

Judge G. Michael Westfall

## QUESTIONNAIRE FOR JUDGE'S BENCHBOOK

JUDGE: G. Michael Westfall - Fifth District Court

### Discovery

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

A: Only if requested. Typically the scheduling deadlines in Rule 26 are followed. However, if there is a reason to consider a different schedule it will be considered upon written request and notice to the opposing party. If there is a scheduling order unique to the particular case I prefer that the scheduling order include pleadings deadlines, Rule 26(a) disclosure deadlines, discovery deadlines, deadlines for dispositive motions, a date for final pre-trial conference, estimated length of trial, and whether the parties have demanded a jury or not.

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

A: It is intended that Rule 4-502 UCJA will be followed.

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

A: It is intended that Rule 4-502 will be followed.

Q: What is your approach to granting extraordinary discovery?

A: As long as standard discovery is exhausted a request for extraordinary discovery will be considered and, if stipulated, normally granted.

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

A: Have offending party pay fees of other party and grant a protective order.

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

A: Generally, yes.

## Motions

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 What about unpublished cases?

A: Yes.

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: Yes. I prefer that the copies be delivered at least two days prior to hearing.

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

A: If requested, I will normally grant the request. If I detect abuse, I may change that policy.

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: My clerk schedules hearings on the law and motion calendar if requested or, if the estimated time will exceed 20 minutes, on a special setting calendar. No hearing is scheduled unless I believe a hearing would be helpful.

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

A: I hardly ever decline a request for oral argument.

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

A: Generally, the arguments have been helpful but some facts contained in briefs have nothing to do with the matter at issue. Only make the argument once.

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

A: An effective motions argument is one that focuses on relevant facts & relevant law. Common mistakes include misstating the facts or quoting from a case that does not really support the attorney's position. Being polite is rarely a mistake.

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

A: I will require a bond if there is a possibility the defendant may be damaged or there is a possibility the plaintiff is just seeking to delay the inevitable.

## **Final Pretrial Conference**

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

A: To review issues, identify areas of agreement and dispute, i.e. facts, witnesses, exhibits, etc.

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

A: Stipulated facts, objections to witnesses or exhibits, jury instructions issues that need to be identified for trial and those that are not in dispute.

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

A: I ask attorneys to articulate the issue and what facts, if proved, would result in a decision in favor of his or her client.

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

A: Present or available by telephone on short notice

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

A: I prefer these motions to be filed sufficiently in advance of trial (10 days +) so that opposing counsel can respond and so that the issues can be taken care of prior to trial but not necessarily at the pretrial conference. However, the existence of a dispute that will result in such a motion should be identified at the pretrial

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

A: Yes, I appreciate trial briefs but do not always require them. If filed, they should be filed 10 days before the scheduled trial date so that the opposition can respond.

## **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: Through the use of general questions designed to identify possible concerns. When a concern is identified, I typically address it in chambers.

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

A: 10 days before the scheduled trial date.

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

A: I haven't allowed jury questionnaires, except in multi-day or high-profile cases. In those instances I expect a stipulated jury questionnaire that I will then review and finalize.

### **Jury Instructions:**

Q: When do you require instructions to be submitted?

A: If not at the pre trial conference then no later than 10 days before the scheduled trial date.

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

A: Yes.

Q: What form do you prefer requested instructions to take (e.g., do you prefer instructions accompanied by supporting cases, etc.)? Is a citation to MUJI 1st or 2nd sufficient legal authority?

A: I prefer a clean copy without citations, and a copy with citations. MUJI is helpful but may not be enough.

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

A: Yes.

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

A: At the final pretrial conference the disputes should be identified and then, if necessary, set for hearing prior to 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: 9 to 5 with an hour and a half for lunch. I have initial appearances at 1:30 nearly every day during every 4th week so on most days I go 9-12 and 1:30 to 5:00.

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

A: It depends. The disputes should be identified at the final pretrial conference and then, if a hearing is necessary, it can be scheduled at that time.

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

A: Counsel should make the request.

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 marked before trial starts.

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

A: Make sure it will work before its use is attempted. Don't waste everyone's time trying it for the first time at trial. Other than that, I have no preference either way.

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

A: I will allow witnesses to be called out of order if that reduces the inconvenience to the witness.

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

A: Ask permission first, otherwise remain behind the podium.

## **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.

### Post-trial Issues

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

A: Yes. I require them at least 10 days before the scheduled trial date in non-jury trials.

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

A: If appropriate.

## Technology in the Courtroom

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

A: I will allow it as long as counsel can make it work without delay.

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

A: That all depends on what it is.

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

A: Poorly done accident reconstruction videos are rarely helpful and there would have to be a significant amount of foundation before even a good one would be allowed.

## **Criminal Matters**

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

A: I generally grant them unless the case is old.

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

A: At any time, but I rarely consider a reduction absent a motion and hearing or a stipulation.

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

A: I generally approve them if the prosecution does.

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

A: Prior record; victim impact.

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

A: I don't encourage them but I don't discourage them either. My experience is that they tend to become more in the nature of advocacy but any information is helpful.

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

A: At least the minimum jail sentence in a DUI. I rarely, if every approve community service or home confinement as an alternative to jail. If there is a weakness in the prosecution's case that would warrant a reduction to alcohol-related recklessness I will consider it.

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

A: Be present and prepared to proceed. Unless they have appeared in front of me numerous times and I have called them by name frequently in the past, state his or her name prior to addressing the court for the first time.

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

A: Know the case.

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

A: Identify the issue and be concise.

### **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: Admonish clients and witnesses to not react to or communicate with a witness during that witness' testimony. Witnesses should be available and ready to testify, although proffer may be acceptable if witness confirms.

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



A: If financial issues are to be addressed, financial declarations with income verification. The moving/opposing parties' affidavits should already have been filed.

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

A: The motion is sufficient. However, counsel should be able to identify 3 potential evaluators if there is no agreement.

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

A: See Rule 10-1-501 UCJA.

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: It depends on the nature of the hearing. If the hearing is for temporary orders the amount of detail regarding property would likely be less than for a trial.

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

A: I always prefer courtesy copies unless the motion will be resolved based on evidence presented at the hearing and then courtesy copies are not necessary.

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: Courtesy copies about a week prior to the hearing are helpful. I do review them. However, courtesy copies the day prior are of little help at the hearing.

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

A: Electronically after a copy has been served on the opposing party, consistent with Rule 7 URCP.

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

A: I anticipate that Rule 26 would govern unless a party requests a discovery schedule unique to that case and then a request should be made by motion unless there is a stipulation. I understand that there are times that the deadlines in Rule 26 might not be appropriate in domestic matters.

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

A: Only by guardian ad litem absent very unusual circumstances. If I do interview a child then counsel will be required to submit proposed questions prior to the interview.

## **Courtroom Protocol**

Q: Is lack of civility ever a problem in your courtroom? If so, what steps do you take to address it?

A: Not so far.

Q: What are your opinions regarding courtroom dress?

A: Should be conservative and respectful.

Q: Do you allow children in your courtroom?

A: Yes, unless they become disruptive.

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

A: Not to be used in court. If they ring during court they are seized by the Bailiff and held until the end of the business day.

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

A: So far I have met privately with offending parties. Time will tell.  
However, in civil matters the party who is late normally loses.

### **Comments from Case Managers and Judicial Assistants**

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

A: Michell Hardman and her telephone number is 1-435-986-5716.

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

A: Jamie Perkes and her phone number is 1-435-656-7545.

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

A: - Last minute add-ons are always disruptive. Keep to a minimum.

- Access court calendar off of the internet site.

- Prosecutors, Defense Counsel, and the bar should make adequate number of copies so clerks are not asked to do so at last minute.

- Remember clerks cannot show favoritism to any attorney or law firm.

- Clerks must remain unbiased, impartial, in all cases.

- Speak clearly into the microphones and keep paper noise to a minimum.

### **Other items**

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: Contact Michell Hardman for copies.