

Judge Randall N. Skanchy

## QUESTIONNAIRE FOR JUDGE'S BENCHBOOK

Third District Salt Lake / Tooele

### 1. Scheduling Conferences

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

A: Scheduling conferences are rarely used in my court, and, if necessary, are generally conducted by telephone. I expect the lawyers to submit a discovery plan and Scheduling Order at the initiation of litigation pursuant to Rules 16 and 26 and we docket the date upon which the matters should be submitted ready for trial.

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

A: Follow the URCP on submission and material in the proposed order.

### 2. Motions Practice

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

A: Yes. My notices usually instruct that courtesy copies be provided 30 days before the scheduled hearing. Upon the filing of a Notice to Submit, my clerk will contact counsel and set the hearing date. You should be prepared to say how much time you anticipate the hearing will take and a date will then be set. Thirty days provides the Court and its clerks time to prepare for the hearing.

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

A: Unless we hear from counsel first, the Court will call to schedule the hearing after the Notice to Submit has been filed. Counsel

may call to schedule the hearing after the Notice to Submit has been filed, and such calls are encouraged as they sometimes make it more convenient and timely.

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

A: Only upon the rarest of circumstances, when the result is obvious. The Court will usually call counsel on a joint conference call, provide the ruling, and deny the request for oral argument.

Q: What is your policy on allowing overlength memoranda?

A: I routinely grant them, although I have never been convinced that what needs to be said cannot be said in a more succinct and briefer manner. The art of persuasion is not enhanced by length.

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

A: I don't need string cites or recitations on the standards applied to summary judgments. Make the point and cite the law. A brief that is personally insulting to the other side's arguments is not helpful.

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

A: Yes, but only those pivotal to the case.

Q: What makes an effective motions argument?

A: Clarity, brevity, and a discussion of the leading or dispositive case law as it relates to the facts of the instant case. I will have read your memoranda, so don't recite it to me. Ask me if I have any questions you could address at the conclusion of your argument.

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

A: The requirements for TROs and Preliminary Injunctions seem to be often overlooked. Make sure your motion meets the threshold requirements before making it.

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

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

A: I use the Final Pretrial Conference to accomplish the following things: 1) outline the issues; 2) address any trial procedure issues; and 3) settlement discussions. I expect counsel to lay out their case, their witnesses, and be prepared to explain why the case cannot be resolved at pretrial.

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

A: The parties and counsel hear the outlines of each party's case. I then may direct questions or comments to the strength of any issue, and explain that, without hearing all the evidence, if it comes in as outlined, my ruling would be, more likely than not, along a certain line. I then ask counsel and clients to discuss settlement given my input.

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

A: Absolutely. I do not permit "available by telephone" pretrial conferences, as no meaningful settlement discussions can take place. I believe at a pretrial conference the parties have to look each other in the eyes before we proceed.

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

#### Jury Selection:

Q: How is voir dire conducted in your courtroom?

A: By the Judge.

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

A: Only to provide the judge proposed questions and to provide supplemental questions during or at the close of voir dire.

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

A: Criminal cases—day of trial; Civil cases—at the time of the pretrial order or as otherwise specified by the Court.

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

A: I use a set jury questionnaire on all criminal cases of one page in length. On a complicated criminal case, I may use an extended questionnaire prepared jointly by the parties.

#### Requested instructions:

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

A: Criminal cases—the day of trial; Civil cases—as directed by the Pretrial Order.

Q: What form do you prefer requested instructions to take (e.g., do you prefer instructions accompanied by supporting cases, etc.)? Is a citation to MUJI sufficient legal authority?

A: I prefer one clean set, unnumbered, and one numbered set. Case authority is unnecessary unless it is an unusual point of law or novel argument.

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

A: Yes, in criminal trials. They are available through my clerks.

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

A: No.

#### Trial procedures:

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

A: Normally 9 to 5, with an hour for lunch around 12:30 p.m. I am open, however, to whatever schedule best accommodates the parties, witnesses, and lawyers, keeping in mind the needs of my clerks.

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

A: Such motions need to be made before trial and are generally expected to be heard at or before the pretrial.

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

A: At the convenience of trial counsel, as long as the trial is continuous and without interruption or undue delay.

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

A: Numbered consecutively and stipulated to in the Pretrial Order.

## **5. Bench Trial Practice**

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

A: In a bench trial, the judge may ask questions of witnesses and I may instruct counsel on areas or lines of questions I don't need to hear. In a bench trial, the Court will take fewer breaks, be less patient with non-useful objections such as relevance or leading questions. I will take a more affirmative role in moving the examination along.

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

A. No.

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

A: Yes, if the case warrants it. In domestic cases, while a trial brief is unnecessary, an outline of the parties' property distribution requests and positions on other issues is extremely helpful.

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

Q: What makes an effective advocate in jury arguments?

A: Brevity, organization, deference to the judge, jury, and opposing counsel, and, most importantly, a pleasing demeanor.

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

A: Nuisance objections which interrupt and antagonize, overly long arguments, lack of organization, unfamiliarity with the rules or the law, and calling counsel or witnesses names. Brevity is persuasion to most jurors.

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

A: Badgering a witness; asking the ultimate question and then arguing with the witness over it; assuming you have to ask a question more than once for the jury to get it; ponderous, slow, and painful examinations.

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

A: Yes, in technical matters, scientific, or medical evidence. Otherwise, it looks and feels “too slick” to be useful, and sometimes is used, not because it is helpful, but to demonstrate supposed competence, which is time wasted.

## **7. Criminal Matters**

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

A: If stipulated to by opposing counsel, they are routinely granted. If not, parties are usually given wide latitude for continuances as necessary. Stipulated continuances can be handled through my clerks.

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

A: With notice to opposing counsel, at any time. If another judge, however, has denied a bail reduction, you need to advise me of it, as I generally will not permit the same argument to be used in a judge-shopping fashion.

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

A: Why I should deviate from the pre-sentence report if it recommends incarceration. I need to know if any statements in the pre-sentence report are inaccurate or wrong and need to be corrected.

I will usually tell counsel up front if the probation recommendation from the pre-sentence report is something I do not intend to follow, which should signal counsel that I intend to put the defendant in jail/prison for some period of time and the issue then is the venue and length of stay.

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

A: They are not encouraged and rarely do I find them useful. I have the feeling a service provider stands to make economic gain on recommendations in private evaluations.

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

A: Community service is rarely an option for me in DUIs, unless the defendant has a skill that would actually assist the community—such as a builder. I assume an alcohol related reckless plea is a result of evidence problems, and I require the prosecutor to outline the problem before I accept it. If a sex offender charge is being reduced to avoid the reporting and registry requirement, such a plea is generally disfavored by me, without an explanation on why I should accept it. Felony DUIs generally will go to prison, unless serious inpatient options are available.

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

A: Don't wait to be called. Move to the lectern and call the case.

## **8. Special Issues for Domestic Cases**

Q: Are there any special issues that arise in your courtroom in domestic cases of which you would like the bar to be aware?

A: I do not want children witnesses to the disputes and tug-a-war of parents. Protective orders obtained to gain a supposed advantage will create judicial disfavor to your client.

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

A: I need the financial declarations or pay stubs; I expect a completed child support form; and I want counsel recommendations. Parties need to come into these proceedings with clean hands. Counsel should try very hard not to have the parties come to the Court without agreement on a property division.

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

A: In appropriate cases involving custody, I will interview children, in the absence of parents and counsel, but only with their (the parties') consent.

## **9. Discovery Practices**

Q: What is your approach to resolving discovery disputes?

A: I impose monetary sanctions on the losing party for each violation in order to direct lawyers and their clients to make all reasonable efforts to comply.

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

A: I am not generally available, as I am usually on the bench. I can and will make myself available, however, and I will impose



sanctions as noted above. No judge likes discovery disputes as it usually involves unreasonable positions.

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

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

A: I'm not sure how to best handle such problems except to say counsel does not engender the goodwill and trust of a judge by behaving boorishly to opposing counsel or the bench. Since an advocate is trying to persuade a judge or jury, acting less than professionally is always counterproductive to the best method to be successful before a jury or a judge.

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

A: You may approach your witness without leave of court, but must ask to approach the other party's witnesses. The record only catches what is said at the lectern, so I generally require lawyers to stay at the lectern.

## **11. Other Miscellaneous Issues**

Q: What are your opinions regarding courtroom dress?

A: I expect appropriate attire from counsel—suit and tie for men, appropriate attire for women. No one is allowed in my courtroom in shorts, tank tops, chewing gum, wearing hats.

Q: Do you allow children in your courtroom?

A: Yes.

Q: Do you allow cellphones in your courtroom?

A: Yes, but they must be turned off. If a cellphone rings during court, my bailiff will confiscate it.

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

A: I start my calendar when it is scheduled, and a matter is stricken if counsel are not there.

## **12. Other Suggestions, Thoughts, Concerns**

1. Trial Day. If you have settled a trial-calendared case, we need to know immediately so the date may be opened up for other scheduling and counsel calendared for trial on that same date can be kept apprised. Criminal misdemeanor trials are scheduled for trial 7 to 10 cases deep and felony trials 5 cases deep, and, thus, it is important to a lot of people to know the status of a trial-scheduled case. Our juries can only be called off up until 3:00 p.m. the day before trial, so we need to know well before 3:00 p.m. if you are having a problem. If you are in a second or greater setting on a trial day, you need to have your witnesses in court and be ready to proceed unless my clerk instructs you otherwise.
2. Case Preparation. I read my cases 2 or 3 days before their hearings, except in complicated cases, and those files are reviewed much earlier than that. Accordingly, if you are making a late submission, the night before the hearing, it most likely will not be read. I am continually amazed that counsel may submit late and lengthy submissions the day before a hearing and expect that those pleadings have made the file and been brought to the Court's attention, neither of which is usually true. If you expect me to be prepared to appropriately review and discuss your case, you must be early in your submissions.
3. Professionalism as Officers of the Court. Judge James Sawaya once told me that he would sign anything I placed in front of him, because he assumed if I placed it there for his signature it was appropriate for his signature to be attached. He also told me if he ever discovered that to have been abused, he would never forget it. While I don't sign anything placed in front of me, I assume if you are asking for an order to be signed, or a default to be entered, that it is ready and compliant with the rules and is

appropriate to be submitted to the Court for signature. My memory is equally as long as Judge Sawaya's, and, if you abuse the trust and confidence this Court concedes to you as an officer of the Court, I, likewise, will never forget it.

4. Hospitality. As a private practitioner, my telephone rang 30 or 40 times a day. As a judge, my telephone rings twice a day; once in the morning as a clerk checks to see that I arrived safely, and once in the afternoon to know when I may be expected at home. This is a lonely job. I welcome lawyers stopping by to say hello, to introduce themselves, or to ask a non-case related procedural question.

You should also get to know my clerks if you are trying a case in front of me. They can answer all your questions; they like to put a face to a name and they can be very helpful in making sure your trial goes smoothly. Introduce yourselves to them, ask how they expect I will want something handled or scheduled and be personable. However, if you offend my clerks or are rude to them, you may rest assured that I will hear about it. My clerks work too hard, and are paid too poorly, not to be treated with great deference and politeness. They make my job much easier and I will protect them.

5. Correct Pronunciation and Spelling. Finally, particularly in my case, please spell my name correctly and be prepared to pronounce it correctly. While it may be a small item, it is indicative to the Court as to the care that you take on your pleadings to make sure that the assigned judge is correctly identified both in spelling and pronunciation. Make the Court's first impression of you be favorable.

### **13. Clerk's Comments**

Q: The name and phone number of my clerks is:

A: In Tooele: Tawni Lyzenga 435-843-3218.

In SLC: Chandee Israel 801-238-7416