

QUESTIONNAIRE FOR JUDGE/COMMISSIONER BENCH BOOK

Judge Adam T. Mow – Third District Court
QUESTIONS : 3rdMowteam@utcourts.gov

1. Discovery

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

A: I rely on the Notice of Event Dues Dates to set the initial case schedule, unless the parties request a Rule 16 conference or stipulate to a different schedule. I am normally willing to reasonably modify the schedule at least once. If I have any concern about subsequent requests to modify the schedule, I am likely to schedule a conference with counsel to better understand the progress of the case.

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

A: I review a Statement of Discovery Issues and any objection to it. I will then decide whether I can sign or modify a proposed Order. If a proposed Order cannot be used, I will typically schedule a telephone conference to hear from the parties before ruling.

Q: What is your approach to granting extraordinary discovery?

A: I generally grant stipulations for extraordinary discovery because I assume the attorneys know what the case needs. This is especially true in cases involving more than one plaintiff and one defendant. However, if the case is more than a year old or if previous stipulations have been granted, I may modify the Order to make clear that no further extensions will be permitted. If a request for extraordinary discovery is opposed, I view the request in accordance with Utah Rule of Civil Procedure 37(a).

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

A: If one party is clearly at fault for a particular discovery dispute, I will likely order that party to pay the reasonable attorneys fees of the other party relating to the dispute. Severe sanctions, such as dismissal or entering judgment, are only warranted in the most extreme cases.

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

A: I am willing to decide important disputes if I am available. However, I am often in court, so I may not be available at the time a dispute arises.

2. Motions

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 What about unpublished cases?

A: Copies of cited, published authorities are not needed since I can easily access them on Westlaw. Copies of unpublished cases that are unavailable on Westlaw may be helpful (although their precedential value may be limited). Any copies should be provided in PDF format as I prefer to review them electronically and not waste paper.

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 review electronic copies of memoranda and exhibits that my judicial assistants assemble in advance of each hearing in an electronic folder. For that reason, I generally do not want or need binders with courtesy copies. However, if the exhibits are unusually numerous or complex, carefully-organized paper copies of the exhibits in a binder are helpful. If you are unsure if a binder would be helpful, please contact my judicial assistants to inquire. If you do provide a binder, please provide it at least two weeks before the scheduled hearing and include the submissions from all parties—not just your own.

Please consider providing a text-searchable single PDF of the memoranda and exhibits that contains hyperlinks to exhibits and cases (we use Westlaw) and bookmarks for exhibits.

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

A: Counsel should carefully consider whether an overlength memoranda is really necessary. Most arguments can be made within the allowed page limits. Counsel should adequately justify the need for an overlength memorandum and submit a proposed Order expressly stating the number of overlength pages sought.

Extensions of the briefing schedule (especially stipulated extensions) are normally granted as long as there is adequate time for briefing and the court's review prior to any scheduled hearing.

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 will determine whether to schedule a hearing upon receiving a Request to Submit. My judicial assistants normally coordinate scheduling with all counsel.

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

A: I may decline to grant a request for oral argument if the motion is purely procedural and if it appears I can decide the matter on the memoranda. I almost always schedule a hearing on substantive motions.

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

A: Briefs should be succinct. Briefs are rarely too short (and if they are, it is because they are lacking analysis and application of the law). Make your best arguments, not all arguments. Frivolous arguments not only take up space, they also make me question other arguments. Also, do not make disparaging comments about a party, counsel, or the Court.

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

A: Ensure that all requirements within the rules have been met before seeking extraordinary relief. I will try to schedule a TRO hearing within a few days, and I require that notice be given to the other side. Extraordinary relief should only be granted in extraordinary circumstances. Be prepared to post security if the extraordinary relief sought is granted.

3. Final Pretrial Conference

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

A: A final pretrial conference (FPTC) is to ensure that the case is actually ready for trial and to resolve any remaining pretrial issues.

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

A: I expect the following things to be filed prior to the FPTC so that they can be discussed at the FPTC: (1) all motions in limine and related motions; (2) trial disclosures and all objections; (3) designation of all deposition testimony to be read at trial; (4) if the parties would like to use a jury questionnaire, a stipulated questionnaire; and (5) any specific voir dire.

Also, prior to the FPTC, I expect the lawyers to have met and conferred to discuss exhibits and jury instructions. I expect the parties to reach stipulations wherever possible regarding the admissibility of exhibits and as to standard MUJI instructions.

Prior to a civil trial, counsel should provide the court with copies of all expert designations, reports, and depositions for any testifying expert. I hope to review those materials before an expert testifies at trial to make sure the expert only testifies as to properly disclosed opinions. If one party anticipates the other will ask an expert for an undisclosed opinion, it is best to raise that prior to trial.

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

A: I typically address mediation well before the final pretrial conference, such as when we discuss scheduling the case for trial. I expect parties in contested civil cases to mediate prior to filing a Certificate of Readiness for Trial. I rarely excuse the mediation requirement.

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

A: Generally, no for civil matters and yes for criminal matters.

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

A: For civil matters, I typically hear all trial-related motions at the final pretrial conference if they have not previously been heard. This requires that the parties have filed and briefed the issues sufficiently in advance of the final pretrial conference. If there are substantive legal issues that need to be addressed well in advance of trial, I am willing to schedule a separate motion hearing date prior to the final pretrial conference.

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

A: For bench trials, I would like to know about any complicated legal issues in a pre-trial brief. The brief can be short.

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 do jury selection in two or three steps. First, each panel member stands and provides background information, including name, city of residence, occupation, marital status, spouse's occupation, children, source of news, and hobbies.

Second, I have a script with a series of neutrally worded questions for the panel overall. These include knowledge of the parties or the case, prior jury service, prior litigation involvement, legal philosophical questions, hardship, etc. Panel members answer by a show of hands if the question is applicable to them, and I may ask follow-up questions. I allow counsel to submit additional questions that I may ask of the panel.

Third, if there is any issue of having enough panel members for preemptory challenges following my standard questions (and on responses to the questionnaire, if there was one.), I will ask follow-up questions to certain panel members. These follow-up questions are normally asked at the bench with the attorneys. I handle for-cause objections as we proceed through this process so that

I will not need to ask more follow-up questions of panel members than are necessary.

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

A: Not later than the Final Pretrial Conference if the questions are for the entire panel.

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

A: I allow questionnaires if they are reasonable for the complexity of the case and the parties stipulate to their form and content. Questionnaires for many trials can be limited to two sides (front and back) and the prospective jurors can complete them on the first day of trial. I discourage long questionnaires in all but the most complex cases. If permitted, long questionnaires must be distributed and responses received prior to the first day of trial for them to be useful. Counsel need to plan ahead if they want a long questionnaire since we will need to bring in the prospective jurors several days prior to the trial. Counsel may also consider the use of an online questionnaire with a secure login.

Jury Instructions:

Q: When do you require instructions to be submitted?

A: By the final pretrial conference. Also, I expect the parties to have met and conferred to discuss jury instructions and the verdict form. At least two days prior to the final pretrial conference, I expect the parties to file a stipulated set of jury instructions, any requested instructions for which they could not reach a stipulation, and any proposed voir dire.

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

A: I use MUJI 2nd instructions, with a few minor adjustments to the opening instructions. The parties do not need to submit any of the general 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: Contested or unusual instructions should cite authority. A citation to MUJI is sufficient.

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

A: Yes, in Word format emailed to my team email (3rdMowteam@utcourts.gov). I will incorporate them into my set of jury instructions.

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

A: Ideally, a civil trial will have discussion of jury instructions at the final pretrial conference. I typically discuss criminal jury instructions during trial, either following a recess or after excusing the jury for the day.

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: My normal trial schedule is 8:30 to 5:00, with a lunch break around noon. We also take recesses in the morning and afternoon. I do not schedule trials on my criminal Law & Motion day, which is Friday.

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 the final pretrial conference. I also believe that most exhibits can and should be stipulated to prior to the final pretrial conference and certainly prior to trial.

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

A: Any stipulated exhibit may be used in opening statements. If there is no stipulation, please seek permission at the final pretrial conference.

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

A: Ideally, all exhibits will be stipulated and pre-marked prior to trial. All non-stipulated exhibits should at least be pre-marked. If there are more than five exhibits per side, the parties must bring an index of exhibits on the morning of trial to help my judicial assistants track the admitted exhibits.

The parties should provide copies of the exhibits for the witness, opposing counsel, and the court.

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

A: I welcome the use of technology, but counsel should ensure they understand how to use the equipment and that their equipment will work at trial. The jury and I can be frustrated when we are waiting for a party to figure out a technology issue during trial. Counsel are welcome to access the courtroom in advance to test their equipment; just contact my judicial assistants. The court's technology is limited.

We have a few media carts available that connect to a laptop (bring your own cords). The carts 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. Be prepared to use your own equipment if a media cart is not available or if the media cart does not work.

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

A: Please ensure that you have a witness ready to go at all times when presenting your case. I want to avoid a jury waiting for a witness to show up. I expect that parties will cooperate with one another regarding the scheduling of witnesses and taking witnesses out of turn, if necessary.

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

A: Yes, within reason. Counsel should always remain within arm's length of a microphone to ensure we create an audible record.

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: A bench trial can move more quickly and informally than a jury trial. I may ask counsel to explain why a line of questioning is relevant and I may ask the witness questions, neither of which I will do during a jury trial. For efficiency, I am amenable to stipulations designed to speed up the process. For example, allowing the parties to present evidence by proffer of secondary witnesses, (if those witnesses are present for cross-examination) and relying on expert reports and deposition testimony, which I can read prior to trial.

6. Post-trial Issues

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

A: Focus on preparing for trial. I may ask the prevailing party to draft them post-trial.

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

A: Only if I request it, such as written closing arguments. I would like to know about any complicated or novel legal issues in a pre-trial brief.

7. Technology in the Courtroom

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

A: I welcome the use of technology in trials, but counsel should ensure they understand how to use the equipment and that their equipment will work at trial. The jury and I can be frustrated when we are waiting for a party to figure out a technology issue during trial. Counsel are welcome to access the courtroom in advance to test their equipment; just contact my judicial assistants. The court's technology is limited. We have a few media carts available that connect to a laptop (bring your own cords). The carts 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. Be prepared to use your own equipment if a media cart is not available or if the media cart does not work.

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

A: The best uses of technology are to project exhibits to a jury and Power Point presentations used to accompany a closing argument. The use of technology is far more important in jury trials than in any other proceedings.

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

A: Only when the technology does not work or is overly cumbersome.

8. Criminal Matters

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

A: I regularly grant stipulations. Objections to continuances are handled on a case-by-case basis.

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

A: I am willing to hear arguments on bail if the required notice is given in advance of the hearing. Absent a stipulation of the parties on release of the defendant, I look to the Public Safety Assessment and any other release recommendation materials I have from pretrial services in making a decision.

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

A: It is the defendant's responsibility to move the court to dismiss the case at the end of the abeyance period. Otherwise, the plea may enter.

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

A: I want to hear their specific recommendations for the sentence. If there is a presentence report, I want to hear if they agree or disagree with its

recommendation and why. I also want to know of any incorrect information in the presentence report.

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

A: I have rarely seen private evaluations. If a case necessitates a presentence report and/or the parties request it, then I will order one through Adult Probation & Parole or Salt Lake County Probation Services, as appropriate. Also, I have been persuaded by a sentencing memorandum prepared by counsel evidencing how the defendant sought out and has already started the treatment that was likely to be a condition of probation.

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

A: Almost every case is unique, so I do not have any standard sentences. Of course, certain crimes, such as DUIs and sex offenses, have statutory sentences and mandatory minimums that will be followed.

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

A: If the assigned prosecutor is in the courtroom, defense counsel should approach the lectern when it is free and ask to call the 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: The best domestic lawyers are problem solvers. They are professional and collaborate with opposing counsel to achieve quick results. This is especially true for cases involving child custody.

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

A: This is generally a matter for the Commissioners. Objections should cite authority demonstrating that the law was not properly applied to the facts.

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

A: This is generally a matter for the Commissioners.

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

A: This is generally a matter for the Commissioners.

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: Financial declarations are extremely important on issues of child support and alimony. A good declaration has proper support (especially for monthly expenses.) I find declarations to be less trustworthy if a party has submitted a series of declarations that vary wildly on certain numbers. Although a declaration is a sworn statement of present finances, I welcome a sworn submission (or other competent evidence) of the couple's finances during the marriage and 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: E-filing largely renders them obsolete.

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: See answers regarding courtesy copies above.

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

A: Please use the e-filing system.

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: I avoid them. I have not yet had a case where I have concluded that the need to interview a child outweighed the negative impacts of requiring a child to testify. I am concerned about requiring a child to go through the stressful exercise of testifying in court (or interviewing with the court). I am equally concerned about a child believing that he or she may have affected the outcome of a divorce proceeding.

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: It is rarely a problem. I may call a recess to allow people to cool down. Most of the time, attorneys and parties act properly.

Q: What are your opinions regarding courtroom dress?

A: I encourage attorneys to dress professionally.

Q: Do you allow children in your courtroom?

A: Yes, if they are not disruptive.

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

A: I expect phones to be silenced when brought into the courtroom. I recognize that sometimes people forget to do this, but attorneys should know better. I will say something if the interruption is prolonged or repeated.

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

A: Time on my calendar is at a premium due to heavy caseloads, so I expect to start at the scheduled time and I will be prepared to start at that time. I recognize that there are reasons why someone may be late. If you are late, please email my judicial assistants and let them know as soon as possible. I may take the bench to wait for you if you are substantially late and have not advised the court.

12. Judicial Assistants

Q: To contact my judicial assistants:

A: 801-238-7179 or 3rdMowteam@utcourts.gov.

Q: When dealing with my judicial assistants, please do these things:

A: All inquiries should include the case number and a telephone number or email address to respond to the inquiry. Email messages are preferred. At times, it is not possible to return all emails or calls on the date they are received.

Please treat my judicial assistants with courtesy and respect. They are integral to the court. Assume that any communications with them will be shared with me. Please compliment them when they are helpful.

13. 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: https://www.utcourts.gov/judgesbios/showGallery.asp?dist=3&ct_type=D#3287

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/>