

Judge Wallace A. Lee

## QUESTIONNAIRE FOR JUDGE'S BENCHBOOK

JUDGE: Wallace A. Lee - Sixth District Court

### 1. Scheduling Conferences

Q: Are scheduling conferences needed or used in your court? If so, are they conducted in person or by telephone?

A: Yes, I find them useful to keep cases moving. I conduct them both in person and by telephone.

Q: What are your preferences regarding Case Management Orders/Scheduling Orders? Do you require that specific things be included in such orders?

A: I don't require specifics. However, one thing practitioners should know is that I generally will not schedule a civil case for trial until the parties have made at least one good-faith effort at mediation.

### 2. Motions Practice

Q: Do you appreciate courtesy copies of briefs being delivered to your chambers prior to hearing on a motion? If so, how early do you want them?

A: No. I have to travel so much between courthouses in our district that there is really no way for me to receive and transport these around the district. I generally prepare for court by reviewing documents filed in our coris system.

Q: Do you schedule hearings on motions automatically upon receiving notices to submit, or do you prefer or require that counsel call to schedule hearings?

A: We schedule some things automatically, but I think it is always a good idea to call our clerks to see about scheduling hearings.

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

A: If the memoranda is adequate and if I think a hearing would not be particularly helpful to me in deciding the issue, I will sometimes decline to hear oral argument.

Q: What is your policy on allowing overlength memoranda?

A: I do not like over length memos, and if practitioners request it they should have a very good reason. The page limits in our rules are generous and generally sufficient. I find when I grant over length memos, they usually could have been done within the limits.

Q: What separates a useful brief from one that is unhelpful?

A: Briefs that are concise and to the point, containing citations to the most important cases and statutes are helpful to me. I struggle with briefs which contain run-on sentences, and numerous typographical errors which make them a real chore to read and understand.

Q: Do you prefer that counsel provide copies of the relevant cases prior to a hearing?

A: No.

Q: What makes an effective motions argument?

A: Please be brief and to the point. I insist on courtesy to the court and opposing counsel. Angry, emotional tirades are not helpful to me and generally will backfire. I appreciate arguments which suggest a common sense, practical solution to the legal problem involved. I always appreciate a good, smart, courteous, professional suggestion for how you believe I should resolve the motion.

Q: Is there anything about the way you handle requests for temporary restraining orders and preliminary injunctions that you think the bar should be aware of?

A: Counsel must follow the rules completely. I see so many who try to skirt the rules by skipping requirements of Rule 65A, including

notice to the other side. If there is no notice, I will need a very, very good reason.

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

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

A: To make sure there is little possibility of settlement, that discovery has been completed and the case is definitely going to trial.

Q: What topics or issues should counsel come prepared to discuss?

A: Discovery, possible trial dates. I also try to find out a little about the case, including claims and defenses. I also discuss number of potential jurors, jury instructions, evidence and stipulations.

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

A: Not very much, beyond making sure mediation has taken place. I also like to hear about the claims and defenses.

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

A: Sometimes but not always. It depends on the case.

### **4. Jury Trial Practice**

#### Jury Selection:

Q: How is voir dire conducted in your courtroom?

A: I conduct the voir dire, but allow counsel to submit questions in advance and at the time of jury selection. I usually go over proposed voir dire at the trial management conference.

Q: Do you allow counsel to participate in voir dire? If so, to what extent?

A: Only through submitting questions.

Q: What is your due date for requested voir dire questions?

A: Trial management order will usually specify, but at trial management or final pre-trial conference.

Q: Do you allow or encourage the use of jury questionnaires?

A: I encourage them in high profile cases or cases that appear to be headed to a lengthy trial.

### Requested Instructions:

Q: When do you require requested instructions to be submitted?

A: Trial management order will usually specify. Otherwise, depending on the length of the trial, at the trial management conference or on the first day of trial.

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 sufficient legal authority?

A: If it is an unusual instruction, caselaw is helpful. I don't really have a strong preference.

Q: Do you have a set of stock jury instructions that you use?

A: Yes, a set is available on the State Court website under Sixth District forms. We have stock instructions for civil and criminal trials.

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

A: No.

### Trial Procedures:

Q: What is your preferred trial schedule (e.g., 9 to 5 with an hour for lunch, 8 to 2 with no lunch, etc.)?

A: Depends on the anticipated length of the trial. One-three days I usually prefer the 9-5 with lunch. Anything that goes longer than 3 days, I usually prefer the 8-2 schedule without lunch.

Q: What are your preferences with respect to motions in limine and other trial related motions?

A: Must be filed on time, in accordance with the trial management order.

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

A: Should be finalized at trial management conference.

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

A: I prefer pre-marking exhibits, and submission of a stipulated joint list of trial exhibits. I prefer sequential numbered exhibits beginning with Plaintiff.

## **5. Bench Trial Practice**

Q: What are the major differences, in your courtroom, between bench trials and jury trials?

A: No major differences.

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

A: It depends on the case. I will tell you if I want them.

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

A: On occasion. I appreciate them in complex trial situations.

## **6. Thoughts on Effective Advocacy**

Q: What makes an effective advocate in jury arguments?

A: Be organized, brief and to the point. Jurors are generally exhausted by the end of a trial. Long, rambling arguments that are unduly emotional and/or angry tend to turn jurors off.

Q: What are the most common mistakes made in argument?

A: Becoming angry, emotional or unduly personal. I see a lot of lengthy, rambling, disorganized arguments. These are not effective.

Q: What are some techniques that do, or do not, work effectively in the examination of witnesses?

A: Do not argue with witnesses on cross examination. Be brief and to the point. Get one or two concessions you can argue in closing argument and stop. You do not have to win every point with a witness.

Q: Do you find the use of computer-assisted presentations (e.g., PowerPoint) effective and/or useful?

A: Very effective as long as you practice beforehand and make yourself familiar with the computer and projection equipment. There is little worse than watching a lawyer flounder while trying to figure out how to use the computer or projector during argument.

## **7. Criminal Matters**

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

A: Please file a motion for continuance.

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

A: At first appearance.

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

A: Anything they consider relevant.

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

A: I don't find these particularly useful and do not encourage them, but will consider one if offered.

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

A: No.

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

A: I appreciate it when counsel is on time.

## **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: Civility and professionalism are very important to me. Please do not become part of the problem by increasing the emotion in a divorce case.

Q: What do you want to have on temporary order issues?

A: Complete financial declarations. After temporary orders are considered, I strongly encourage counsel to move forward to mediation rather than litigating issues relating to temporary orders such as orders to show cause on temporary orders.

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

A: I am usually willing to conduct such interviews if counsel believe they will be helpful.

Q: [For judges in Districts 5-8] Do you require attorneys to follow Utah Rule of Civil Procedure 101, even though there are no domestic relations commissioners in your district?

A: Generally, yes. I don't require the courtesy copies.

## **9. Discovery Practices**

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

A: No

Q: What is your approach to resolving discovery disputes? How do you handle status and scheduling matters for discovery issues?

A: I expect counsel to follow the rules relating to discovery. I require counsel to certify they have made a meaningful effort to meet and confer before filing a motion to compel, in accordance with the rule.

Q: What is your approach with granting extraordinary discovery?

A: No general approach. I would need to consider case by case.

Q: What are your thoughts on imposing sanctions for discovery abuses?

A: Sanctions will be imposed in egregious cases. I expect counsel to work together to resolve discovery issues.

Q: Are you generally available to solve problems that arise during a deposition?

A: Yes, but I hope counsel would try their best to resolve issues first.

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 think the amendments will be a great thing for practitioners and the court. I intend to try my best to enforce these rules.

## **10. Thoughts on Courtroom Protocol**

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

A: Yes, it has been from time to time. I demand civility in my courtroom. If there are abuses, I will generally require counsel to certify in writing that they have read the rules of professionalism and civility and will follow them.

Q: Do you impose any limitations on courtroom movement (approaching witnesses, podium, etc.)?

A: Only if I think it needs to be done to prevent disruptions in a highly emotionally charged case.

## **11. Other Miscellaneous Issues**

Q: What are your opinions regarding courtroom dress?

A: Appropriate dress is a requirement in my Court.

Q: Do you allow children in your courtroom?

A: Yes.

Q: Do you allow cell phones in your courtroom?

A: Yes, except during in a jury trial. I require that they be set to vibrate so they don't disrupt. Counsel can use smartphones or tablets during a jury trial as long as wireless capability is disabled.

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

A: I really appreciate counsel who show me the courtesy of being on time in court.

## **12. Clerk's Comments**

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

A: I have clerks in 6 counties. My primary Judicial Case Manager is Carol Frank, 435.896.2705.