at hand. This is a pretty broad question.

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

A: If they are well done and cost is not an object.

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: Approach the lectern when it's free and ask to call your case.

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 have found that the best domestic lawyers are problem solvers who are professional and collaborate with opposing counsel to bring about results – especially when child custody is at issue.

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

A: This is generally a matter for the Commissioners.

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

A: This is generally a matter for the Commissioners.

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

A: This is generally a matter for the 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: Financial declarations are extremely important to the Court on issues of child support and alimony. I think often times the parties don't spend enough time and pay proper attention to filling them out. I expect a good declaration to have proper backup support (especially for the monthly expenses.) And, I find declarations to be less trustworthy if a party has submitted a series of declarations that vary wildly on certain numbers.

Finally, although a declaration is a sworn statement of present finances, I welcome (and in fact I am often required to consider) a sworn submission (or other competent evidence) of the couple's finances **during** the marriage and at the time of separation.

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

A: I rarely find motion binders to be helpful in domestic cases.

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: Not really. See Answers regarding courtesy copies above.

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

A: Use the efiling system. I frequently make edits.

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

A: By stipulation, or request a scheduling conference with the Commissioner.

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

A: I have yet to have a case where I have concluded that the need to interview a child outweighed the negative impacts of requiring a child to testify. I remain concerned both about requiring a child to go through the stressful exercise of testifying in court (or interviewing with the Court), and having a child having to live with the belief that he or she may have affected the outcome of a divorce proceeding.

A Note About Objections to Commissioner Recommendations: If you disagree with a Commissioner's ruling you may file an objection under the Rules. I will review it and first determine whether I can rule based on the pleadings. If not, I will likely set the matter for a telephone conference to discuss it. At that time, we can talk about whether to schedule oral argument or an evidentiary hearing. I am reluctant to set an evidentiary hearing (for example on a custody issue) because we will likely need to re-address the very same issues at trial. So, be prepared for me to explore ways to have one evidentiary hearing, even if that means expediting the matter.

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: It is rarely a problem. Once or twice I have called a recess to allow people to cool down. Most of the time, attorneys and parties act properly.

Q: What are your opinions regarding courtroom dress?

A: While I have no dress requirements, I think it behooves attorneys (and to a lesser extent parties) to dress professionally in court.

Q: Do you allow children in your courtroom?

A: Of course.

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

A: Nowadays, everyone has cell phones and rely heavily upon them. I would hope everyone would silence their phones when they enter the courtroom. While I recognize that, occasionally, a phone may go off in the gallery, I will say something if the interruption is prolonged or repeated. It is inexcusable for an attorney's phone to go off in a courtroom.

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

A: I recognize that there are many reasons why someone may be late. If you are late, please call my clerks and let them know as soon as possible. I generally will not take action until it becomes a repeat problem.

11. Prohibited Jury Arguments

Counsel should be aware that I expect them to follow well-established Utah law concerning permissible closing arguments. The following are not permitted:

1. Arguments to the effect that the jury should be swayed by their emotion, sympathy, passion or prejudice, rather than the facts of this case and the applicable law.

2. Arguments asking the jury to "send a message" to the community, the medical industry or otherwise.

3. Arguments asking the jury to "prevent this from happening again."

4. Arguments that ask the jury to apply either a general safety standard or a community standard based on jurors' own beliefs.

5. Arguments that suggest that the jury serves as the conscience of the community in rendering a verdict.

12. Comments from Case Managers and Judicial Assistants

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

A: Kathy Westwood 801-238-7516. The best way to reach all my assistants is via email at **3rdLawrenceteam@utcourts.gov**.

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

A: State your name for the record clearly, return her calls, recognize that she may not be able to return your calls if we're in court.

Q: The name and phone number of my judicial assistants are:

A: Elsa Young 801-238-7142
Luke Meredith 801-238-7053

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

A: **1. BE NICE TO MY CLERKS!** (Not only because they deserve it, but because you can expect them to tell me everything you say to them.)

2. For any evidentiary hearing, make sure all exhibits are properly organized and pre-marked. Also, bring a detailed exhibit list with you on the first day of trial.

3. Read Notices from the Court! Especially notices of telephone conferences which contain the call in information.

13. 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: **https://ballotpedia.org/Barry_Lawrence**
http://www.utcourts.gov/judgesbios/showGallery.asp?dist=3&ct_type=D#3124

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: https://www.utcourts.gov/resources/muji/