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## Judge Kate A. Toomey

### QUESTIONNAIRE FOR JUDGE'S BENCHBOOK

JUDGE: Kate Toomey - Third District Court

#### 1. Scheduling Conferences

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

A: *Yes. More often than not, we conduct them by telephone. Exceptions include cases where there are so many parties that a telephone conference would be confusing, and cases involving pro se litigants without telephone access.*

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

A: *I prefer that such orders include everything identified in Rules 26 and 16, with pretrial and trial dates deferred for scheduling until the close of discovery.*

#### 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: *I would prefer not to have courtesy copies except on the rare occasions when I ask for them, in which case I will set a date for their delivery.*

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: *The clerks who assist me initiate calls to set hearings.*

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

A: *I follow Rule 7(e). Unless it is a dispositive motion, I usually decline the request when the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by a hearing. I also usually decline the request when the motion is unopposed.*

Q: What is your policy on allowing overlength memoranda?

A: *I'm inclined to allow them if the situation warrants it, but I'd prefer that counsel work hard to avoid filing them.*

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

A: *Good writing and careful focus on the issues. Bad writing, including poor structure and errors in grammar and spelling, is distracting.*

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

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A: Yes, for cases outside this jurisdiction. Otherwise, no.

Q: What makes an effective motions argument?

A: Concise, clear presentation of the legal issues and the ability to engage in dialogue.

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: Don't bring it to me without involving the adverse party or their counsel, or having an excellent reason why you didn't.

### 3. Final Pretrial Conference

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

A: Making sure that everyone is ready and that the trial proceeds smoothly.

Q: What topics or issues should counsel come prepared to discuss?

A: Procedural issues, witnesses, exhibits, proposed jury instructions, and any questions that could be resolved before trial starts.

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

A: None. But I ask counsel to keep me advised.

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

A: Yes, usually.

### 4. Jury Trial Practice

#### Jury Selection:

Q: How is voir dire conducted in your courtroom?

A: I ask basic initial questions, then permit attorneys to conduct their own within the limits of the rules and the interpretive case law, and with an outer time limit.

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

A: Yes; I ask them to keep it within reasonable time limits so that selection is complete before the end of the first morning.

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

A: I don't have one.

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

A: If the case is complex, I would consider it.

#### Requested Instructions:

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

A: *At the final pretrial conference.*

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: *A MUJI citation is sufficient. If I need more, I ask for it.*

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

A: *No.*

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

A: *I ask for both formats.*

#### 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: *I prefer 9 to 5 with an hour for lunch.*

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

A: *I would rather have them submitted well in advance of the trial unless it's truly unavoidable because the issue could not have been anticipated. Oftentimes, good planning helps avoid eleventh-hour scrambling.*

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

A: *I prefer to let the attorneys work it out, and to do so in a way that minimizes delay.*

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

A: *Pre-marked with consecutive numbers (e.g. Plaintiff's 1, 2, 3, etc., and Defendant's 10, 11, 12, etc.) and no sub-parts (such as 1-A, B, and C).*

#### **5. Bench Trial Practice**

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

A: *In jury trials, I tend to take more frequent recesses so that the jurors can be as comfortable and alert as possible. In bench trials, I sometimes ask questions.*

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

A: *If I want them, I ask for them.*

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

A: *Again, if I want them, I ask for them. When I ask for briefs, I set a deadline for simultaneous filing because I do not wish it to become an additional forum for responsive briefing.*

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

Q: What makes an effective advocate in jury arguments?

A: *Keeping them interested and being courteous. No one likes to be bored, and no one likes a bully.*

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

A: *Reiterating a point to death and being rude.*

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

A: *Keep the questions simple. Know when to stop.*

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

A: *Personally, no. I have no opinion about whether they're effective with jurors. It's a rare occasion, even with advance set-up, that there isn't some sort of hitch.*

#### **7. 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 really appreciate it when counsel represent their clients with diligence and skill without acting in a manner inconsistent with the Standards of Professionalism and Civility.*

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

A: *Sufficient evidence to warrant what's being requested.*

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

A: *No.*

#### **8. Discovery Practices**

Q: What is your approach to resolving discovery disputes?

A: *I hear from the attorneys and then make a decision that seems reasonable to me considering all the circumstances.*

Q: What are your thoughts on imposing sanctions for discovery abuses?

A: *I'll do it if the situation warrants it.*

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

A: *Yes.*

#### **9. Thoughts on Courtroom Protocol**

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

A: *Ever is a big word. On those rare occasions, I ask counsel to dial it back a little. Each counsel table has the*

*Standards of Professionalism and Civility, and I hope this helps remind people that I place a premium on civility.*

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

*A: Counsel should ask to approach witnesses for the first time, and I direct attorneys not to hover over the jurors. Other than that, they can go wherever they want.*

#### 10. Other Miscellaneous Issues

Q: What are your opinions regarding courtroom dress?

*A: I expect professional attire for attorneys, but I understand that coming to court isn't always foreseen.*

Q: Do you allow children in your courtroom?

*A: It depends on the nature of the case and the age and demeanor of the child.*

Q: Do you allow cell phones in your courtroom?

*A: I prefer that people turn them off.*

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

*A: I try to be prompt myself.*

#### 11. Clerk's Comments

Q: The names and phone numbers of my clerks are:

*A: Kathy 238-7516; Beth 238-7352*

Q: My clerks want you to please do these things:

*A: Call as soon as you know a case is resolved, especially if it is set for trial or a hearing. Do not call to ask when the Judge will make a decision or sign documents you have submitted. Make sure the correct case number is on any document you file. Do not ask the clerk how to prepare pleadings or other documents. Make sure you return client calls and keep them informed of the status of their cases.*



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