

QUESTIONNAIRE FOR JUDGE'S BENCHBOOK

1. Discovery

Q: What is your practice regarding statements of discovery disputes? Do you ordinarily set a telephonic or in-person hearing?

A: When a proposed order on a statement of discovery issues finds its way to my signing queue, I will first review the file to see if there is a timely objection to the SDI. If so, then per URCP Rule 37(a)(6) I review the pleadings and determine if the issue can be decided on the papers, or whether to set it for oral argument. If a hearing is needed I try to set oral argument as expeditiously as possible. My intent post-pandemic is to continue conducting discovery hearings via Webex.

Q: What is your approach to granting extraordinary discovery?

A: So long as the request is timely, I weigh heavily the reasons extraordinary discovery is sought. I also consider such motions in light of the complexity of the underlying issues, or lack thereof. While the litigants and the court should have adequate information to make informed and intelligent decisions, I expect the parties and counsel to make every effort to stay within the URCP Rule 26 limits for domestic actions.

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

A: I might award attorney's fees when entering an order on a SDI. Before imposing additional sanctions I first give the compelled party the opportunity to comply with the order by a date certain. If there is still non-compliance by the deadline, upon proper motion and notice I will consider awarding additional sanctions, which may include the striking of pleadings and granting default, as well as additional attorneys fees associated with the motion for sanctions.

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

A: Deposition disputes ordinarily are handled by the assigned judge, not the commissioner. I would make myself available if the judge delegated the task to me, but so far this has not occurred.

Q: What insights do you have for litigants with respect to discovery matters in general?

A: Most discovery issues can be avoided by the parties simply taking the time to be thorough in preparing financial declarations, and backing them up with supporting documentation. Likewise, if you are served with discovery requests, be direct and not evasive in providing answers and documents. When propounding discovery, do not be overreaching. Keep the requests succinct and pertinent. I frown on discovery requests that result in overly burdensome time and expense for little or no good reason.

2. Motions

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

A: No, unless it's not easily available in Westlaw. I can look up case citations quickly on my own.

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: If the briefs have been e-filed courtesy copies are not necessary. With respect to properly summarized voluminous exhibits per Rule 101(h)(3), yes I appreciate a tabbed binder of the exhibits prior to the hearing. During the pandemic I have allowed exhibits to be e-filed. I prefer that all exhibits be e-filed as one text-searchable PDF file, rather than each exhibit being e-filed separately.

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

A: I generally dislike overlength memoranda, but will grant motions in appropriate circumstances. I typically have several matters on any given law and motion calendar, and frown on having to spend the majority of hearing preparation time on one matter, at the expense of the others. All matters are important, and each matter warrants sufficient time and attention. Also, when filing a motion for overlength memoranda, please state the total number of pages to be filed. I do not grant open-ended requests for overlength memoranda. For overlength exhibits, please follow URCP Rule 101(h)(3).

I am willing to grant extensions of time due to exigent circumstances, so long as not prejudicing other parties, and so long as not the habitual practice of the attorney or party requesting the extension.

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: Motion practice before commissioners is governed by Rule 101, which mandates oral argument when standard motions are filed. After filing a motion the moving party should request a hearing date by emailing my team via the team email address. My team then sends out proposed dates and times out to all parties, so that hearings can be set at mutually agreed-upon times. The exception are case management conferences and TRO requests, which, if a hearing is needed, are scheduled by the court without the input of counsel or the parties.

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

A: Rule 101 requires oral argument on every standard motion. I sometimes reject hearing requests on discovery issues and TRO requests, based on determination of the need for oral argument. For example, if a written motion for TRO does not facially allege irreparable harm, or is procedurally defective, oral argument might not be warranted.

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

A: Be as concise as possible. Use plain English. Make it easy for the court to follow your line of reasoning. If filing motions to enforce (OSC's), cite the specific paragraph number of the specific order allegedly violated. When filing motions, please state in one section the specific relief sought, and then in a separate section or declaration state the basis for the relief sought in the motion. Do not make requests for relief in declarations that are not also contained in the motion itself. They will likely be disregarded.

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

A: Generally the moving party speaks first, then I hear the response, and then back to the moving party for rebuttal. If there is a countermotion and/or guardian ad litem there may be some blending of this process. Unless you have a valid objection, please do not interrupt the speaker. An argument that an asserted fact is not true is not a valid objection. Address disputed facts on rebuttal.

Q: Do you have any guidelines or preferences that you expect counsel to follow regarding temporary restraining orders or preliminary injunctions? In particular, do you have any preferences regarding the presentation of evidence during these proceedings?

(For example, do you prefer exhibits to be marked in a certain manner, or for counsel to proffer affidavits with the witnesses present for potential cross examination rather than proceeding with direct examination by default?)

A: Please file a separate Rule 65A certificate of notification, not simply a certificate of service at the bottom of the motion. E-file all documents in support of the declaration, preferably as a separate, single PDF file. I have no preference as to how documents should be marked. If there is oral argument, I prefer

that witnesses who filed declarations be present, in the event I have questions for them.

3. Final Pretrial Conference

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

A: As a commissioner, the final pretrial before me is to determine which issues are resolved and which will be certified for trial. We might also address collateral issues, such as updating financial declarations, whether a judicial settlement conference should be sought, and whether the parties prefer a formal trial or a UCJA Rule 4-904 informal trial.

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

A: Please be prepared to discuss all issues that remain in contention. Some issues might be resolved at the time pretrial, and if so agreements can be read into the record.

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

A: Mediation and certification of readiness for trial is required before a pretrial is scheduled before me. I am a strong proponent of ADR domestic relations cases. Knowing that the vast majority of domestic matters will not actually be tried to judicial disposition, I encourage the parties to continue settlement negotiations and further mediation efforts even though they might already have fulfilled their mandatory ADR requirements. This is especially so in cases where child custody and parent-time issues remain.

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

A: I prefer, but do not mandate that the parties themselves (unless pro se) be present at pretrials. To make it easier for the parties, because pretrial hearings are largely procedural in nature, post-pandemic I intend to continue holding pretrials via Webex.

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

A: Motions in limine and other pretrial motions generally will be heard by the trial judge, not by the commissioner. Exceptions include contempt issues that arise after certification of the trial issues.

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

A: I don't require them, but they certainly are appreciated.

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: Not applicable to Third District commissioners.

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

A: Not applicable to Third District commissioners.

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

A: Not applicable to Third District commissioners.

Jury Instructions:

Q: When do you require instructions to be submitted?

A: Not applicable to Third District commissioners.

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

A: Not applicable to Third District commissioners.

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: Not applicable to Third District commissioners.

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

A: Not applicable to Third District commissioners.

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

A: Not applicable to Third District commissioners.

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: For informal trials before me, I scheduled them in the afternoons, from 1:00 to 5:00 p.m. Each side is provided about 1.5 hours each with a break in between the parties' testimonies, leaving time for opening statements and closing arguments, and the ruling of court if made from the bench.

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

A: This is not an issue with informal trials, Under UCJA Rule 4-904 any exhibits timely submitted for an informal trial are received into evidence.

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

A: I have no preference about the use of exhibits or demonstrative during opening statements, so long as not unduly prejudicial. Informal trials are bench trials and the process is so simplified that use of exhibits during opening is of questionable value. However, I don't want to dictate how a party chooses to present their case, and so do not prohibit the use of exhibits or demonstratives during opening.

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

A: I prefer that exhibits be pre-marked as P1, P2, R1, R2 etc., but recognize that most of my informal trials involve pro se litigants, and so I'm not inclined to mandate procedures that might be more applicable to formal trials before a judge.

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

A: The technology in the commissioner courtrooms of the Matheson Courthouse is very limited. We don't have the equipment to play media files. If you have video or audio you would like to be shown or heard, please bring your own devices for playing them so that all can see and hear. Likewise, if you want to project images, please bring your own equipment. Please test your equipment ahead of time so that the proceedings are not unduly delayed.

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

A: This is not an issue with informal trials before a commissioner, where the witnesses are limited to the parties themselves.

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

A: I prefer that counsel remain at the lectern or at counsel table, where there are microphones. Moving away from the microphones can be problematic in making a clear record. The in-court microphones are not just for amplification. They are also the source of the recording of the proceeding.

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: All of my informal trials are bench trials. As such, opening statements are of questionable value. Closing arguments can be of more value in tying together the testimony and evidence.

6. Post-trial Issues

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

A: I appreciate but do not require proposed findings.

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

A: No. I am limited to half-day bench trials with only the parties as witnesses and all timely documentation being received into evidence. My trials also are usually narrow in scope and typically do not involve conceptually complex issues.

7. Technology in the Courtroom

Q: Do you have recommendations or requirements for counsel who will be participating in a remote hearing? (E.g., use of headphones, providing chambers with physical copies of all exhibits in advance, certain practices to avoid when appearing remotely, etc.)

A: Headsets are best for audio clarity and avoiding echo and feedback. I start the Webex hearings early to that people can log on and test their equipment before their matter is called. Good bandwidth is extremely helpful. If you are told that you are freezing up or your audio is intermittent, please turn off your video to reduce bandwidth issues. If you know you have bandwidth issues you can also leave your video on, and call into the hearing using your phone for audio. Also, please remain muted until your case is called and it is your turn to speak.

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

A: Again, please bring your own equipment. That being said, I rarely have time to listen or watch lengthy recordings during

proffer hearings on the law and motion calendar. For the most part, multimedia is preservation of the evidence in the event of a URCP Rule 108 objection to my recommendations.

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

A: Not so far, but I am open to new ideas and being educated.

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

A: None that I recall.

8. Criminal Matters

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

A: Not applicable to domestic relations commissioners.

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

A: Not applicable to domestic relations commissioners.

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

A: Not applicable to domestic relations commissioners.

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

A: Not applicable to domestic relations commissioners.

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

A: Not applicable to domestic relations commissioners.

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

A: Not applicable to domestic relations commissioners.

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

A: Not applicable to domestic relations commissioners.

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

A: Not applicable to domestic relations commissioners.

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

A: Not applicable to domestic relations commissioners.

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 don't allow the stacking of motions onto existing hearing slots. Sometimes after a hearing date is set on a motion counsel will file additional motions and notice them for hearing on the already existing calendared slot. Due to nature of law and motion calendars I allow one motion and one counter-motion per calendar slot. If, for the sake of judicial economy you want several motions heard at the same time, then absent prior consent of the commissioner you will need to secure a date where multiple, consecutive calendar slots are available. For Courts without Commissioners:

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

A: Not applicable to me.

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

A: Not applicable to me.

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

A: Not applicable to me.

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: Not applicable to me.

For Courts with Commissioners:

Q: What is your practice with regard to setting hearings on Objections to Commissioners' recommendations?

A: Not applicable to me.

For all Courts:

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

A: For voluminous exhibits that cannot be e-filed, courtesy binders of exhibits should be provided to my team approximately one week before the date of hearing. I read all pleadings but do not review all voluminous exhibits before the hearing. During the hearing you will need to direct me to exhibits you want me to review. See URCP Rule 101(h)(3).

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: This is not necessary when pleadings are timely e-filed.

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

A: Improperly formatted proposed orders is a persistent issue.

Please review the following:

<https://www.utcourts.gov/efiling/district/docs/formattingrtfdocuments.pdf>

<https://www.utcourts.gov/efiling/district/docs/Standards.pdf>
<https://www.utcourts.gov/efiling/district/>.

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

A: I do not interview children except in extreme circumstances and only at the request of a guardian ad litem. Since taking the bench in 2018 I have conducted only one in-camera interview of a child.

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: Civility is sometimes a problem, especially with the informality that comes with Webex hearings. Pro se parties, especially tend to argue with each other and interrupt more when outside the formal atmosphere of the courtroom. When civility issues arise I first warn people to please stop, and if the problem persists I will give them a second warning that if they do not stop I might find them in contempt, advising them of the potential sanctions. If I find contempt in my presence, the bailiffs can remove someone from the courtroom or take them into custody. With Webex hearings I can electronically eject the offending party from the hearing and issue a civil bench warrant and/or civil order of commitment.

Q: What are your opinions regarding courtroom dress?

A: For attorneys I expect the same dress code for Webex hearings as would be expected of them if coming to the courthouse. For litigants I expect them to wear clothing that is clean and not containing offensive language or images. In general, litigants also should not wear shorts, or bare mid-drift, tank tops, etc. They should dress as if they were attending an event of importance, which a court hearing is. At the same time the standard for litigants varies. I frequently encounter indigent and homeless parties. So long as litigants are doing their best given their circumstances I try to be mindful of that. Most important is

arriving on time and being respectful of the process and the court.

Q: Do you allow children in your courtroom?

A: No. Children should not see or hear the arguments between their parents. With video and phone conference hearings, children might be present and out of camera view. I try to announce at the beginning of Webex calendars that children are not to be present, and that it might be considered contempt of court if a party allows children to see or hear the proceedings against my directive. At the same time I try to recognize the reality of single parents with limited resources. Sometimes I just proceed, if for example a pro se party has brought their infant child with them to the courthouse.

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

A: Litigant and attorney cell phones should be silenced with vibration off. IN the gallery, cell phones should be turned off.

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

A: I like promptness but recognize that there can sometimes be unexpected traffic/parking issues despite leaving reasonably early, and also that there can be technical issues joining video/phone hearings. I will usually pass on a matter or give them at least 10 minutes after the time set for hearing before proceeding in their absence. Please email my team if you are running late. If someone is extraordinarily late at the expense of the other party, I might award reasonable attorney's fees.

11. Comments from Case Managers and Judicial Assistants

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

A: My case manager is Dina Martinez. 801-238-7126.

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

A: Mainly, please be patient, polite and respectful toward court staff. The court clerks are under tremendous strain due to the pandemic, and are doing the best they can. They are sometimes newer employees, are human and make mistakes. Good relationships with the clerks can make your professional life a lot easier.

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

A: My team email is 3rdminasteam@utcourts.gov. My team phone number is 801-238-7021. My judicial assistants as of April 2021 are Suzett Martinez and Elizabeth (Ebet) Knight.

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

A: Same as my case manager.

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: Commissioner Russell Minas graduated from the University of Utah S.J. Quinney College of Law in 1989. Until his 2018 appointment to the bench he practiced family/matrimonial law in Salt Lake City for 29 years. During this time he served as a staff attorney, domestic violence program director, and executive director of the Legal Aid Society of Salt Lake. He was a sole practitioner for 18 years, and a shareholder in several law firms, large and small. He was listed on the Utah Courts ADR roster as a master mediator for domestic relations. In 2013 he was recognized as the Utah State Bar's Family Law Attorney of the Year. Comm. Minas is a member and past chair of the Executive Committee of the Utah State Bar Family Law Section, and a member and past chair of the Utah Association of Collaborative Professionals. He also serves on the Utah Judicial Council's Standing Committee on Children and Family Law, and chairs its Custody Evaluation Subcommittee. He also co-chairs the Utah

Child Support Guidelines Advisory Committee, and serves on the Judicial Council's Court Forms Committee. In 2015 he earned Fellowship to the American Academy of Matrimonial Lawyers.

Q: Do you have any stock jury instructions, verdict forms, articles, standing orders, checklists, remote hearing protocols, 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: Not applicable to me.