



Hon. David Nuffer Chief Judge, U.S. District Court for the District of Utah

It is hard to define Chief Judge David Nuffer. Is he a Renaissance Man? Is he the judicial equivalent of Sheldon from the television show, *The Big Bang Theory*? Or, as widely suspected, is he the Most Interesting Man in the World? Perhaps he is all three.

Indeed, one commentator has observed that the following facts appear to apply equally to Chief Judge Nuffer and the Most Interesting Man in the World:

- He has won a lifetime achievement award—twice.
- He once got pulled over for speeding, and the police officer ended up getting the ticket.
- He has taught old dogs a variety of new tricks.
- He once had an awkward moment, just to see how it feels.
- He lives vicariously through himself.¹

Following a distinguished career as a named partner in a prestigious St. George, Utah, law firm, Hon. David Nuffer quickly ascended from U.S. magistrate judge (2003) to U.S. district court judge (2012) to chief judge (2014). In addition to maintaining a full caseload, Chief Judge Nuffer is an adjunct professor at Brigham Young University's J. Reuben Clark Law School. He also teaches information technology courses to federal judges throughout the country on behalf of the Federal Judicial Center (often while wearing a multicolored beanie cap with a propeller). He has been heavily involved in lecturing about the American legal system to judges throughout



the world—including judges from Ukraine, Turkey, Iraq, Czech Republic, Brazil, United Arab Emirates, and Iran.

Chief Judge Nuffer's past accomplishments include serving as president of the Utah State Bar and chair of its Long-Range Planning Committee, as a member of both state and federal committees on the Rules of Civil Procedure, as a St. George Chamber of Commerce president, and chair of the Utah State Judicial Conduct Commission.

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Although Chief Judge Nuffer has served in many different judicial capacities, there are some constants: He expects lawyers to be thorough, civil, and polished in their writing and well-prepared in the courtroom.

As most Utah lawyers well know, Chief Judge Nuffer is an ardent advocate of technology, tirelessly encouraging lawyers and judges to modernize their practices. He happily reports that 85 percent of federal judges now have iPads. “They are easy to read, easy to use, and have become an indispensable tool for judges,” he notes. However, he uses a Surface Pro 3, which, he says, gives him access to more tools in a small mobile package.

Chief Judge Nuffer strongly encourages lawyers appearing before him to provide hyperlinks in all pleadings—including links to statutes, cases, and other relevant portions of a brief. He also advises lawyers to provide links to specific pages in cited exhibits: “Few lawyers are providing these links, and I believe they should be standard practice for lawyers appearing before me. It allows me instant access to record facts and research authorities that are often critical to my decisions.” He reports that the federal courts “are trying to make these tools of technology easier to use. The capability now exists to easily build an entirely electronic brief. I highly recommend all lawyers learn these simple skills.”²

Chief Judge Nuffer clearly follows his own advice about using technology.³

In his chambers, he has two very large computer monitors that appear, at first glance, to be flat screen TVs that most would use to watch sporting events. He uses them instead to review email, examine case documents filed electronically via Case Management/Electronic Case Files, and draft opinions. He also takes his beloved Surface Pro 3 and Note 3 with him on the road, which also allow him to then review pleadings and draft opinions.⁴

Chief Judge Nuffer has one career law clerk and three term clerks. He makes extensive use of interns, calling them essential to what he does on a daily basis. Many of his interns come from the two Utah law schools, but he has worked with interns from law schools across the country.

Chief Judge Nuffer is very open about his decision-making process. He admits that he tends to over-study issues prior to making a final decision. He typically goes through two phases in reaching judicial decisions. First, he reviews the pleadings and makes an initial decision. He then reads everything again, reevaluates his initial decision, and reaches a final conclusion. After reaching his “final answer,” he writes and rewrites his opinion until he is satisfied that it is fair, thorough, and correct.

Chief Judge Nuffer “enthusiastically” follows the recommendations of Bryan Garner’s *Manual on Legal Style*, including putting citations in footnotes and eliminating substantive footnotes. He encourages counsel to also follow Garner’s guidelines.

Chief Judge Nuffer views legal writing as “creating art.” That is a standard he applies to himself and what he expects from lawyers appearing before him. Not all pleadings qualify. “As I’m reading a poorly written brief, I often wonder whether counsel really believes what he is arguing to me.” When the parties’ positions are not well-argued, it requires much more work on the part of Chief Judge Nuffer and his staff. Again, calling upon the words of Garner, the Chief Judge encourages counsel to create an initial draft and edit (and re-edit) the draft until the final stage of writing, which Garner refers to as “the work of a finish carpenter.”

Paradoxically, Chief Judge Nuffer fears that the eventual elimination of paper may decrease the quality of writing, because the process will become less deliberate. Although this potential cultural shift seems to undermine Chief Judge Nuffer’s ardent wish to advance technology in all aspects of the practice of law, he reminds us that as participants in the judicial process, “we are in a deliberate world and need to be deliberate in our writing.”

Another reason for quality writing before Chief Judge Nuffer is that he often makes decisions without oral argument. As a result, “there is no reason to save anything for oral argument when that hearing may never occur.” When there is a hearing, Chief Judge Nuffer admits that he sometimes ambushes counsel. Generally, as he takes the bench, he is almost prepared to issue a decision, but he will often have specific questions for counsel to probe weaknesses in the planned outcome. At oral argument, it is critical that counsel fully know their case, because Chief Judge Nuffer’s questions, as he admits, can “come from anywhere.” While it is safe for lawyers to presume at oral argument that Chief Judge Nuffer is familiar with the contents of the pleadings, it is important to recognize that he has not lived with the case in the same way that counsel have. As a result, he will sometimes request background of a case during oral argument, particularly where science is involved.

Chief Judge Nuffer encourages all lawyers appearing before him to observe the Utah Standards of Professional Civility. However, in general, Chief Judge Nuffer believes that the federal bar in Utah is very competent and very collegial.

In contrasting the tasks of counsel versus his responsibilities as a judge, Chief Judge Nuffer says, “I have the easy job. Advocacy, timing, client relations, working within a budget—these are all challenges for lawyers. I admire the work of lawyers appearing before me, whether they win or lose.”

Here in the Utah Federal District Court, we feel fortunate to have David Nuffer as our chief judge, regardless of how you define him. ☉

Endnotes

¹Additional facts suspiciously applicable to both Judge Nuffer and the Most Interesting Man in the World:

When he drives a car off the lot, its price increases in value.

Once when a rattlesnake bit him, after five days of excruciating pain, the snake finally died.

He once went to the psychic—to warn her.

If he were to punch you in the face, you would have to fight off a strong urge to thank him.

He can speak Russian—in French.

He never says something tastes like chicken, not even chicken.

Superman has pajamas with his picture.

His tears can cure cancer; too bad he never cries.

His passport requires no photograph.

The circus ran away to join him.

He once brought a knife to a gunfight, just to even the odds.

If he were to visit the dark side of the moon, it wouldn’t be dark.

He once won a staring contest with his own reflection.

He can kill two stones with one bird.

His signature won a Pulitzer.

When a tree falls in a forest and no one is there, he hears it.

The dark is afraid of him.

Sharks have a week dedicated to him.

His 10-gallon hat holds 20 gallons.

He once made a weeping willow laugh.

He once won the Tour de France but was disqualified for riding a unicycle.

A bird in his hand is worth three in the bush.

The Holy Grail is looking for him.

Roses stop to smell him.

When he was young, he once sent his parents to his room.

Once while sailing around the world, he discovered a short-cut.

His shadow has been on the Best Dressed list twice.

When he holds a lady's purse, he looks manly.

Two countries went to war to dispute HIS nationality.

When in Rome, they do as HE does.

Presidents take his birthday off.

He is the life of parties that he has never attended.

The police often question him, just because they find him interesting.

²Chief Judge Nuffer's instructions on how to use these tools can be found at: http://www.utd.uscourts.gov/judges/nuffer_resources.htm. A common mistake made by lawyers practicing before Chief Judge Nuffer is to file documents electronically—but as a scanned PDF, which the chief judge is unable to search. Chief Judge Nuffer's "resource materials" Web page provides "PDF Skill and Help Files," which details how to preserve searching functions and image quality even in PDF documents. The chief judge encourages lawyers to provide exhibits in PDF format on a CD, which is far more useful to him than a binder (which he views as "old school"). Chief Judge Nuffer also suggests that lawyers use Adobe Acrobat instead of more expensive trial presentation software. He finds such off-the-shelf tools to be nearly as effective as third-party software applications. Other practice pointers are found on a separate Web page, <http://www.utd.uscourts.gov/judges/nuffer.html>. This page also contains contact information for Chief Judge Nuffer's staff.

³Chief Judge Nuffer's courtroom has Wi-Fi, allowing both the

chief judge and counsel to do research on the spot. Chief Judge Nuffer encourages counsel to immediately email him the results of research or other information that he may request during the course of a hearing (such as exhibits). Clearly, counsel should have their computers "fully loaded" and with them in the courtroom when appearing before Chief Judge Nuffer.

⁴Observing Chief Judge Nuffer gleefully demonstrating his tools of technology lends credence to the rumor that he is indeed the author of the following alternate lyrics to a recent hit song (compare *I'm Sexy and I Know It* with *I'm Geeky and I Love It*):

When I walk in the courtroom, this is what I see:

A whole bunch of lawyers staring at me.

I have a passion for technology and ain't afraid to show it, show it, show it.

I'm geeky and I love it.

Check it out!

When I sit down to read your brief, here's what I'm about:

Bryan Garner's writing style and hyperlinks throughout.

I have a passion for technology and ain't afraid to show it, show it, show it.

I'm geeky and I love it.

Check it out!

This is how I roll; come on counsel, it's time to go.

Metadata, PDFs, lawyers don't be nervous.

(But if you don't e-file, you won't still get service.)

I have a passion for technology and ain't afraid to show it, show it, show it.

I'm geeky and I love it.

Check it out!