Judge Todd M. Shaughnessy
3rd District Court
QUESTIONNAIRE FOR JUDGE'S BENCHBOOK

1. Discovery

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

A: I follow the requirements of Rules 16 and 26. Initial case scheduling is handled largely and usually by agreement among counsel, subject to the requirements of Rule 26. Parties should always meet and confer regarding these matters before bringing them to the court. If the parties stipulate to changes, I almost always approve those changes. If a case has been pending for a substantial period of time, has previously been on the court's order to show cause calendar for dismissal due to inactivity, or some other extenuating circumstance exists, I may require more information or may schedule a telephone conference before approving a stipulated extension. If parties cannot agree after meeting and conferring, I prefer to handle these in the form of a statement of discovery issues so they can be addressed more quickly.

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

A: We follow the process for Statements of Discovery Issues (SODI), which is now codified in Rule 37(a).

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

A: After a SODI has been submitted for decision, I will either rule by signing one of the proposed orders or I will schedule a telephone conference, typically within a day or two. They are rarely set for in-court argument. Please comply with the requirements in the rule, including page limits. This is probably the only area where I do not allow overlength memoranda, and that is because doing so really undermines the purpose of the rule. If you have a

complicated legal or factual issue and the page limits prevent you from adequately addressing it, explain why and I will consider alternative procedures or supplemental briefing if necessary. Separate statements should not be used to get around page limits; file them separately only if they really present different factual or legal issues.

Remember to file a Request to Submit for Decision when the SODI (or any motion) has been fully briefed. The request to submit is what triggers us to look at the file - without one, we may not know something requires our attention. I try to address these matters as promptly as possible, typically within a day or two of being submitted for decision. If a matter has been filed, briefed, and submitted for decision, but you have not heard from the court, you should feel free to contact one of my judicial assistants to check on it.

Consistent with Rule 37(a)(5), a proposed form of order should be attached as an exhibit to the SODI, in pdf format.

Q: What is your approach to granting extraordinary discovery?

A: This is necessarily determined on a case-by-case basis. When disputed, I will allow extraordinary discovery that is necessary and proportional. I encourage counsel to provide specifics of what is needed and why, with reference to discovery that already has taken place, rather than an abstract or generalized argument about why the discovery is needed.

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

A: I follow the Utah Rules of Civil Procedure and applicable statutes. I find that, in general, most discovery disputes arise from good faith disagreements and differing interpretations of the rules, not from the kind of intentional conduct that typically warrants sanctions. When sanctions are warranted, however, I will impose them.

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

A: It goes without saying that parties should try in earnest to work out these matters without involving the court. If those efforts are unsuccessful, and if I am not on the bench, I will attempt to resolve the matter.

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: The changes to the discovery rules are fundamentally intended to benefit litigants by making the process faster and less expensive. Judges have been reminded repeatedly that in order to accomplish that goal, we must enforce them so don't be surprised when we do. At the same time, they are not intended to be another opportunity for gamesmanship, so don't invoke them when it really isn't necessary.

2. Motions

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

A: If a case is particularly important or dispositive, counsel may want to attach a copy of that case. If a case is unpublished, is not available on Westlaw, and you want me to read it, you need to attach it.

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 generally rely on electronic copies of memoranda that my judicial assistants assemble in advance of each hearing in an electronic folder. That folder contains a text-searchable copy of the briefs (with declarations and exhibits), the pleadings in the case, prior rulings and orders, and other relevant materials from the file. For that reason, we generally do not want or need binders with courtesy copies of memoranda. If the exhibits are unusually lengthy or complex, carefully-organized paper copies in a binder are helpful. If you're unsure if a binder would be

helpful, please contact one of the judicial assistants to inquire. If you do provide a binder, all parties' briefs need to be provided. To aid us in preparing electronic folders, we encourage you to consider the following, as they may apply to your case: (i) always follow the requirements of Rule 7 with respect to the format, naming, and content of memoranda (don't forget to combine your motion and memorandum); (ii) compile your memoranda and exhibits into a single pdf, to the maximum extent you can within efiling size limits (this saves time compiling the memoranda); and (iii) if memoranda and exhibits are particularly lengthy, consider providing us a text-searchable electronic version that contains hyperlinks to exhibits and cases (we use Westlaw), and pdf bookmarks for exhibits and attachments - these are all useful tools that we will use if you can provide them; they can be submitted to the judicial assistants by email or flash drive, depending on the size of the files.

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

A: I don't think I have ever denied a motion for an overlength memoranda (except perhaps for a SODI, see above), so you are pretty much free to file as long a brief as you want - but remember that longer does not mean more persuasive (on the contrary, the opposite often proves to be the case). Also, the longer the brief, the less time I have to study it carefully. Counsel almost always cooperate with respect to extensions, and I will approve an extension as long as it doesn't interfere with other dates in the case.

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 a hearing is going to be held, I will schedule a date and time after receipt of a Request to Submit for Decision. We try to get these out within a few days of receiving the notice. If you haven't heard from us, call my judicial assistants to make sure we have it. We select a hearing date and time that is available on our

calendar. If that date or time presents a problem, talk to opposing counsel and if everyone agrees, jointly call one of our judicial assistants to schedule a new date.

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

A: If desired, oral argument should be requested in writing in the motion papers, and noted in the Request to Submit for Decision. I follow Rule 7(e) with respect to granting hearings. I generally grant one if you request it.

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

A: Focus on the substance. Avoid name calling and gratuitous adjectives.

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

A: I don't insist on formalities, other than the obvious ones - be polite and respectful, don't interrupt, etc. I will have read your briefs and the principal cases before the hearing, so it usually isn't productive to repeat what's in the briefs. Conceding a weak or losing point often bolsters your credibility. Anticipate questions and don't assume that if I ask questions I disagree with what's being said - often the opposite is true. And if you disagree with something I say, don't be afraid to explain why (politely, of course).

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

A: TROs in domestic cases will be heard in the first instance by the assigned commissioner, and questions concerning procedures and protocol should be directed to the commissioner or the commissioner's assistants.

TROs in civil cases should be efiled, and counsel should notify a judicial assistant by telephone <u>after</u> the papers are filed. The

moving party must comply with Rule 65A(b)(1) and must file with the court the necessary written certification. Ex parte motions are strongly disfavored. I will review the written submissions and notify the moving party of any hearing dates; the moving party will be required to serve the opposing party notice of hearing date, as well as all papers filed with the court.
For preliminary injunction hearings, I typically require that direct testimony be provided by declaration exchanged in advance of the hearing, or by proffer at the time of the hearing, with such witnesses being available for cross-examination and re-direct, if necessary.

3. Final Pretrial Conference

Q: In your view, what is the purpose of the final pretrial conference?
A: To address those pretrial issues that can reasonably be addressed at that stage. This typically includes hearing motions in limine (which should be filed and fully briefed at least a few days prior to the final pretrial conference), discussing jury selection and voir dire issues, resolving those jury instruction issues that are not dependent on facts or evidence that may come out at trial, and any other procedural issues that will make jury selection and the trial operate more smoothly. I encourage counsel to ask questions and make any suggestions that will help trial proceed efficiently.

Q: What topics or issues should counsel come prepared to discuss at the final pretrial conference?
A: All pretrial motions, including motions in limine; witnesses, including scheduling accommodations that may be necessary; how exhibits will be handled; objections to exhibits that can be addressed at that stage; any unique jury instructions or special verdict issues that may be out of the norm; and other matters counsel identify as important (after meeting and conferring on the subject).

Q: What steps do you take, if any, at a final pretrial conference to encourage settlement of the case?
A: Typically none.

Q: Do you require clients to be present at final pretrial conferences?
A: Generally no.

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

Q: Do you appreciate or require pre-trial briefs from counsel?
A: Generally not at the final pretrial conference. If I need something, I will ask for it at the time I schedule the final pretrial conference.

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 conduct general voir dire with the entire jury pool to determine qualifications and gather basic background information. Counsel conducts individual voir dire when it is needed.

Q: When do you require requested voir dire questions to be submitted?
A: I only need voir dire that is specific to your case or type of case and generally like to have it by the time of the final pretrial conference. I prefer that counsel meet and confer and provide stipulated voir dire to the extent possible, and then separately provide non-stipulated voir dire.

Q: Do you allow or encourage the use of jury questionnaires? If so, by when must jury questionnaires be filed?
A: I will almost always allow a short (ie, one page) jury questionnaire that is stipulated and can be filled out by jurors in

10-15 minutes the morning they report (which should include qualification/competence questions). If you want a more involved jury questionnaire, I will consider using one in an appropriate case. With this type of questionnaire, I also require that the questions be stipulated to by all parties. If you want this kind of questionnaire, make sure to raise the issue early. Giving one involves some significant advance planning and it cannot be done at the last minute.

Jury Instructions:

Q: When do you require instructions to be submitted?

A: Generally by the final pretrial conference, and certainly by the first day of trial, I like to have on file three sets of jury instructions:
(1) stipulated instructions,
(2) plaintiff's instructions to which defendant objects, and
(3) defendant's instructions to which
plaintiff objects. Parties should have a meaningful meet and confer on jury instructions and should stipulate to the extent possible.

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

A: I have a standard set of civil and criminal jury instructions, both opening and closing, that are pretty much stock MUJI instructions. You can email my judicial assistants to obtain copies if you want them. If you have stipulated stock instructions that you prefer, that is fine as well.

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: Stipulated instructions, including stock instructions, should be submitted in final form - no citations, no page numbers, a blank line for numbering them, etc. Proposed instructions to which there is an objection should include citations and page numbers,

but
counsel should have handy a clean electronic copy of those instructions to be used if I determine that it will be given.

Q: Do you prefer to receive an electronic copy of requested instructions?
A: Yes. Stipulated instructions, in final form and in Word format should be provided. As indicated, have your disputed instructions in final form ready to go on a flash drive.

Q: When do you prefer to hear disputes over jury instructions?
A: When there are objections to closing instructions that turn on the facts, those objections generally cannot be resolved until trial. If the objections turn on purely legal matters, those often can and should be resolved at the final pretrial conference or some other time 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: My preferred trial schedule is 8:30 am to 2:30 pm, with a few short breaks and no lunch break.

Q: Do you prefer to hear disputes over trial exhibits before trial or during?
A: If the dispute is one that can be resolved before trial - ie, it does not require factual context - then before trial is preferred. If not, it has to be resolved during trial. If the dispute requires extended argument or cannot be addressed at a side bar, try to address it at the beginning or end of a trial day or on a break to avoid unnecessarily excusing the jury.

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

A: Get a stipulation or a ruling before using an exhibit in opening statement.

Q: What are your preferences with respect to trial exhibits? What are the preferences of your clerks with respect to trial exhibits?
A: To the greatest extent possible, please try to stipulate to receipt of exhibits and use a common set of stipulated exhibits. Where not stipulated, there needs to be a clear differentiation between the sides - one using numbers and the other letters, or one using numbers starting with 100, etc.
The original, marked set of exhibits should be placed in binders for the witness - one with stipulated exhibits, and one each for non-stipulated exhibits. Try to make it easy for witnesses to locate exhibits - for example, use different colored binders, clearly marked tabs, etc. Witness examination proceeds much more smoothly if you do this. If you're using an elmo or trial management software to project the exhibits on screen or on a monitor, please be sure to (i) have the back-up, hard copy set on the witness stand in case they are needed, and (ii) move for admission before publishing the exhibit to the jury.
If the exhibits in total are a binder or less, then provide me a courtesy copy in a binder as well. If they are voluminous, you can provide them to me in pdf form (using the exhibit number as the file name) and provide them on a flash drive.
My judicial assistants need a hard copy list of your exhibits, separately identified, with a place to mark off whether they are offered and received or not received.

Q: Do you have any guidelines or preferences regarding the use of technology at trial?
A: No. Practice with it. Have a backup plan in case it fails.

Q: What are your preferences and/or procedures related to witness scheduling?
A: Counsel should meet and confer and try to accommodate witness schedules. For longer trials, each side must disclose a "batting order" 24 to 48 hours in advance. Please be sure to

have witnesses scheduled appropriately, and have at least one witness waiting and ready to go at all times so we do not have the jury waiting for witnesses.

Q: Do you allow counsel to move freely around the courtroom during trial?
A: Yes, with two caveats: (1) please be mindful of the jury's space and do not approach the jury box unnecessarily, and (2) keep your voice up so we can get an audio record - if you're soft spoken, you should stay close to the microphone on the lecturn or request one of our lavalier 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. The same general rules apply though I'm much more likely to ask questions of the witnesses or counsel if there's something I need clarified.

6. Post-trial Issues

Q: Do you appreciate or require proposed findings of fact and conclusions of law from counsel?
A: It depends. If I need them, I'll ask for them.

Q: Do you appreciate or require post-trial briefs from counsel?
A: Only if requested.

7. Technology in the Courtroom

Q: To what extent do you allow the use of technology in your courtroom?
A: Within the limits of the rules, I will allow counsel to use whatever technological aids they find useful. We can't offer much more

than a screen, however, so whatever you want to use you have to bring.

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

A: I have seen some trial presentation programs and Powerpoint presentations that are very effective; I've seen others fall flat. The best ones are the ones that work seamlessly and don't interrupt the pace of the questioning. The worst ones are the kind that slow things down and become a distraction. It probably has more to do with the operator than the software so make sure you're proficient at whatever you bring (or bring someone proficient with you).

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

A: See above.

8. Criminal Matters

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

A: Absent unusual circumstances, I permit one scheduling conference before setting the case for a preliminary hearing. If the parties want time to discuss resolution, and the defendant consents, I will set the preliminary hearing out to allow this to occur, and if the parties reach a resolution, will set the matter for a disposition hearing by a simple phone call or email to my judicial assistants.

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

A: Any time. If the prosecution or victims are entitled to advance notice, that should be provided. I prefer addressing this with the benefit of an evaluation by pretrial services, and encourage you to request one in advance of the hearing.

Q: What is your policy, if any, on pleas in abeyance?
A: I do not have any standing policy. Pleas in abeyance are an appropriate and useful way of resolving cases, particularly those involving low risk offenders.

Q: What information do you want from counsel at the time of sentencing?
A: Most of the information I need is in the presentence report.

Q: Are private pre-sentence evaluations useful or encouraged?
A: It depends on the circumstances. I have seen some that are helpful. Others less so.

Q: Do you have any standard sentences the bar should be advised about, i.e., DUI sentencings, acceptance of alcohol-related recklessness?
A: No. It depends on the circumstances.

Q: How should counsel on busy law and motion calendar handle calling a case?
A: If you're ready, your client is ready, and the lecturn is empty, stand up.

Q: What advice do you have for prosecutors to be most effective in your courtroom?
A: Keep the victim(s) advised. Try to cover all the issues in your discussions with defense counsel to minimize the chance of unexpected problems. If it's an OSC, talk to AP&P (the in-court agent or assigned probation officer) so you know where AP&P stands.

Q: What advice do you have for defense counsel to be most effective in your courtroom?
A: Prepare your client. Same as above.

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: The Commissioner assigned to the case handles motion for temporary orders.

Q: What documents do you want filed before appearing on a motion for a custody evaluator?
A: The Commissioner assigned to the case generally handles these motions.

Q: What are the special procedures for filing a Motion for an Order to Show Cause?
A: The Commissioner assigned to the case will address any motions for order to show cause. If certified for contempt, the parties must file a written request for an evidentiary hearing. We will schedule the hearing and send notice.

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: Make sure they are complete, accurate, and up to date.

Q: Do you want any type of motion binder delivered? Is this helpful, or does e-filing render these obsolete?
A: See discussion above regarding courtesy copies.

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 discussion above regarding courtesy copies.

Q: Is there a special way that you would like proposed orders to be filed?
A: No. Follow Rule 7(f). Proposed orders that are approved as to form will be acted on immediately. Proposed orders that are not approved as to form should contain a certificate of service and the court will not act on them until the applicable periods of time have expired. An order should not contain an exhibit per Rule 7(f)(3). The title of the order should not indicate proposed.

Q: How should discovery deadlines be handled on petitions to modify, where a schedule is not automatically issued by the court?
A: The Commissioner generally addresses discovery disputes.

Q: Do you have a policy on child interviews with respect to custody?
A: These are discretionary and I will address the matter on a case-by-case basis. As a general matter, I can say that I will not do it unless there is a very good reason.

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: Rarely. The members of the bar overall conduct themselves very professionally in court. I occasionally have to remind counsel not to speak over one another.

Q: What are your opinions regarding courtroom dress?
A: I have no dress code.

Q: Do you allow children in your courtroom?
A: Absolutely.

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

A: Cell phones should be silenced in the court room (but I understand that occasionally people forget to do this; just silence it asap if it rings).
Cell phones should not be used to take photographs or video recordings in the courtroom unless you comply with the rules governing the use of cameras in the courtroom.

Q: What, if anything, do you do to enforce promptness in your courtroom?
A: This has not been a problem so I have not had to do anything. If you know you are going to be late, contact the judicial assistants and let them know.

11. Comments from Case Managers and Judicial Assistants

Q: The name, phone number, and email addresses of my judicial assistants is:
A: Team Contact 801-238-7302 3rdshaughnessyteam@utcourts.gov
Michael Starks and Mandy Acevedo

Q: My judicial assistant wants you to please do these things:
A: Please become familiar with the standards and tips available on the courts website regarding efiling. The following links will answer most questions regarding these issues:
http://www.utcourts.gov/efiling/
http://www.utcourts.gov/efiling/docs/formattingrtfdocuments.pdf
http://www.utcourts.gov/efiling/docs/Standards.pdf
http://www.utcourts.gov/efiling/docs/District_Contact_List.pdf
All orders must be approved as to form or contain a certificate of service showing the date sent to all other parties, as the last page of the order. Orders that are approved as to form are given to the judge for review and signing. Orders that are not approved as to form by all parties will be held by us for at least 10 business days to determine whether there are objections, and then given to the judge. So if you want your stipulated orders signed promptly, make sure they are approved as to form. Do not add

the word “Proposed” on an Order or in the additional text box in e-filing. The order will initially be filed as proposed.
All cases in which a monetary judgment is being sought by default, must comply with the requirements of Rules 55(b)(1)(D) and 54(b).

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.

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:http://www.utcourts.gov/resources/muji/