

QUESTIONNAIRE FOR JUDGE/COMMISSIONER BENCH BOOK

Judge Andrew Stone – Third District Court
QUESTIONS : 3rdStoneteam@utcourts.gov

1. Discovery

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

A: Scheduling conferences and case management orders are rarely necessary under current rules. In cases where they are useful to the parties, I'm happy to hold them in person or by telephone. I have no special requirements for Case Management or Scheduling Orders.

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

A: Yes. We follow 4-502.

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

A: I encourage counsel to arrange a conference call when it is simply a matter of making a quick judgment call. I will arrange a conference call or a hearing when a statement of discovery issues is submitted for decision. Counsel have to submit it—we will not address it unless they do. I am open to having a conference call if counsel believe that the Statement of Discovery Issue procedure is inadequate.

Q: What is your approach to granting extraordinary discovery?

A: On stipulation in compliance with the rules, I grant it. If it's opposed, I apply the factors set forth in the Rule.

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

A: "Abuses" is a loaded word. If one party is at fault for a particular discovery dispute, they should bear the cost of that dispute incurred by both parties. This might apply if one party is simply wrong—it doesn't necessarily require "abuse."

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

A: Yes. I recognize that discovery matters are important and am not offended when people ask me to resolve a discovery dispute. Make sure you address potential relevance and proportionality. Be as concrete as you can be regarding the likely burden and the likely benefit.

2. Motions

- Q: Do you prefer that counsel provide copies of the cited authorities prior to a hearing? What about unpublished cases?
- A: If a case is particularly applicable, feel free to provide it. Cases cited for non-controversial points (e.g. the standard on summary judgment) are not helpful. As with all courtesy copies, pdfs are preferred.
- 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: Courtesy copies are helpful. I prefer a single, indexed pdf (searchable) with all the parties' submissions relevant to the motion. This is easy to do, and probably less expensive than the traditional three-ring binders. When I say "indexed" I mean bookmarks for the various memoranda and exhibits. For instructions on bookmarking, go to:
http://www.youtube.com/watch?feature=player_embedded&v=cravIRXCRdo
A few days ahead of the hearing is usually adequate, but a week or more is preferred.
- Q: What is your policy on allowing overlength memoranda? Extensions of the briefing schedule?
- A: I have never denied a motion to file an overlength memo. Yet. Remember, there is a reason we call them "briefs." If stipulated, I allow extensions of briefing. Otherwise it depends on prejudice to the opposing party.
- 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 ordinarily schedule hearings on most all contested motions. We will call if uncertain how much time to allow. If the time scheduled is inconvenient, we will accommodate a conference call to find a time that works for all involved.
- Q: Under what circumstances do you decline to grant a request for oral argument?
- A: Only in the rarest circumstances, usually when one party is making an argument that is frivolous or has already been ruled on clearly by the Court.
- Q: Do you have any recommendations or preferences regarding written advocacy that you would like counsel to be aware of?
- A: A useful brief gets to the point, is succinct, and generally provides a logical means of analysis. Metaphors and quotations from sources aside from case law are well-thought out, fresh, and applicable. The writing is crisp and words are chosen carefully and sparingly. An unhelpful brief spends excessive time on well-known legal standards, tries to argue every point conceivable, and its strong arguments are indistinguishable from the make-weight arguments. Its metaphors are

hackneyed, and its popular quotes are not only stale, but probably inapplicable to the case at hand. The writing is overblown and verbose.

Editing takes confidence, even courage. But aggressive editing will make your written arguments easier to understand and ultimately more persuasive.

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

A: Read the rule. Explain your attempts to give notice carefully. Don't wait until the last minute to try and force the Court's hand on a TRO. Be prepared to post bond.

3. Final Pretrial Conference

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

A: Purpose is to address any pending legal issues in order to streamline presentation at trial. This includes any motions in limine, jury instructions and voir dire, and specific disputes over exhibits.

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: I want to be certain that genuine settlement discussions have been undertaken recently.

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: Typically at pretrial, unless submitted earlier.

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

A: Depends on the case. If the issues are novel or complex, a brief may be necessary.

4. Jury Trials
In general see the guidelines at { link to jury trial paper }

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: Unless a survey is used, after initial introductions of parties, counsel, and each panel member, neutrally worded questions are addressed to the panel overall. I typically ask these in yes or no format. Panel members answer by a show of hands. In the case of a survey or after questions addressed to all the panel members are complete, follow up questions may be addressed to the panel members on an individual basis in chambers.

Counsel ask any follow-up questions directly. Counsel may suggest areas of inquiry. I am not opposed to allowing counsel to address the entire panel if all sides agree.

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

A: Final Pretrial.

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

A: I have no strong feelings either way about the use of questionnaires. They should be filed at least prior to pretrial, and much earlier if distribution to the jurors is contemplated prior to trial. I have had a couple of successful efforts with using online questionnaires prior to the first day of trial. Short questionnaires can be useful on the morning of trial. Long questionnaires must be distributed and responses received prior to the first day of trial in order for them to be useful. This involves significantly more complex logistics, so counsel need to plan ahead if they want a longer questionnaire.

Jury Instructions:

Q: When do you require instructions to be submitted?

A: Final pretrial ordinarily. I am increasingly requiring them at the first scheduling conference after the case is certified.

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

- A: Generally use MUJI, available online. There are always a handful of instructions that have to be adopted or created for a particular case.
- 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 editable form, (Word or WordPerfect, not pdf).
- Q: When do you prefer to hear disputes over jury instructions?
- A: Final Pretrial, unless I've ordered them prepared for the scheduling conference.

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: 8:30 to 5:00, brief breaks in the morning and late afternoon, typically a 90 minute lunch.
- 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 final pretrial.
- Q: What is your practice regarding the use of trial exhibits or demonstratives during opening statements?
- A: Counsel need to be certain they will be admitted. This is best handled by stipulation.
- Q: What are your preferences with respect to trial exhibits? What are the preferences of your clerks with respect to trial exhibits?
- A: Pre-marked if at all possible. Courtesy copies given to judge in advance (ideally in a single, indexed pdf). An index of exhibits for the clerk's use. Also, please try to publish promptly—jurors really don't like to watch counsel and the witness discuss an exhibit they haven't seen.
- 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. I think technology is underused in trial and motion hearings. 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.

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

A: Use the whole day. Do not expect early recesses. Cooperate with opposing counsel regarding scheduling of witnesses, taking witnesses out of turn if need be.

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: I will probably be more proactive in asking questions of counsel and the witnesses. As I learn the issues in the case, I am more likely to question relevance.

6. Post-trial Issues

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

A: Depends on the case. They aren't typically much help in advance of trial.

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

A: Depends on the case. Feel free to request if you think there are legal issues that need briefing.

7. Technology in the Courtroom

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

A: I think it is underused. I've never said no. Yet.

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

A: In oral argument or testimony, they can provide helpful structure and be used to emphasize key points (quotes from cases, important documents, useful exhibits, etc.). Video excerpts from depositions can be powerful. They should complement argument or testimony, not supplant it. Projection is an excellent means of publishing exhibits.

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

A: Linear, rigid presentations that do not allow the presenter to control and change the order of slides. Just as advocates need to be flexible, their visual aids must be flexible, too.

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 think might be helpful to the case at hand. This is a pretty broad question.

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

A: I have seen some that were well done, but I'm not sure they're worth the cost. I used to hire experts for civil cases, so I am skeptical of the private pre-sentence evaluation's objectivity.

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 enjoy these cases and the counsel who try them.

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

A: A stipulation, preferably. If not, I need to know the finances as accurately as possible, and if custody is contested I would encourage something like the informal custody trial procedure, at least for the temporary order.

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

A: Follow the rule.

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

A: Follow the rules. (I assume "failing" is a typo).

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 special preferences. I recognize that the declaration is a sworn statement of present finances, and may not accurately reflect the needs I need to consider (i.e. the lifestyle 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: PDF (as described above) is preferred. E-filing has not replaced the utility of courtesy copies.

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: Single, indexed pdf, including exhibits. At least a couple of days before the hearing, preferably earlier. Include both sides' briefs.
- Q: Is there a special way that you would like proposed orders to be filed?
- A: Use the efilng 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: No set policy. Obviously, the maturity of the child is a key factor in whether I will agree to an interview.

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: Rarely a problem. I try to be courteous and respectful. If I ask counsel back to chambers and tell them to cool it, it's safe to assume that someone has annoyed me.
- Q: What are your opinions regarding courtroom dress?
- A: I don't have any strong feelings on this. I think if you asked me immediately after a hearing what the attorneys were wearing I would draw a complete blank. I have seen some outfits that caused me to wonder what other judges' reactions might be, but I have never been personally offended. Be professional.
- 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: I follow the rule re electronic devices. I also recognize that people tend to have their schedules on their cell phones.
- Q: What, if anything, do you do to enforce promptness in your courtroom?

A: This is not typically a problem. Sometimes people are late. It happens. I am not aware of any counsel with whom this is a problem. A quick apology to court and counsel is not a bad idea. If you're really late, maybe take opposing counsel to lunch.

11. Comments from Case Managers and Judicial Assistants

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

A: Nicole Bizek 801-238-7392. The best way to reach all my assistants is via email at 3rdStoneteam@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 assistant(s) is:

A: Michelle Adams 801-238-7121

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

A: See above.

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: http://en.wikipedia.org/wiki/Andrew_H._Stone
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/>

For Specific, detailed instructions on jury trials (also probably helpful in bench trials) please see : [insert link here]