

# BENCH BOOK

## Commissioner T.R. Morgan – Second District Court

### 1. INITIAL CONSIDERATIONS

- a. #1 Rule - Whether in person or on the phone, be polite, professional, and grateful to office staff/personnel and opposing counsel and parties. Failure to follow this rule will not help your client.
- b. #2 Rule - Unless a party has a medical condition, hats are not allowed to be worn in my courtroom. (and they shouldn't be worn in restaurants)
- c. I have very little patience for attorneys that make personal attacks on opposing counsel. It is unprofessional and will not be tolerated.
- d. Counsel may address the court from the podium/lectern or from the table. I understand that there are circumstances when you need an entire table to arrange your paperwork. I also want counsel to be relatively comfortable.
- e. When scheduling a hearing, make sure it is for a day and time that your client can appear. Having a party appear by phone is acceptable in limited circumstances.
- f. If you resolve a matter and/or enter into a stipulation prior to the hearing date, please call and cancel the hearing.
- g. If you file a motion to continue and requisite notice to submit, also call the clerk to inform them that a motion has been filed and (if not agreed) to set a telephone conference call on the motion.
- h. Please take note of URCP 101(h), "*Copies of court papers such as decrees, orders, minute entries, motions, or affidavits, already in the court's case file, may not be filed as exhibits.*"
- I. I like periods in my name (ie: T.R. Morgan) and my position is District Court Commissioner.

### 2. DISCOVERY

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

A: I often hear Motions for Temporary Orders early on in the proceedings. As such, I try to set a schedule from that point for mediation, peculiar discovery, custody evaluation, pretrial, or whatever is the most logical next step.

A separate scheduling order usually isn't required, and the parties will either follow the discovery time lines in Rule 26 or have a deadline set when they come to pretrial.

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

A: Generally the parties are to follow the procedures outlined in Rule 37 of the Utah Rules of Civil Procedure.

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

A: If a motion to compel is filed, it's set on my regular calendar. If a Statement of Discovery Issues is filed along with a request for a phone conference, it's scheduled for a phone conference.

**Q: What is your approach to granting extraordinary discovery?**

A: Each case is different, but unless there are parties who have interests in multiple businesses or there are specific medical/mental health concerns, it's difficult to envision a case that would require much more than the normal allocation.

If both parties agree, I will grant stipulated requests to expand the scope of discovery.

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

A: Attorney fees are the first step. Next, if parties just will not do what they need to do to preserve a claim, it isn't fair for the other side to have to try to litigate blind. Rule 37 allows for further sanctions for uncooperative parties. However, a Statement of Discovery Issues does not, by Rule, allow a request for sanctions. A Motion for Sanctions is required if the Order from the Statement of Discovery Issues is not followed.

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

A: I am generally in hearings all day. The parties would have better luck communicating with the judge assigned to the case.

**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: Personally, I liked the old procedures where opposing counsel would get on the phone with each other and make their own schedule for discovery and filing motions. It seemed to me that there were less issues with motions to compel and deadlines.

Counsel was able to plan a schedule that was tailored to the specific issues. I think it is somewhat ridiculous that parties in divorce proceedings should be limited in discovery scope from the beginning. I prefer parties to work together to establish discovery that is appropriate for the case at hand. I have little patience for parties and/or counsel whom I feel are just using discovery (or failing to answer) in an attempt to play games with the other side.

Finally, while the limit of 10 interrogatories includes all discrete subparts, it is inappropriate to object to requests for interrogatories by trying to argue that the requesting party has exceeded the 10 interrogatory limit with subparts, when those subparts are not discreet (distinct and separate), but are in fact part of the question.

### 3. MOTIONS

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

A: No. I can look up cases, so long as they are cited correctly.

**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: The only courtesy copies I like are financial declarations. I usually print these documents so I can take notes on them, so having a courtesy copy is helpful. I don't need all of the attachments required by Rule 26.1, though.

**Q: What is your policy on allowing over length memoranda? Extensions of the briefing schedule?**

A: I generally will not allow it. I know of few issues that can't be described and argued in 10 pages or less. Occasionally there will be an unique issue that requires additional briefing, but in my court, get to the point and make your best argument first.

**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: After filing a motion and accompanying documentation, a quick call or email to my clerk to schedule the matter is required.

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

A: Motions before the commissioners generally require a hearing. If both parties stipulate to waive oral argument I will usually grant such request.

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

- A:
- I. SHORT, SWEET, TO THE POINT! KEEP IT RELEVANT. Maybe what happened 10 years ago doesn't actually matter that much. It is generally more helpful for the court if you spend your facts and arguments on addressing the recent past. Make your best arguments first! While I truly appreciate zealous advocacy, I get annoyed quickly when I have to read personal attacks directed at opposing counsel.
  - ii. Hyperbole, editorializing, and *reductio ad absurdum* are unhelpful and annoying.
  - iii. Requests should be just that, a request for the Court to do something, ie: The Court *should* find... not The Court *shall* find...
  - iv. It is also generally unhelpful to argue that the Court *must* do something. Any good attorney knows that in law (especially family law) and in life there are exceptions to almost everything.
  - v. When preparing financial declarations, round your numbers. It is time consuming and tedious to do calculations on the fly during hearings and worry about a few cents here or there.

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

- A:
- I. Assume that I have read the motions and supporting affidavits (at least up to the page limits) because I do.
  - ii. The time for hearing is brief so get to the point and make your best argument up front. Don't waste the court's time and patience with extraneous finger-pointing and name calling.
  - iii. Don't spend your time telling the court what your opponent's argument is. Make your arguments. I have already read theirs.
  - iv. Also, making an objection just to put on a show for your client (even if appropriate) isn't always helpful.

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

- A: In the 2nd District, commissioners conduct the 10-day hearing following the issuance of a TO. These hearings are set for either 15 or 30 minutes, so do not anticipate that

witnesses will be called. If you are attempting to modify a prior decree, Rule 106 requires that a petition to modify be filed even if your motion to modify is filed as a TO.

#### 4. PRETRIAL CONFERENCE

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

A: For me, a pretrial conference is to identify what issues are resolved, what issues are in dispute, and what needs to be done to get the disputed issues to trial.

For good reason, I will always entertain a request for a Rule 16 Status Conference.

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

A: The nature of the disputed issues and how to prepare them for trial.

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

A: If counsel are involved, I generally defer to them as to whether settlement is possible. With pro se parties, I talk through the issues and what the possible outcomes are.

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

A: I prefer it but I don't require their presence.

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

A: Those motions would go before the judge.

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

A: No. But best practices is that trial briefs be filed with the Judge prior to trial.

#### 5. 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: When filing motions, please follow Rule 101 of the Utah Rules of Civil Procedure. A motion should state succinctly and with particularity the relief sought. A motion

that does not list what is wanted but merely, “requests relief as alleged in the accompanying affidavit” is not in compliance with the rule.

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

A: Motion, Affidavit/Declaration in Support, Financial Declaration and generally a certificate of completion of the Divorce Orientation class.

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

A: Motion, Affidavit/Declaration in Support, Financial Declaration. (A Stipulation for the Appointment of a Custody Evaluator is preferable.)

**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: I. Financial declarations should be completed as required by URCP 26.1, however, if a party is requesting a modification of child support after the entry of a Decree then only the income information is really necessary. Monthly budgets and home value, etc. are not germane and I don't care if that portion of the Financial Declaration is completed.

ii. If either party owns/operates a business (LLC, C corp, S corp, self-employed Schedule C business, etc.) please include the most recent quarterly and yearly Profit/Loss statements, as well as the first 2 pages of the most recent tax return.

iii. I have ordered parties to jail if they continue to delay and not comply with discovery orders. Striking pleadings is always an option if necessary.

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

A: Exhibit binders for evidentiary hearings and informal trials are extremely helpful. Make sure to have 4 copies, 1 for me, 1 for you, 1 for opposing counsel, and 1 for the witness(es).

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

A: Each case is unique so I do not have a general policy. I am not adverse to meeting with children and sometimes I specifically request it, especially if the child is 17 years old.

6. **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 usually. If someone crosses the line, I will call them out on it relatively quickly. If persons in the gallery are disruptive, or if I take a recess to consider the matters before me and attorneys act unprofessional in my absence then my bailiff has *carte blanche* to take any necessary actions, including removing the person or attorney from the courtroom.

**Q What are your opinions regarding courtroom dress?**

A: I. For parties - business casual is appropriate, hoodies, hats and shorts are not.  
ii. For Attorneys - business attire

**Q: Do you allow children in your courtroom?**

A: I reserve the right under UCA §78A-2-208 to exclude anyone who does not have a direct interest in the proceedings. Children who are subject of the proceedings are not allowed in my courtroom. Occasionally as appropriate, I will interview minors in chambers.

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

A: An attorney may have and use their cell phones. Parties and those in the gallery may not. There are occasions when there is a particular piece of evidence that is on a phone. At that point, I may ask the attorney to have their client access said evidence. No one is allowed to record the proceedings without my specific permission. A court generated audio file may be requested at the front counter.

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

A: That has not been a problem as yet in my courtroom. I reserve the right to hear the matter, continue it, or in the rare instance to strike the hearing.

7. **COMMENTS FROM CASE MANAGERS AND JUDICIAL ASSISTANTS**

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

A: Cindy Bills, 801-447-3914

