2025 Bench Book for Judge Jennifer A. Mabey

Judge: Jennifer A. Mabey -Juab, Millard, Utah, and Wasatch counties– Fourth District Court

Date of Bench Book: September 30, 2025

Discovery

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

A: No

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

A: If I feel comfortable that I have sufficient information to rule without a hearing, I will do that. If I hold a hearing, it will generally be virtual.

Q: What is your approach to granting extraordinary discovery?

A: I will consider the complexity of the case, the number of parties, the amount at issue, etc. I am generally willing to grant some additional discovery if the request is explained and supported, but want to see that the parties have worked to keep it as limited as reasonably possible while still addressing the need to adequately explore the claims and defenses.

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

A: Discovery abuses or gamesmanship shouldn't occur. I try to address them in a way calculated to avoid prejudice to the complying party and to deter future abuses.

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

A: Rule 26, and the opinions that have been issued by our appellate courts, make it very clear that failure to disclose comes at a significant risk to the non-disclosing party. It is far better to over-disclose than to fail to disclose something that ends up being critical to your case. Also, be mindful of the need to disclose damage calculations (or at least the method by which those calculations will be made).

Motions

Q: Do you appreciate courtesy copies of briefs being delivered to your chambers prior to a motion hearing?

A: Yes. 7 days

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: Yes, generally. However, if counsel has not heard from my office within 2-3 weeks of having filed a Notice to Submit, please call. Unfortunately, I have limited staff at this location and if someone is sick or on vacation, things can get missed--I would much prefer that counsel call than to let things go uncalendared.

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

A: At final pretrial conference

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

A: Please take a look at the written calendar for that day and use the Calendar # to call the case (I use the written calendar and make my notes on it, so your help in navigating me to the right place on the calendar helps speed things up).

Final Pretrial Conference

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

A: I use the final pretrial conference to confirm the trial dates and to address any substantive pretrial motions--by "substantive," I mean that the decision will have a significant impact upon final trial preparations, such as the exclusion of a witness, certain evidence, etc. I generally will not address general objections to pretrial disclosures at the final pretrial conference.

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

A: Jury instructions (if applicable), timing for trial days, special schedules to accommodate witness availability, and any other unusual issues that may affect the flow of trial.

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

A: I will have already addressed potential settlement prior to getting to the final pretrial conference.

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

A: No

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

A: I am pretty liberal with continuances as long as the case is progressing. If nothing seems to be accomplished in between hearings, then I start to tighten down on requests for continuances.

Jury Trials

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

A: Yes. I use a standard questionnaire--any proposed modification must be submitted approximately two months prior to the final pretrial conference--this is a deadline that I discuss with counsel when scheduling the trial.

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

A: Yes. I discuss this with counsel when scheduling the trial. If I forget to bring it up, please ask.

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

A: If I feel as though the disputes are significant enough, I will ask my staff to schedule a hearing prior to trial. If they are minor, I will generally handle them during lunch or after the jury is excused for the day.

Q: Do you have any particular guidelines or preferences that counsel should be aware of regarding bench trials as opposed to jury trials?

A: I am more flexible with my scheduling during bench trials, and am willing to shorten lunches, or sometimes go beyond 5:00 if necessary to make sure we get through all of the evidence in the number of days we have allotted.

Post-trial Issues

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

A: Yes

Technology in the Courtroom

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

A: Yes. This is a broad question. My preference is that if counsel intends to use technology during trial, that they schedule a time to come to the court in advance of trial and make sure that their technology is compatible with the courtroom and will function properly during trial.

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

A: I am open to most forms of technology in my courtroom.

Courtroom Protocol

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 will generally start the voir dire process to address answers on the questionnaire that I have noted during my review. I will allow counsel some follow-up, depending upon the type of case.

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

A: No

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

A: At initial appearance (if counsel/defendant is prepared at that time). Once bail has already been addressed, any requests to modify bail need to comply with U.C.A. 77-20-207.

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

A: Although you have a lot of demands for your time and attention with conversations that are happening with defense attorneys, please try to be attentive to what case I have called--if it's not your case, then you are free to return to what you were doing. But if it is your case, please be attentive to what is being discussed to avoid the need for defense counsel (or me) to repeat the discussion.

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

A: Please don't wait until the day of court to try to convey important information to your client. Diligent communication outside of court is important and appreciated.

Other items

Q: Please provide the following information

A: Jennifer A. Mabey

Q: What is your practice with respect to modifying an initial case schedule under Rule 26?

A: I will almost always accept a stipulation from the parties modifying an initial case schedule. If the requested modification is not stipulated, and comes early in the proceedings, I am still open to the modification, as long as the moving party demonstrates proportionality to the case.

Q: What is your approach to protective orders? Do you often use something similar to the federal court standard protective order?

A: Generally, counsel submits the form of protective order to me for signature, so I will use whatever form they have agreed upon--generally it is fairly standard language.

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

A: I do my best to make myself available, but my trial and hearings calendar is very full. If I am in a trial, especially one with a jury, I generally will not make the jury/parties wait while I take the time to address deposition disputes.

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

A: No

Q: What about unpublished cases?

A: Yes

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

A: I have generally trusted counsel when they tell me that an overlength memorandum is necessary to adequately address all of the issues, so I routinely grant those requests. However, I will note that after reading the briefing, I sometimes find myself thinking that it could have been done within the page limits. I would encourage counsel to take the time to refine their arguments--longer isn't always more persuasive. I also encourage counsel to be cooperative with one another if extensions are requested. If that doesn't happen for some reason, I will consider the reason for the request, and whether the requested extension will prejudice the opposing party in some way.

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

A: I will decline to grant a request for oral argument consistent with Rule 7(h) of the Rules of Civil Procedure.

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

A: Please be courteous and respectful, and remember the rules governing civility and professionalism. The arguments on the merits are not enhanced by inappropriate disparaging comments about opposing counsel (for example). In fact, it leaves me with the impression that your legal arguments aren't very strong if you have to resort to personal attacks.

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

A: Similarly, counsel should limit themselves to arguments about the facts and the law and not attacks on opposing counsel. In addition, your arguments should be made to me, not to each other, and cross-talk (i.e., making comments during opposing counsel's arguments like "that's not true" or other non-objections) should be minimized. I make every effort to ensure that everyone has an opportunity to be heard, so please do not interrupt unless you have a specific objections (stated clearly, with reference to a rule, case, or statute).

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: I will generally proceed by way of proffer, with an opportunity for cross-examination. I generally will not accept or consider affidavits unless those witnesses are present (unless there is some hearsay exception that applies).

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

A: Yes

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

A: I generally use questionnaires to cover the majority of the questions that counsel wants to ask. Those questions must be submitted approximately 2 months before the final pretrial conference so that our staff can modify the standard questionnaire in Survey Monkey.

Q: When do you require instructions to be submitted?

A: I ask counsel to do their best to agree to a stipulated set of jury instructions. If they are unable to do so, any disputed instructions should be submitted 14 days before trial.

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: If counsel has stipulated, I don't need the citations. For any disputed instructions, I would prefer to have MUJI or case citations (or both, if counsel wants to argue that the MUJI instruction needs to be modified for some reason).

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

A: Yes

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 jury trials, I will start no earlier than 8:30, and will do my best to end by 5:00 (with an hour for lunch) in order to be considerate of their other obligations.

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

A: Other (please specify)

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

A: I generally do not allow exhibits to be used until they have been admitted into evidence.

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

A: I'm not entirely sure what this question means. However, I do request that counsel have their exhibits pre-marked. We are able to accept physical or digital copies, but would prefer to know in advance which will be used.

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

A: I am willing to be flexible with counsel if they have a witness with limited availability. Please be prepared to have that discussion at the final pretrial conference.

Q: What is your preference or practice regarding witnesses appearing remotely at trial?

A: My preference is that witnesses are physically in the courtroom. If that is simply not feasible for some reason, then I expect counsel to be very clear with their witness that they cannot rely upon anything other than their own memory. No notes, open screens on a device, or anyone in the room with them who might be trying to influence how they answer a question. I have had instances in which it became clear that the witness was receiving communications about how to answer certain questions--that completely undermines the credibility of the witness' testimony and may involve sanctions for the party/counsel who engages in that type of witness tampering. Also, if counsel has a witness who will be appearing remotely, it is counsel's responsibility to make sure the witness can access any exhibits that he/she may be asked to testify about.

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

A: Yes

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: Counsel should make sure they have an adequate connection to support video/voice transmission. If you are going to ask to share your screen, please make sure you have the images ready to go so we don't spend a lot of time waiting for that process to happen. Please remember that you are still in court, and professional attire is expected.

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

A: The type is not what matters as much as counsel's ability to smoothly navigate whatever tool they are using. The effectiveness is diminished if the presentation is choppy or the information is difficult to see/read.

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

A: Please see #46.

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

A: I'm unsure what this question is addressing. I generally accept pleas in abeyance, but have at times rejected one based upon the proposed terms.

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

A: Anything that they believe would be helpful to me in making a sentencing decision.

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

A: Yes

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

A: Possession of controlled substance cases generally involved court probation and a substance abuse evaluation, with credit for the cost of treatment applied to the fine (up to 50% of the fine amount). I take DUIs very seriously, because of the extreme risk that they pose to members of our community. My "standard" sentence on an MB DUI will generally involved community service as opposed to jail time, and will require a substance abuse evaluation, mandatory fine, and court probation. However, if a defendant gets to a point that they are convicted of an F3 DUI, I am moving away from the opportunity to voluntarily change their behavior and looking at what needs to be done to incapacitate them from endangering everyone around them (generally prison, or a lengthy jail sentence).