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## Civil Case Management Pilot Program

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### Introduction

The Futures Commission of the Utah State Bar recommended in July, 2015 that "the Bar Commission endorse and promote increased judicial case management oversight of dockets...." The Advisory Committee on the Rules of Civil Procedure reached a similar conclusion in 2014, and the Supreme Court has approved this pilot program for active judicial management of tier 3 and select tier 2 civil cases.

The experience of other jurisdictions strongly suggests that early and active judicial case management is key to efficient litigation, particularly in complex cases. With this in mind, the committee proposed, and the Supreme Court approved, a pilot program for select cases in the Second, Third, and Fourth Judicial Districts. Starting on January 1, 2016, and continuing through December 31, 2017, all tier 3 cases randomly assigned to the participating judges will be part of the program. Also, excluding family law cases and debt collection cases, tier 2 cases randomly assigned to participating judges in Districts Two and Four will be part of the program.

The district court has for years been applying evidenced-based practices in drug court and in other problem-solving courts. Legislation at the 2015 legislative session adopted evidenced-based practices in criminal sentencing generally. Measuring the impact of the pilot program is Utah's second application of that principle in civil cases. The first, which was proven successful—as opposed to just sounding good—was the effort to focus and speed up discovery.

Cases within the pilot program will be measured against other tier 2 and tier 3 cases. Counsel, parties, and judges will be surveyed. One premise to be tested is that early and active judicial case management will result in decreased time to disposition and reduced litigation costs. If litigation becomes more efficient and less costly, while still achieving just outcomes, the hope is that litigants, lawyers, and judges will have greater satisfaction with the judicial process.

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## Outline of case management pilot program

As soon as possible after the parties are known, the judicial assistant will notify the parties that their case is part of the pilot program, that the default discovery limits apply, but that the judge will schedule a Rule 16 conference for the purpose of entering a case management order, which will govern discovery limits and procedural deadlines.

The Rule 16 conference will be held approximately 28 days after the defendant's initial disclosures are due. Lead counsel will be required to attend, with telephonic participation available in exceptional circumstances. Before the conference, counsel are to file a detailed statement of the case, including the party's factual claims and legal theories. The statement of the case is not intended to persuade the judge of the merits of the case but instead to educate the judge on the complexities of the case for the purpose of establishing proportional discovery limits and realistic timeframes. The case management order resulting from the conference will establish a firm trial date or a firm date for dispositive motions, as the judge prefers, as well as firm dates for interim steps.

After the initial conference, the judge will hold periodic status conferences, as needed, including one or more during fact discovery and one at the close of fact discovery. The primary purpose of the periodic conferences is to ensure that the case is progressing as planned. Some cases may require more frequent conferences; others fewer, depending on the circumstances.

Discovery disputes will be handled using [Rule of Civil Procedure 37\(a\)](#)—formerly Code of Judicial Administration 4-502—statement of discovery issues. The participating judges also have the option to advise the lawyers to simply arrange a meeting, perhaps by telephone, to discuss and resolve a discovery dispute without the need for written statements. At the close of discovery, a status conference will be held to set a trial date and otherwise prepare for trial.

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## Participating judges

Click on a judge's name to link to his or her benchbook page sponsored by the Litigation Section of the Utah State Bar.

### Second District

- [Judge David Connors](#)
- [Judge Thomas Kay](#)
- [Judge Brent West](#)

## Third District

- Judge Barry Lawrence
- [Judge Ryan Harris](#)
- [Judge Andrew Stone](#)

## Fourth District

- Judge Christine Johnson
- [Judge Derek Pullan](#)

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## Notice of participation in the pilot program

As soon as possible after the parties are known, the judicial assistant will notify the parties that the case is being assigned to the pilot program; that the default discovery limits apply, but that the court will schedule a Rule 16 conference for the purpose of entering a case management order. The notice will describe the purpose and requirements of the conference.

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## Rule 16 conference

The purpose of the conference is to focus the litigation on the issues that are truly in dispute and to understand what is required to resolve the litigation efficiently and fairly.

As part of the conference, the judge will set limits on the various discovery methods and the time in which to complete discovery, which may be the same, less, or more than the default limits. It is expected that this process will reduce or eliminate the need for extraordinary discovery. The judge also will set a cutoff date for dispositive motions. The scheduled dates are firm, and continuances—even if stipulated—will not be granted, except for extraordinary, unanticipated circumstances.

The judge will schedule periodic status conferences as needed. The lawyers may express their opinions about the anticipated need for status conferences. And, if the need arises, the lawyers will be able to request a conference outside of those that are regularly scheduled. Likewise, the judge might initiate a conference outside of those that are scheduled in the case management order. If the case is progressing smoothly under the management order, "hands-off" is a legitimate management tool. The primary purpose of the conferences is to reassure that the management plan is on track. A secondary purpose is to remove excuses for requests for continuances.

The judge will set a deadline for dispositive motions and motions in limine or possibly a trial date. If the judge plans to rule on the motions at the final pretrial conference, the motions, including cross-motions, should be filed at least 35 days before the pretrial conference.

The judge's rulings will be memorialized in a case management order.

**Date.** The judicial assistant will contact the lawyers to schedule the conference when the first answer is filed for a date approximately 28 days after the date the defendant's initial disclosures are due. Disclosures are due 42 days after the first answer is filed.

**Lead trial counsel.** It is up to the attorneys to identify lead counsel—the lawyer who has the authority to make decisions about the case—and lead counsel must participate in the conference in person. The judge may permit participation by telephone or video conference if there are exceptional circumstances.

**Statement of the case.** The lawyer must file a written, detailed statement of the case, including the factual claims and legal theories at least 14 days before the conference. The statement of the case may be no more than 10 pages. The purpose of the statement is not to convince the judge of the merits of any claim or defense, but rather to describe the case and what discovery is needed so that the judge can decide on a reasonable management order. The judge will gather as much information about the case as the statement of the case and the pleadings and other papers provide.

**Mediation; settlement.** The judge will explore ways, including mediation, to focus on the disputed issues. If the judge directs mediation, the case management order will include the effect of mediation on discovery and other deadlines.

**Proportional discovery.** [Rule 26\(b\)\(2\)](#) governs proportional discovery. The statement of the case should reasonably and accurately inform the judge of the amount, methods and timing of discovery that are proportional to the case. The judge will recognize the value of the lawyers' judgment in establishing proportional limits, but will not allow the lawyers to dictate the pace at which a case will move. The judge will explore how best to structure discovery:

- Identification of lead counsel.
- Party's factual claims.
- Party's legal theories.
- Is there a good reason not to refer this case to mediation?
- What are the core issues?
- What information is needed about those issues?
- What is the relevance of particular evidence to the core issues?
- What information is needed to make intelligent settlement negotiations possible?
- What are the best sources for that information?
- Is information in the possession of non-parties from whom discovery under Rule 45 will be required?
- Will discovery include electronically stored information?
  - What types of discoverable information are in electronic form?
  - What should be the schedule for production?
  - In what form is ESI ordinarily maintained and will it be produced in that form or in another form?
  - Where and on what type of media is ESI maintained?
  - Who are the key people knowledgeable about discoverable ESI and the servers or devices on which it is maintained?
  - What steps are being taken to preserve ESI?
  - Has ESI been deleted? Can it be restored? Does it need to be restored? Who will bear the cost of restoring it?

- What are the most efficient methods of identifying discoverable ESI (e.g., sampling, key word searches)?
- What ESI is not reasonably accessible? What are the costs of retrieving that information? Why it is needed? What conditions should be placed on its production? Who will bear the cost of production?
- Is there a need for a special master, consultant or technician?
- Who are the critical witnesses? What are the critical documents?
- What is a reasonable timeline for obtaining that information?
- What is the likelihood that discovery will be the subject of a protective order?
- Should some elements of discovery proceed before others?
- Proposed dates for various case milestones.

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## Case management order

The case management order will memorialize the agreements and decisions from the case management conference. Because the order includes the participation of the lawyers, it is expected that there will be a high degree of compliance.

- Discovery
- Due dates for various stages in the case.
  - Status conferences.
  - Amended pleadings.
  - Joinder.
  - Fact discovery.
  - Expert discovery.
  - Pretrial conference.
  - Dispositive motions and motions in limine and/or trial date.
- Standards for continuances.

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## Standards of Professionalism and Civility

### Standards of Professionalism and Civility

Professionalism among lawyers has been shown to help move the case forward and to help settlement, and the participating judges expect professionalism, courtesy and respect at all times. If a lawyer does not adhere to the Standards, the judge may:

- conduct an off-the-record discussion with counsel;
- conduct an on-the-record discussion with counsel;
- refer for counseling under Supreme Court [Standing Order 7](#); and
- order sanctions, if all else fails.

## Discovery disputes

Rule of Civil Procedure 37(a) governs the resolution of discovery disputes. In addition, the judge may permit the lawyers to quickly and easily schedule a conference, perhaps by telephone, without the need for a statement of discovery issues. If a conference is held, lead counsel must participate. The judge will encourage the lawyers toward an agreement if possible, and rule on the dispute promptly if needed.

## Pretrial conference

**Motions in limine.** Before filing a motion in limine the lawyers must meet and confer in a good faith effort to agree upon remaining issues. A motion in limine must be fully briefed and ready for argument at the final pretrial conference. Once the final pretrial date is set, the deadline for filing a motion in limine can be calculated. The judge might encourage the lawyers, instead of filing a motion, to confer and discuss how any issues might be raised and resolved during the pretrial conference. The judge will try to rule on motions in limine at the pretrial conference to leave the lawyers time during which they can determine how their case is going to unfold at trial. Lead counsel must participate at the final pretrial conference.

**Jury instructions.** Before filing requested jury instructions, the lawyers must meet and confer in a good faith effort to agree upon them. The lawyers should file a joint stipulation to the agreed-upon instructions, and each lawyer should file a request for additional instructions not agreed upon. Disputed jury instructions must be fully briefed and ready for argument at the final pretrial conference.

## Forms

- Notice of assignment to pilot program -  [PDF](#) |  [Word](#)
- Notice of Rule 16 conference -  [PDF](#) |  [Word](#)
- Statement of the case -  [Word](#)
- Case management order -  [Word](#)

