

ANSWERS TO QUESTIONNAIRE FOR JUDGE'S BENCH BOOK
by Judge Kraig Powell, Fourth District Court, Provo, Utah

1. Discovery

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

A: The court-generated scheduling order will govern the case from the outset. It will remain in place unless modified by court order. Requests to modify the scheduling order should be made by motion and should indicate whether they have been stipulated to by the parties.

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

A: No.

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

A: After counsel has followed the procedures in the rules, including expiration of all deadlines, you should call my clerk as soon as possible to request a telephone conference.

Q: What is your approach to granting extraordinary discovery?

A: Follow Rule 26 or Rule 37, as applicable.

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

A: I will consider them if requested by motion pursuant to the rules.

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

A: Yes, if I am not 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: Read and follow the rules. Cooperate with each other.

2. Motions

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 What about unpublished cases?

A: No, that is not necessary. I have easy electronic access to virtually any authority cited.

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 not require it. It is fine to do so and it can be helpful for voluminous or complex matters. If submitted, please do so at least three business days in advance.

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

A: Fine and fine. Just please follow the rules.

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: If counsel properly completes and files a request to submit for decision, I will schedule the hearing without any other contact if: (1) a hearing is requested and I decide to hold a hearing; or (2) a hearing is required. The request to submit for decision MUST include all detailed information required by Rule 7, Utah Rules of Civil Procedure or Rule 12, Utah Rules of Criminal Procedure, especially the dates of each document previously filed.

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

A: I rarely decline a request for oral argument, but I will do so if the matter is straightforward and a hearing would cause unnecessary delay.

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

A: Proofread, proofread, and proofread. Also, whenever possible, avoid use of confusing party labels such as plaintiff, defendant, petitioner, or respondent. Instead, use the parties' actual names (e.g., "Ms. Jones" or "Mr. Smith") or other clearly-distinguishing pronouns (e.g., "Mother" or "Father").

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

A. Please do not interrupt opposing counsel. "Objections" are typically not appropriate during argument. If you must object to proffered evidence, politely point out exactly why you believe you must interrupt. Better yet, write down your objections and counter-arguments and raise them after opposing counsel is finished. Also, whenever possible, avoid use of confusing party labels such as plaintiff, defendant, petitioner, or respondent. Instead, use the parties' actual

names (e.g., “Ms. Jones” or “Mr. Smith”) or other clearly-distinguishing proper nouns (e.g., “Mother” or “Father”).

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

A: If the motion is made ex parte, please call my court clerk immediately after filing. I generally require attempts to notify adverse parties before I rule, except in extraordinary situations. If the motion is not ex parte, just follow the rules. For all cases, please indicate in an affidavit any prior contact you have had with opposing parties or counsel regarding the issue.

3. Final Pretrial Conference

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

A: First, to ensure that timely preparation is made for trial, both by counsel and by the Court. Second, to raise and address any unique or difficult issues that one or both parties know will arise at trial.

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

A: 1 – Status of pretrial disclosures. 2 – Whether trial memoranda would be helpful. 3 – Any pending or anticipated motions in limine. 4 – Status of jury instructions. 5 – Whether an advance jury questionnaire is requested.

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

A: Verify that concrete, good-faith attempts at Alternative Dispute Resolution have already occurred.

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

A: Yes.

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

A: Usually at a separate motion hearing.

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

A: Always appreciated, usually 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: First, all potential jurors fill out a brief written questionnaire. Then I also ask a few general questions orally to the entire juror pool in open court. Counsel and parties then typically adjourn to my chambers, where I allow counsel to directly ask questions of any prospective juror individually and in private. I follow up at that same time in chambers with any questioning I find necessary.

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

A: I do not.

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

A: I do use jury questionnaires. They must be filed at or before the final pretrial conference. In rare and exceptional cases, when requested, I may mail the questionnaire to prospective jurors three weeks before the trial. Otherwise, the prospective jurors complete the questionnaire when they arrive on the day of trial.

Jury Instructions:

Q: When do you require instructions to be submitted?

A: Four weeks before trial.

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

A: No, I do not. I ask counsel to follow the most recent version of MUJI whenever possible and to submit a complete set of proposed 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: Citation to MUJI is sufficient, unless there is significant question or lack of precedent on the issue.

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: During the trial, unless I decide to schedule an earlier hearing.

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: 9 to 5 with one hour for lunch. One day each week I have criminal law and motion calendar when I am not able to hold trial.

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

A: Before trial. Please call my in-court clerk to request oral argument as early as possible.

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

A: Inform opposing counsel before the argument that you will be using the item. If opposing counsel objects, inform the Court before the argument.

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

A: Agree with opposing counsel before trial on a numbering system that clearly distinguishes the exhibits of each party from any other party. If this practice is followed, all parties can number their exhibits before trial without conflicts. Please provide both the judge and the clerk with their own individual, separate, complete, and pre-numbered set of all exhibits on the day of trial. Also provide the same for the witness stand and another set for opposing counsel.

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

A: Arrive 60 minutes early, or even the day before trial, to verify and practice with the resources we do and do not have available. Call the clerk one week in advance to ask questions about what is available.

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

A: Notify and consult with opposing counsel on any unique needs or arrangements.

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

A: Yes, but the farther you go from a microphone, the louder you must speak.

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: No.

6. Post-trial Issues

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

A: Only if directed by the Court on a case-by-case basis.

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

A: Only if directed by the Court on a case-by-case basis.

7. Technology in the Courtroom

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

A: Freely.

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

A: Not necessarily.

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

A: Not necessarily.

8. Criminal Matters

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

A: By oral request to the judge, handled at counsel's convenience, at the beginning of, or any time during, the calendar.

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

A: If stipulated by the parties, a bail modification may be addressed to the Court at any time. Without a stipulation, I allow each party one opportunity to address bail modification after the case has been assigned to me following the initial

appearance, regardless of whether the initial appearance judge addressed bail modification. If there is an alleged victim or victims in the case, or if the opposing party needs time to prepare to address the request, I require the requesting party to give one week prior notice of this hearing, pursuant to Title 77, Chapter 20, Utah Code.

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

A: They are fine in accordance with Title 77, Chapter 2a, Utah Code.

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

A: 1. Any corrections to the pre-sentence report. 2. Whether both parties have stipulated to an agreed sentence. 3. Any other relevant information or argument. 4. Whether any victim wishes to speak. 5. Whether anyone wishes to speak in support of the defendant.

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: No.

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

A: Speak to other attorneys who are ready to present; coordinate with each other; cooperate so as to expedite continuances, summary matters, simple cases or an attorney with a single case.

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

A: Cooperate with opposing counsel.

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

A: Cooperate with opposing counsel.

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: No.

- Q: What documents do you want filed before appearing on a motion for temporary orders?
- A: Check with the commissioner's clerk and follow court rules.
- Q: What documents do you want filed before appearing on a motion for a custody evaluator?
- A: Check with the commissioner's clerk and follow court rules.
- Q: What are the special procedures for filing a Motion for an Order to Show Cause?
- A: Check with the commissioner's clerk and follow court rules.
- 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.
- Q: Do you want any type of motion binder delivered? Is this helpful, or does e-filing render these obsolete?
- A: Not needed.
- 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 not require them. It is fine to do so and it can be helpful for voluminous or complex matters. If submitted, please do so at least three business days in advance.
- Q: Is there a special way that you would like proposed orders to be filed?
- A: Follow the Rules of Civil Procedure.
- Q: How should discovery deadlines be handled on petitions to modify, where a schedule is not automatically issued by the court?
- A: Check with the commissioner's clerk and follow court rules.
- Q: Do you have a policy on child interviews with respect to custody?
- A: No.

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: I ask that a speaker who is speaking not be interrupted. Instead, write down your objection or disagreement and, when the speaker is finished, ask the Court for permission to speak to address that issue. The only exception is for a true evidentiary objection (not an objection to an argument).

Q: What are your opinions regarding courtroom dress?

A: None.

Q: Do you allow children in your courtroom?

A: They are welcome, as long as they do not visually or audibly disrupt the proceedings.

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

A: Comply with Utah Rule of Judicial Administration 4-401.02.

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

A: I require attendees to call my chambers in advance if they will be more than 10 minutes late.

11. Comments from In-Court Clerk

Q: The name and phone number of my in-court clerk is:

A: Calli Stephensen, 801-429-1011.

Q: My in-court clerk wants you to please do these things:

A: When using the e-filing system, please title your filing with the exact full name, verbatim, that is on the caption of your hard-copy document. Please don't use a different or shortened version of the title of the document.

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.

https://www.utcourts.gov/judgesbios/showGallery.asp?dist=4&ct_type=D#3245

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. Counsel should submit a full set of all instructions for each jury trial.