

Judge Thomas Low

QUESTIONNAIRE FOR JUDGE'S BENCHBOOK
JUDGE: Thomas Low - Fourth District Court

1. Discovery

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

A: Generally approve the stipulations of the parties. If modified more than 2 or 3 times, will need an explanation or, if none is submitted, will set the matter for a hearing.

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

A: Not currently (August, 2014). If we do in the future, they will be found in the Fourth District Supplemental Rules, located in the Rules of Judicial Administration, Chapter 10.

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

A: I follow Rule 4-502 in the Utah Rules of Judicial Administration.

Q: What is your approach to granting extraordinary discovery?

A: I follow Rule 4-502 and rule 26(c)(6)(B) of the Utah Rules of Civil Procedure.

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

A: No response.

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

A: Rarely, because current judicial assignment requires so much time on the bench. Calling the judge during a deposition, most attorneys recognize, is generally poor form and should not be done except in the most extraordinary situations.

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: No response.

2. Motions

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 What about unpublished cases?

A: If there are one or two highly on-point cases, it is helpful. Submitting a copy of every cited case, however, is discouraged.

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 have found these to be very helpful, especially for complex issues. The most helpful time to receive it would be at the same time the request to submit is filed. That way my clerk and I can both have time with it before oral arguments are held.

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

A: Both are fairly liberally granted.

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: Will only schedule motions for oral arguments if a party requests it, or if I need to hear more than the briefs provide. We will set the hearing ourselves, but your call is not discouraged and would probably be helpful. Civil clerk is currently (August 2014) Nicole DeMille at (801) 772-5718.

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

A: (1) If the motion's outcome is obvious,
(2) if the only party requesting oral arguments is the one who should clearly prevail, or
(3) if the only party requesting oral arguments has filed a memorandum (or memoranda) that is/are not seriously briefed or otherwise worthy of serious consideration. However, these general inclinations frequently do not apply to cases involving a pro se litigant.

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

A: (1) Make sure the cases cited do support the proposition for which they are cited. Nothing loses credibility faster than an inappropriate citation.
(2) A very brief "Summary of the Argument" section, while not required by the rules, is always helpful, even on simple motions.
(3) Avoid all personal attacks, derogatory statements, and irrelevant criticisms. Nothing is more persuasive or better conveys a confident position than a deferential, respectful, and polite memorandum. Nothing causes suspicion more quickly than ad hominem or irrelevant criticisms.

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

A: (1) Expect that I've read the briefing and the cases. I've probably drafted, or begun drafting, a ruling. Introductory statements intending to give the lay of the land should either be dispensed with entirely or massively abbreviated.
(2) There are usually two or three crucial issues that form the impasse preventing you from agreeing with the equally intelligent and professional attorney on the other side. Get to those issues quickly. I will have questions about them and will want you to have adequate time to respond to them.
(3) Know your motion and the facts of the cited cases well so that we can discuss them effectively. (4) If I ask hard questions, that does not mean that I favor the other side's position---only that I want to hear your defense of your weakest points.

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

A: Follow rule 65A precisely. Full candor is absolutely critical. The injunction will be vacated and fees assessed if a subsequent full disclosure of facts reveals that the issuance of the restraining order or injunction was ill advised.

3. Final Pretrial Conference

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

A: Rule on pending motions that can be addressed summarily, set oral arguments for pending motions that need them, make sure that all issues regarding jury instructions are fully resolved, and set for trial. Trials are generally set one to two months out. So the case should be completely ready to be tried by the final pretrial conference.

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

A: Those set forth above as well as how many days' trial are needed and, if a jury is going to be impaneled, the method of seating the jury (i.e., written vs. oral voir dire, and whether the attorneys would like to address questions directly to the panel).

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

A: None. Mediation, as addressed in the scheduling order, should have been completed before the final pretrial.

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

A: No. But their unavailability for the trial dates selected by their attorney at the pretrial conference will not be a basis for continuing the trial. The attorney will be expected to know the client's schedule.

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

A: If they are not complex and can be argued in just a few minutes, then I prefer to hear them at the final pretrial conference.

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

A: If it is a bench trial and no dispositive motions have been previously filed, then yes. If summary judgment has been denied, then no, because I will already be familiar with the facts and the principal legal issues involved.

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 leave it up to counsel to express a preference. The only aspects of voir dire that I will not delegate are the (1) roll call, (2) oath, and (3) juror qualification questions. Counsel can handle the remaining voir dire through a brief (one- to two-page) juror questionnaire that can be answered by the prospective jurors the morning they arrive or through attorney-directed oral voir dire of the panel. If the latter is chosen, the questions must be submitted to opposing counsel and to the court in advance. Of course, the court can conduct all of voir dire if the parties prefer it. Follow-up questions of individual jurors will occur outside the hearing of other jurors---in chambers and on the record.

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

A: This will be discussed at the final pretrial. Usually a week or two before the jury trial is fine. It is most important that they be timely shared with opposing counsel because the court can, if necessary, rule on the propriety of a given question without extensive advance notice.

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

A: They are allowed, but they must be brief (one- to two-pages) so that they can be answered by the jurors the morning of their arrival to court. Attorneys, therefore, will not have much time to review them. The deadline for the submission of a questionnaire will be discussed at the final pretrial. If the parties anticipate a dispute as to the questions to be used in a questionnaire, then the deadline will be earlier. I do review and edit the questionnaires, so an editable Word or WordPerfect digital copy will be required.

Jury Instructions:

Q: When do you require instructions to be submitted?

A: My preference is that a jury trial not be set unless the jury instructions are agreed to or all disputes regarding them have been resolved by the court. This is because even jury trials will often be set only one to two months out. If an exception to this preference is allowed, then very strict deadlines relating to the submission and briefing of disputed jury instructions will be established at the final pretrial conference. The failure to meet these deadlines will result in the jury trial being stricken and, possibly, fees being assessed.

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

A: The model instructions (MUJI) on the court's website are the only ones I have.

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: I require a stipulated set of instructions to be submitted. These should not have any citations at all in them. Disputed instructions, if any, will be submitted pursuant to an agreed-upon deadline together with a memorandum supporting the

instruction(s). Because disputed instructions will be supported by briefing they still should not have any citations at all in them. Because I often edit proposed jury instructions, a Word or WordPerfect digital copy of them will be required.

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

A: Yes, if by “electronic” it means an editable copy in either Word or WordPerfect. I have never received proposed jury instructions (and despite my best efforts have probably never ended up using any) that were typographical-error-free.

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

A: In advance of 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: I leave it to the jury to choose. So far, every jury has wanted to work from 9 to 5 with a lunch break. Tuesdays are my felony law and motion calendar, so most jury trials take a break on all or at least part of that day.

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

A: Before.

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

A: These are allowed either upon stipulation of the opposing party (i.e., that the exhibits’ admission at trial is already stipulated to).

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

A: I ask my clerk, at every recess, to make sure that she has all of the exhibits, or at least knows where they are. Large paper exhibits should have an 8 ½ x 11 copy for ease of storage. Exhibits that are objects must be packaged to preserve their integrity and ease of transport. DVD's, if they are to be admitted for the jury's use during deliberations, must be viewable on the court's DVD player. This technical compatibility can be checked prior to trial.

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

A: Generally, if you bring it and are responsible for it, you can use it. Do not rely on the court to make your technology useable.

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

A: Leave it to the parties to work out. If substantial trial time is lost because witnesses end earlier than expected and remaining witnesses were not subpoenaed to appear until the next day, the court may restrict the amount of time that can be spent with the remaining witnesses to keep the trial within the days allotted.

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

A: Yes. However, the quality of the recording dissipates quickly as the attorney or witness steps away from the microphone. I have a portable microphone that can be used for attorneys or witnesses that need to step away from their microphones.

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: Rarely. If they would be helpful in a particular case, the parties can suggest it or I will request them.

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

A: Rarely.

7. Technology in the Courtroom

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

A: If you bring it and are solely responsible to make sure it works, it is generally acceptable.

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

A: If the attorney would like to publish an exhibit to the jury during trial, it is usually better for all to be looking at it simultaneously, on a screen, than to have it handed around the jury box for the jurors to look at one at a time.

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

A: Arguments should never be contained in a technological presentation. Only evidence.

8. Criminal Matters

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

A: Motion need to be filed in writing. An appropriate date should be selected and included in the proposed order. If the continuance is stipulated, it will usually be signed immediately. If not, the court will generally not consider the motion until the time to

respond has lapsed or, if the hearing is sooner than that, it will consider the motion at the time set for the original hearing.

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

A: First appearance and, thereafter, after notice to the opposing party.

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

A: If the parties agree to it, I almost always will. If it will not be approved by the court, I will tell you before the plea is entered or allow a withdrawal of the plea. While it is within the discretion of the prosecution to offer a plea in abeyance, once it is offered, the court will occasionally impose terms different from those that the parties have agreed to.

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

A: A Presentence Investigation Report usually has most of the information needed. If one is not going to be used, then the parties should try to provide much of the same information that would be included in one.

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

A: Only seen one so far. It was moderately helpful.

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: Be sensitive to where the court is in its progress through the different segments of the calendar. For example, if your matter is scheduled for 9:30 and I am still trying to take care of the 8:30 matters, try to wait unless your need to call the case early is

urgent. Other than that, requests to call a case out of order are generally accommodated.

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

A: No response.

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

A: No response.

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 response.

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

A: No response.

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

A: No response.

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

A: No response.

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 response.

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

A: They can be helpful.

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: They can be helpful if they are submitted soon after the court issues the hearing date.

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

A: No response.

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

A: By Pretrial Order. If it cannot be stipulated to, then a motion for the issuance of a Pretrial Order should be filed.

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

A: Prefer not to do them. The prospect of a custody order being unappealable because the evidence forming the basis for it is not recorded in the record is a concern to the court. However, if both parties agree to it, or if the court agrees after hearing the evidence at trial that it is still necessary, then it may do so.

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: Fortunately it is rare. So far, I have only resorted to calling attention to it when it happens. Sanctions are not impossible, though.

Q: What are your opinions regarding courtroom dress?

A: No response.

Q: Do you allow children in your courtroom?

A: Yes. It is a public courtroom. Anyone who does not cause a disturbance is permitted.

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

A: Cell phones are allowed. They may not cause a disturbance.

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

A: After 15 minutes, we will proceed in the absence of the opposing party.

11. Comments from Case Managers and Judicial Assistants

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

A: Criminal cases: Rose Wells, (801) 773-5727
Civil cases: Nicole DeMille, (801) 773-5718

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

A: No response.

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

A: No response.

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

A: No response.

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: No response.

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 response.