

# BAR & BENCH

## SALT LAKE COUNTY BAR ASSOCIATION

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FALL 2015

### President's Message

"There is no such thing as a 'self-made' man. We are made up of thousands of others. Everyone who has ever done a kind deed for us, or spoken one word of encouragement to us, has entered into the make-up of our character and of our thoughts, as well as our success."

--George Matthew Adams

In contemplating what I might say in my first "President's Message", I've been particularly mindful of the sentiment expressed by Mr. Adams (who made his mark in the heyday of the printed press, i.e., eons ago). It strikes me that this is the fundamental essence of the Salt Lake County Bar Association, to build each other up, to make each member a better attorney, a better judge and, perhaps, a better person. It is this principle that underlies every effort that the Executive Committee makes on your behalf.

I can certainly attest that I am better for my association with the SLCBA. It is, and has been, my privilege to follow in the footsteps of some fantastic past presidents, all of whom are no doubt brighter and more talented (not to mention better looking and funnier) than I. I've learned valuable lessons from each. For example, I learned from the Honorable James Blanch that you can't have a SLCBA party unless there are lots of "free" drinks and copious amounts of red meat (which may be enshrined somewhere in our bylaws). From Trina Higgins, I learned that you are never properly dressed as president unless you have a matching tiara. From the Honorable Robert Shelby, I learned that board minutes are infinitely more enjoyable when written in limerick form. I could go on and on, but am limited both by page limits and the fact that this is a family friendly publication.



Shane Hillman

by Shane Hillman  
Salt Lake County Bar President

The Executive Committee's most recent endeavor for the betterment of the Association took place on November 5, 2015, in the form of our annual New Lawyers' and Judges' Reception, which was held for the first time at Gallivan Hall. If you attended, you, like I, enjoyed the excellent company of more than two hundred of our fellow members, consisting of "new" lawyers, seasoned professionals and members of the judiciary. If you attended--and were early enough--you were reminded that, with change, there are often unforeseen hiccups. I will not soon forget watching early arriving members of the judiciary, including a Utah Supreme Court Justice, a new nominee for the Utah Supreme Court, and others willingly jump in to help make last minute adjustments. It was quite the sight to be seen, not to mention a testament to the collegiality and kind-heartedness of our membership. I am sure everyone walked away better at the end of the evening.

Social events, such as the New Lawyers' and Judges' Reception, are the hallmark of the SLCBA. These events are overseen by our hard-working socials committee, currently chaired by Jonathan Pappasideris. Our next event, the crown jewel of SLCBA social events, is the annual Holiday Party, which will be held on December 4, 2015 at the Country Club. During my time on the Executive Committee, this event has gone from a "so-so" attended event to one that consistently sells out, often within days. We expect this year to be no different and I hope that you will be joining us for dinner, dancing and a celebration of the Holidays.

In addition to throwing great social events, the Executive Committee puts on a number of excellent CLE events throughout the year. Our CLE Committee is chaired by Clemens Landau. This past year, the CLE Committee organized some wonderful CLEs, not the least of which was

# President's Message

C o n t i n u e d

an event that was live broadcast on KUER's RadioWest show, hosted by Doug Fabrizio, regarding an unfortunate trend of certain students, particularly minority students, being subjected to a "school to prison pipeline." If you have ideas regarding future CLEs, I am sure that Clem would welcome your input. In any event, please keep an eye out for announcements regarding upcoming CLE events.

SLCBA also participates in the annual "Law Day." In particular, the "Art and the Law" Committee, chaired by John "Jack" Nelson, solicits artwork from elementary students that interprets the National Law Day theme, this year "Miranda: More than Words." Suffice it to say, I am more than eager to view this year's artwork and expect that the various judges--volunteer Judges from our Third District--will be in for quite the treat. Student winners are invited to attend the annual Law Day Luncheon, receive cash prizes and are likely to have their artwork displayed in the offices of the various Judges. Pretty much a "win-win" for both the students and the Judges, I'd say.

If you're reading this, you're benefitting from the very hard work of our "Bar and Bench Bulletin" Committee, chaired by Kate "don't call me Katherine" Conyers. This Committee puts in yeoman's (yeo-women's) work, not the least of which is beating up on the President to get a "President's Message" put together, which is almost always the last thing to arrive. The Bar and Bench is always informative, often witty, and well worth the read. In this issue, you will find, among other things, a number of Judicial Profiles and an article by the always entertaining "Justice Tongue." Having reviewed all of the above, I can assure you that you will find the profiles to be illuminating and the words of Justice Tongue to be, at a minimum, fodder for a lively, much larger discussion. On a completely unrelated note, I'm informed by our lawyers that I'm obligated to note that "the views expressed in contributions to the Bar and Bench do not necessarily reflect those of the Salt Lake County Bar Association and/or its officers."

Last, but certainly not least, please take the time to visit our various online media portals, including LinkedIn, Facebook and our website. Our Membership, Website and Social Media Committee is co-chaired by Lauren Shurman and Aida Neimarlija. These portals are a great way to stay up to date on SLCBA activities and announcements.

In sum, I hope that each of you will make an extra-special effort to get more fully involved in the Salt Lake County Bar Association this year. I can assure you that you will be better for it and that the Association will benefit from your participation.

# Judicial Profile

## J u s t i c e   D e n o   H i m o n a s

By Kristen Olsen

Constandinos “Deno” Himonas is the most recent addition to the Utah Supreme Court, and he adds a rich and varied perspective to the highest court in Utah. Justice Himonas, an only child, was born and raised in Price, Utah. His family ran first a sheep, then a cattle ranch in Carbon and Emery counties. He helped his father and uncles work the ranch by rounding up the animals, doing cattle drives, and being involved with the branding. “It was a great way to grow up,” he said. According to Justice Himonas, both of his parents were extremely hard workers. His father ran the ranch and worked as a carpenter and his mother was a hairdresser. While his parents did not have the opportunity to obtain a formal education, they both stressed the importance of education and hard work to Justice Himonas.

His mother, the youngest of nine siblings who grew up in a small village in Crete, Greece during the Nazi occupation, did not want her son to grow up without understanding the importance of hard work. When Justice Himonas was in middle school or high school, an oil company came to their ranch to drill for oil, and his mother prayed that they would not be successful. Justice Himonas explained that she feared that if life were too easy for her teenage son, he would not work hard or focus on his schooling. “Despite the fact that she came from very humble origins, she was not interested in being wealthy,” he said. “She thought it was much more important that I got [a] work ethic and an education.”

His mother, whom Justice Himonas describes as “a force of nature,” also played a role in Justice Himonas’s decision to become a lawyer. She gave him what he calls “the immigrant choice.” He could be anything he wanted to be when he grew up, as long as it was a doctor or a lawyer. When he was young, his mother had him follow around a doctor for a day, and Justice Himonas quickly ruled out that profession, which left a career in the law. At Carbon High School, Justice Himonas focused on debate, and at the University of Utah, he studied economics, but always with the intention of earning a law degree after graduation.

He attended the University of Chicago Law School, which is where Justice Himonas met his wife. Justice Himonas

described his first encounter with his wife, who was earning a master’s degree in social policy at the time, as love at first sight. They have been inseparable ever since. “My wife is the singularly most important person in my life by a factor of 100,” he said. She has influenced Justice Himonas’ career more than anyone else. Together they have two daughters, both of which are currently attending university, and Justice Himonas said he did not give them the same “immigrant choice” as his mother gave him. He hopes they pursue a career in whatever makes them happy. One of the few rules he has given them is simply to leave every place better than they found it.

Justice Himonas said that in law school he had no ambitions to become a judge, but he knew he wanted to be a litigator. “When I started practicing law, my motto used to be I’d practice whatever kind of law would get me in the courtroom most often,” he said. One of his favorite parts of being a litigator at Jones Waldo was that everyone was rowing the boat in the same direction, working towards the same goals. He appreciated the friendships that were forged in fire while practicing law, on both sides of the litigation. He said there were so many people that helped him throughout his career that he could not name them all. “As you walk through life, you come across a dozen or half dozen individuals who, because of the gravitas of their own personality, they alter the arc of your existence and your view of things,” he said. He has greatly appreciated those people in his life.



J u s t i c e   D e n o  
H i m o n a s

Justice Himonas practiced law for fifteen years before becoming a trial court judge. He has loved serving the community in his capacity as a judge because “this community has been so supportive and so great.” To aspiring judges, he said, “If you don’t ask, and you don’t try, it’s never going to happen.” You have to be willing to put yourself out there and go through the difficult application process. Before that, you have to work hard as a litigator and develop the respect from colleagues and clients on both sides of the aisle. He has also enjoyed teaching trial advocacy and trial methods at the University of Utah law school. “There are few things in life that I enjoy as much as teaching,” he said. “It’s one of my passions.”

## Judicial Profile

J u s t i c e   D e n o   H i m o n a s

After ten years on the district court bench, Justice Himonas felt that his “gas tank was full.” The Utah Supreme Court is exciting to him because he gets to work without a safety net. “It’s been wonderful and has exceeded all of my expectations.” About his colleagues, he said they are superb to work with, even though they often do not agree. Justice Himonas described his service on the Utah Supreme Court as the “greatest job on earth.”

He cautioned attorneys not to “phone it in,” referring both to briefing an issue and to oral arguments. Justice Himonas said oral arguments and briefing are very important to his decision-making process, both at the trial level and the appellate level. He said he tries to have an open mind while hearing oral arguments and his conclusions often change several times, even after oral arguments are over.

When asked about advice he may have for lawyers, Justice Himonas said he has two rules of thumb, which were established rules at his former firm. First, “don’t offend the mind you’re trying to convince.” He said once you unpack this rule, you realize the breadth of its application, such as: “You write persuasively. You don’t write antagonistically. You’re a professional. You know your case. You’re not coming in unprepared.” He said it will offend the judge, for example, if it is clear that the judge has invested more time into the case than you have. The second rule at Justice Himonas’s firm was “don’t bore the mind you’re trying to convince.” Justice Himonas explained that he was in the middle of a lengthy (and apparently boring) examination of a witness when his colleague tugged on his suitcoat, suggesting that Justice Himonas had just created the need for the second rule. Unpacking this rule, he said, you learn to “think about your presentation, make it concise, make it interesting, don’t just stare at your notes. Have some passion.” Justice Himonas said these are good guidelines to follow, but he does not see either of these rules violated very often in Utah. “We have a superb bar, and we should be very proud of our bar.”

First, “don’t offend the mind you’re trying to convince.”



# Judicial Profile

## J u d g e K a t e T o o m e y

**By Tomu Johnson and Scarlet Smith**

Judge Kate A. Toomey has attributed her decision to study law as merely an “intellectually stimulating” way to achieve a “portable credential.” But recently she found a prophetic essay that she wrote in eighth grade about becoming a lawyer, revealing that she is literally living her childhood dream as a judge on the Utah State Court of Appeals.

Appointed to the Court of Appeals in 2014 by Governor Gary Herbert after serving almost eight years as a Third District Court Judge, Judge Toomey offers extensive and diverse intellectual and practical experience to the bench. This experience is the culmination of an impressive background and unique perspective on life.

Born in New York state, Judge Toomey and her family moved around a bit for her father’s education before settling in Utah when she was seven-years-old. But, notably, although she was not born in Utah, Judge Toomey considers it her home. Growing up, Judge Toomey lived in the Harvard/Yale area of Sugarhouse (next door to the house she lives in today) and attended East High School. She is the oldest of three children.

Judge Toomey received her B.S. in Anthropology from the University of Utah in 1981 after receiving a scholarship for academic merit all four years. Her specific focus was in archeology, a sub-discipline of anthropology, which studies the remains of cultural activities—artifacts. Interested in “its explanatory power for human behavior,” she continued studying archeology in graduate school, and later received her M.A. in Anthropology from the University of Utah in 1987. Her Master’s thesis focused on the phenomenon of the simultaneous emergence of agriculture cross-culturally and globally. Outside the classroom, she also performed field work in archeology all around the Western United States. One season, in particular, in her favorite site to date, Judge Toomey was responsible for mapping and taking field notes outside Salina, Utah where she helped excavate a storage structure in a Fremont village.

After completing her Master’s degree, Judge Toomey worked at the Utah Museum of Natural History on the University of Utah’s campus for most of the year as the Computer Project Coordinator and later the Data Manager

and Assistant Curator of Collections. Some of her responsibilities were to develop a searchable, interactive computer database and to supervise staff in capturing data for research purposes of more than two million objects in the museum’s collection, a real pioneering effort in that day. She was also responsible for the transfer of the collection from the Stewart building to the old museum in President’s Circle. During the good weather months, Judge Toomey continued her archeological field work.

Eight years later, after reaching the end of her intellectual road with what she was doing, she faced an important decision: whether to continue down the more natural path to a Ph.D., which included teaching, or to pursue something different altogether. Through many quarters

working as a Teaching Assistant when she was a Master’s student, Judge Toomey knew she did not want to teach. Instead, she settled on the law.

After being accepted to the University of Utah Law School, Judge Toomey decided to attend the University of Maryland School of Law after her husband received a position as Director of Marketing with the Baltimore Symphony Orchestra. During law school Judge Toomey also served as a research editor for the University of Maryland Law Review and was selected for an ALI-ABA Additional Education Course of Study in Environmental Law. Her first summer, she received an Asper fellowship and opted to intern at the Federal Public Defender’s Office where she had the

opportunity to shadow an attorney who taught her that “appellate work is pure law.” Motivated by this experience, after law school she clerked at the Maryland Court of Special Appeals, the state’s intermediate appellate court.

Following her clerkship, Judge Toomey began what she now considers the most important work she has ever done. As an Assistant Public Defender at the Maryland Public Defender’s Office in the Children in Need of Assistance Unit, she defended parents in abuse and neglect civil proceedings. At that time, and even now, she believes ensuring a child’s health and safety is “one of the most significant things in life.” Furthermore, it provided her with great courtroom experience. With her practice conducted in the Baltimore courthouse at the center of the popular non-fiction book “Homicide: A Year on the Killing Streets” and



J u d g e K a t e  
T o o m e y

# Judicial Profile

## J u d g e K a t e T o o m e y

the television shows “Homicide: Life of the Street” and “The Wire,” Judge Toomey covered over 110 court hearings a quarter.

To be closer to family, Judge Toomey moved back to Utah in 1993. At first, she worked at the litigation firm Anderson & Karrenberg for a few years. Several years later she was hired by the Utah State Bar’s Office of Professional Conduct (OPC), first as Assistant Counsel, then Deputy Counsel. Her responsibilities included investigating complaints against attorneys, litigating in district courts statewide, and handling all of the OPC’s appellate work. During that period, she served on the executive committee of the Utah State Bar’s Bar Journal and Editor-in-Chief of the Litigation Section’s Voir Dire (which eventually merged with the Bar Journal). Eleven years after beginning her work at OPC, she was encouraged by her mentor, Senior Counsel Billy Walker, to apply for the bench.

Believing that being a trial court judge would be intrinsically rewarding but would also provide good training for eventually serving on the appellate court, she applied for a vacancy at the Third District Court. Governor Jon Huntsman, Jr. appointed her to the trial court bench in 2006. According to Judge Toomey, she was “often humbled by the struggles of real life people” at the district court. Participating on numerous committees and acting as a leader in the Utah legal community, including serving on the Litigation Section’s Executive Committee and the Supreme Court’s Advisory Committee on the Rules of Civil Procedure, Judge Toomey was incredibly involved during her eight years as a District Court Judge. As a member of the Board of District Court Judges, including a stint as its chair, she was pleased to have the opportunity to meet and get to know all of the state’s district court judges. She also continued to volunteer for organizations promoting the welfare of children, such as the Foster Care Foundation.

As an appellate judge, she serves on the Judicial Council, the governing body for Utah’s state courts. She has found the transition to the Court of Appeals to be fairly easy and the learning curve manageable thanks to her experiences as a trial court judge. Not only is it exactly what she expected, it is even better than she hoped.

Judge Toomey prepares for oral arguments and conferencing with her colleagues on cases by reading the briefs, in order, then rereading them, and often reading them again, along with reviewing controlling statutes and cases. She usually prepares her own bench memos. Before oral arguments, based on the briefs and her research, Judge Toomey often has a general sense of how the case will go, but this forecast can change as the result of oral argument and discussing the nuances of the arguments with the other judges on the panel after argument.

With regard to counsel’s preparation, as discussed in her Bar Journal article, she believes that the most effective arguments are those that are well-written, clear and accurate

on the facts, and supported by the law.

Judge Toomey encourages counsel to focus on their two or three best arguments, rather than arguing every potential issue.

She finds typos and redundancy distracting. And, although she believes the bulk of the work is done in the briefs, she also believes that oral arguments provide a good opportunity to fine-tune the legal analysis. To her, the best arguments involve a conversation between the court and counsel exploring questions the judges may not fully understand. Even so, she appreciates counsel who have the confidence to sit down after making their points instead of using all of the allotted time.

Judge Toomey encourages counsel to focus on their two or three best arguments, rather than arguing every potential issue.

A major take-away from my interview with Judge Toomey in preparing for court: know your audience. You must understand that if you are appearing before her you should omit sports metaphors because she will not understand them. Similarly, references to pop culture are hit-and-miss; she is one of the few remaining people in our culture who has been able to withstand the urge to obtain modern conveniences that many of us take for granted, such as a cell phone, cable television, or even a microwave oven.

Judge Toomey lives in Salt Lake City with her husband Sean. They enjoy travel of all kinds, as well as cooking, gardening, and bird-watching. But what they especially love is white water rafting. Not a sport for the weak, two years ago they took a 16-day, 220 mile trip through the Grand Canyon in a paddle raft, where she took an inadvertent swim and slept on a pad under the stars every night.

# Judicial Profile

## J u d g e J a m e s D . G a r d n e r

by **Kate Conyers**

Judge James D. Gardner was appointed to the Third District bench by Governor Gary Herbert in December, 2014. Judge Gardner grew up in Orem, Utah with one brother and three sisters. From a young age he knew he wanted to be a lawyer and to make a difference in the community.

Judge Gardner graduated from Mountain View High School where he was President of the National Honor Society and a Sterling Scholar in Speech and Drama. He received his B.A. from Brigham Young University in English and History and graduated magna cum laude. Immediately following college, Judge Gardner attended Duke Law School. He decided to go to Duke because he was—and still is—a big Duke basketball fan. During law school he was a Research Editor for the Duke Journal of Comparative and International Law, a Robert Netherland Miller Scholar, and President of the Howard W. Hunter Law Society. During his second summer of law school, he split his time between Gibson, Dunn & Crutcher in Dallas and Snell & Wilmer, LLP in its Phoenix office. In 2000, Judge Gardner graduated cum laude from Duke Law School.

After law school, Judge Gardner joined Snell & Wilmer LLP's Salt Lake City office in its commercial litigation section. During his fourteen plus years at Snell, Judge Gardner worked on many big cases, including representing AT&T in Salt Lake Tribune Publishing Co. v. AT&T Corp., relating to the ownership of the Salt Lake Tribune; representing The Church of Jesus Christ of Latter-day Saints in First Unitarian Church v. Salt Lake City Corp., regarding First Amendment issues related to the Main Street Plaza; and representing Procter & Gamble in The Procter & Gamble Co. v. Haugen, helping his client secure a \$19.25 million verdict.

An exceptional lawyer, Judge Gardner was honored as Mountain States Super Lawyer for Business Litigation (2014), a Rising Star in Business Litigation (2008-2009, 2011-2012), a Utah Legal Elite in Civil Litigation from Utah Business magazine (2006-2014), and Top 100 National Verdicts of 2007 from Verdict Search ALM. Judge Gardner also gave back to the community and other

lawyers at his firm. While at Snell, Judge Gardner volunteered for Tuesday Night Bar and served on the firm's Community Service Committee, responsible for all of Snell's community service such as providing volunteers on a monthly basis to Hildegard's Pantry and to the Jubilee Center. Judge Gardner was also the office's Hiring Partner and served on the firm's Attorney Development Committee. His many mentors from Snell include Alan Sullivan, Matt Lalli and Wade Budge.

Even before law school, Judge Gardner knew he wanted to go into public service. This goal led him to law school and eventually to apply for the bench. Although he loved working at a firm, Judge Gardner wanted to contribute to a

broader segment of society. He also believed that he would be well suited to the bench because of his personality and temperament. Together with these qualities, and his experience as a commercial litigator for over fourteen years, Judge Gardner applied to the bench in 2014 and was appointed shortly thereafter. It was not an easy decision for him, but he believes being appointed has been worth the sacrifices that he and his family have made.

Judge Gardner misses a lot about being an advocate, including being in court, the competitiveness that goes with being a lawyer, helping clients resolve disputes, and the feeling of victory when your client wins. Despite being different, Judge

Gardner also thoroughly enjoys being a judge. Judge Gardner appreciates his colleagues that have assisted him in this transition—especially his mentors Judges Barry Lawrence, Bruce Lubeck and Todd Shaughnessy. Judge Gardner has been thoroughly impressed by the people he works with, and he has enjoyed meeting a broader segment of practitioners in the state. He is also impressed by the litigators that have appeared before him, the “ethical” job they do in representing their clients, and how much they seem to care about their clients and the system of justice. These things have helped him with the steep learning curve judges experience when taking the bench. As a lawyer from a big firm, it was hard for Judge Gardner to anticipate the different areas of law and types of cases he would experience as a judge: “It's truly spectacular. You have a very narrow view of what goes on when you see what judges do



J u d g e J a m e s D .  
G a r d n e r

## Judicial Profile

J u d g e J a m e s D . G a r d n e r

from the perspective of a lawyer working for a law firm,” Judge Gardner observed. Overall, Judge Gardner feels more of a sense of contributing to society in a more meaningful way than he did as an advocate.

As a positive person, Judge Gardner generally focuses on the positive qualities of lawyers. He does, however, have a few pet peeves, including when lawyers appear late or unprepared, when they personally attack opposing counsel or clients, or when they exaggerate about things the other side has done. Judge Gardner appreciates courtesy copies including trial binders, when attorneys can get along, and when counsel and their clients are respectful to each other. As one of the Third District’s busiest judges (right now, he is setting trials for August, 2016), Judge Gardner also appreciates when counsel provides him as much notice as possible when a case has settled or when a hearing needs to be continued.

Judge Gardner lives in Draper with his wife, Cari, and their five children—Jackson (16), Abby (15), Tucker (11), JJ (9), and Quin (6). They are all Duke fans! As a family, they enjoy volunteering and traveling. Combining these interests, the Gardner family will volunteer at an orphanage in Mexico this Christmas.

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# Judicial Profile

## J u d g e L . D o u g l a s H o g a n

### By Kate Conyers

Judge L. Douglas Hogan has always known that he wanted to help the broader community and appreciates the opportunity to do so as a judge. He was appointed to the Third District Court by Governor Gary Herbert in October, 2014.

Born in Murray, Utah to Leland and Joyce Hogan, Judge Hogan grew up with his two younger brothers on their family farm in Rush Valley, 15 miles southwest of Tooele. Judge Hogan has always enjoyed all sports, particularly football. In addition to being an All Star Quarterback at Tooele High School, Judge Hogan was a Sterling Scholar and he represented his high school at American Legion Boys State. After graduating at 17, Judge Hogan went on to play football at Snow College until he tore his ACL. Later, he served a Mormon mission in Minneapolis, Minnesota, Hmong speaking.

After his mission, Judge Hogan received his associates degree from Snow and his Bachelor's in Geography with an emphasis in Environmental Studies from the University of Utah. While studying at the U, he worked at the Tooele Army Depot South Area, the chemical weapons incinerator. Although he no longer played football, Judge Hogan could usually be found at the Field House playing racquetball or other sports.

Judge Hogan's interest in environmental and water law continued as he attended McGeorge School of Law at the University of the Pacific, where he graduated in 1999 as a member of the Traynor Society (qualifying for the Dean's List for at least two years). Although he once believed he would practice environmental law, his interest waned over time because he found the classes boring.

After law school, Judge Hogan returned to Utah to work as in-house counsel for SK Hart Management, the holding company for Envirocare (now Energy Solutions). A year later, he returned to Tooele to start his own general practice, Law Office of L. Douglas Hogan, P.C., where he practiced for over six years. For much of that time, he also served as a public defender.

In 2006, Judge Hogan ran and was elected as County Attorney, a position he held for eight years. As County Attorney, Judge Hogan chose to serve as prosecutor in the Tooele Drug Court program. In 2014, just as he was about to start a third term as County Attorney, he was appointed to the bench where he presides over the West Jordan Drug Court and a criminal calendar. Judge Hogan enjoys serving in West Jordan because of the people he works with and the high level of professionalism of the attorneys that appear in front of him. Although he commutes two hours each day, he is somewhat hesitant to transfer to his hometown because it would be difficult to "deal with divorces and protective orders for people [he has] known for more than two generations."



J u d g e L .  
D o u g l a s H o g a n

One of Judge Hogan's favorite things about being a judge is "making the decision" after listening to both sides make their arguments. "The buck needs to stop with somebody" and he believes he makes reasonable decisions based on his experiences as a general practitioner, a public defender, and a county attorney. The hardest part about being a judge is losing your social circle. "It's a bit lonely, honestly." Although there are other judges in West Jordan, it will sometimes be a week before he'll talk to another judge because they are all so busy.

Regarding advice for attorneys, Judge Hogan appreciates attorneys that are able to remain professional rather than mirroring the emotions of their clients, which he acknowledges is hard to do, especially in family law cases. He also appreciates when counsel concedes to obvious or good points made by opposing counsel, which he believes enhances that counsel's credibility before the court. Another thing Judge Hogan welcomes is when attorneys talk to each other and understand each other's positions before taking the court's time. For example, before admitting to an Order to Show Cause, defense counsel should talk to the prosecutor and AP&P about their recommendations and stipulate wherever possible. Judge Hogan also likes trial binders and courtesy copies. He likes to have pre-sentence reports in hand, and because he reviews his cases at least a day before the calendar, anything counsel files within a day of a hearing should be provided to him in hard copy as well.

# Judicial Profile

J u d g e L . D o u g l a s H o g a n

Be assured that Judge Hogan will be prepared for all hearings. He typically takes time during sentencings and other hearings to let clients/defendants know that he has thoroughly read and processed pre-sentence and other filings. He does this to make sure defendants know he sees them as individuals, not just another case. He said, “Everyone has a story, no two people are situated exactly the same way.” Judge Hogan will also ask defendants how they believe they should be sentenced, mainly because he is interested in the outcome/end game and how committed the defendant is to doing what is required of him/her and in improving his/her situation. This sort of judging takes time, but in the end, Judge Hogan believes his style inspires and incentivizes defendants.

Even while maintaining a respectful courtroom, Judge Hogan appreciates humor and he appreciates when counsel has a sense of humor. It could be his way of easing the tension in what may otherwise be a difficult situation. He also appreciates when defendants and litigants feel comfortable enough to speak freely and tell him the truth. As a new judge, Judge Hogan knows he’ll make mistakes, and when he does, he wants to hear about it. As a sports enthusiast, he welcomes constructive criticism. He doesn’t think he’s “the best” at the job right now, but he expects, like most things, to get better as he gains experience.

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Judge Hogan met his wife Laura while at the “U” playing on a traveling recreational softball team. They live in Tooele County near his family farm with their three children, Nick (14), Kate (12), and Luke (8), a yellow lab named Lola and a cat named Blackie. The Hogans all love playing sports. As a family, their kids played over 200 games this year; this “self imposed insanity” keeps them constantly busy. Judge Hogan likes to mow the lawn to unwind so he can get a few minutes to himself. He also enjoys playing racquetball.

# Judicial Profile

## J u d g e W i l l i a m K . K e n d a l l

### By Kate Conyers

Be Prepared. Throughout his life, this motto has guided Judge William K. Kendall. As an active Boy Scout, he learned to be prepared and as a judge, he thoroughly prepares for each case.

Judge Kendall was born in Pennsylvania as the only child to K.C. and Karen Kendall. When Judge Kendall was young his father was in the Air Force, so his family lived in North Carolina and Northern California. After his father left the military, their family settled in Cincinnati, Ohio where Judge Kendall grew up.

From his youth and into college, Judge Kendall played competitive soccer, but one of his most important activities was Boy Scouts of America (BSA). His troop was very active in all types of outdoor pursuits and consisted of about 45 boys from ages 8-17, which provided great learning, mentoring and leadership opportunities. Judge Kendall earned the rank of Eagle Scout, and along the way spent hundreds of nights outdoors, attended the National Jamboree in Virginia and trekked at the Philmont Scout Ranch in New Mexico.

Judge Kendall attended Miami University in Oxford, Ohio, where he received Bachelor's degrees in both Political Science and Speech Communication. In 1996, Judge Kendall graduated from University of Richmond School of Law in Virginia, where his electives focused on environmental and criminal law. During his summers, he served internships with the U.S. Environmental Protection Agency and the Attorney General's Office in Richmond.

For six months after law school, Judge Kendall and his wife traveled around the country in their Volkswagen camper van, spending their time rock climbing, camping, and visiting friends and family. Their favorite location to camp was in Jackson, Wyoming, a place he and his family still frequent.

After exploring the country, Judge Kendall and his wife decided to move to Utah. After passing the Utah Bar, Judge Kendall worked as a District Executive for the BSA in Salt Lake City and Jackson, Wyoming. As a Director of the Teton High Adventure Base, he believed it was

important to learn all of the skills and responsibilities of each of his employees, from grilling steaks for 200 people a night to being a river guide.

After three years with BSA, Judge Kendall wanted to put his law degree to use in either environmental or criminal law. He applied for and received a position at the District Attorney's Office in Salt Lake County, where he worked from 2000 to 2007. Judge Kendall worked in several divisions, including the drug team and gang team, but he spent most of his tenure in the special victims unit. He tried a large volume of cases, including a number of homicides. As a special victims prosecutor, Judge Kendall also taught forensic interviewing techniques at the Children's Justice Center.



J u d g e W i l l i a m  
K . K e n d a l l

In 2007, Judge Kendall became an Assistant United States Attorney. As a prosecutor at that office, he was able to focus more on long term investigations, complex cases and trials. Judge Kendall quickly earned a reputation as a competent and hard-working attorney and was the Deputy Chief of the Violent Crimes Section and the Anti-Gang and Robbery outreach and prosecution coordinator.

While at the U.S. Attorney's Office, Judge Kendall served on the faculty of the National Advocacy Center in Columbia, South Carolina, teaching new DOJ and Assistant U.S. Attorneys trial advocacy skills. Judge Kendall also received several awards. As a result of his successful gun

crime prosecutions, Judge Kendall received ATF's Project Safe Neighborhood's Prosecutor of the Year award. He also received the U.S. Attorney's Award for Superior Performance by a Litigative Team and the U.S. Attorney's People's Choice Award.

In December, 2014 Governor Gary Herbert appointed Judge Kendall to the Third District bench.

The steepest part of the learning curve in transitioning from an advocate to a judge has been handling civil cases in areas of law Judge Kendall didn't practice. However, he enjoys the challenge of learning new things and his colleagues in West Jordan are a great resource. Judge Kendall takes very seriously his responsibility to make tough decisions regarding other people's lives. His favorite parts of being a judge are being prepared for hearings,

# Judicial Profile

## J u d g e W i l l i a m K . K e n d a l l

treating people with respect, and making sure that everyone who appears before him feels that they have had their fair day in court. Some defendants have even returned to thank Judge Kendall for helping them turn their lives around, which has been a very rewarding part of his job.

Tips that Judge Kendall gives to attorneys appearing before him include being prepared, concise and efficient. In return, he'll do the same. With motion hearings, counsel are free to present arguments and evidence as they choose, but remember that Judge Kendall will be thoroughly prepared and will have read through everything at least once, including cited cases, and he has done his own research. Before the hearing, Judge Kendall may have a general idea of how he intends to rule, but he remains open to arguments. He extensively prepares for hearings and besides being on the bench, that preparation is what takes most of his time as a judge. Before he leaves each day, he makes sure to clear his e-file and paper queues.

Judge Kendall lives in Salt Lake with his wife April, their two children and dog. Judge Kendall is a car enthusiast and enjoys driving and instructing at Miller Motorsports Park. He has fun rock climbing with his daughter and taking his son to see live music. In the winter, Judge Kendall and his kids spend many weekends skiing. From spring to fall the family explores Utah in their RV where Judge Kendall teaches his kids the skills he learned as a scout.

He extensively prepares for hearings and besides being on the bench, that preparation is what takes most of his time as a judge.



# Judicial Profile

## J u d g e K a r a P e t t i t

By Rita M. Cornish

Judge Kara Pettit was born and raised in Iowa, and did not stray far from home for her undergraduate degree. Judge Pettit attended the University of Northern Iowa where she obtained a B.A. in accounting in 1988. Following graduation, she took a position as an internal auditor with 3M in the Minneapolis-St. Paul area. Even though she loved her experience with 3M, which included travels to many parts of the country and overseas, a family tragedy prompted her to re-examine her career path. She began to question whether she could be doing work that was more meaningful and public-service oriented. She thought law could offer her some of those opportunities.

In 1992, Judge Pettit moved to Utah to attend law school at the University of Utah's College of Law. Judge Pettit most enjoyed the law school's clinical program. As a law student, she pursued clinical, pro bono opportunities such as volunteering with Disability Law Clinic, Legal Aid Society, and Utah Legal Services. In the summer between her second and third years of law school, Judge Pettit had the opportunity to intern in the Ada County Prosecutors Office in Idaho, which not only fed her appetite for public service, but also led to her first position as an attorney.

Following her graduation from law school in 1995, Judge Pettit moved to Idaho and took a position as Deputy Prosecutor in Ada County. During her service as a prosecutor, Judge Pettit had an opportunity, not only to work in a meaningful way within the community, but also to develop strong trial advocacy skills.

Judge Pettit returned to Salt Lake City, Utah in 1999 to marry her law school sweetheart and take a position with the local law firm Snow Christensen & Martineau. Judge Pettit initially retooled her practice to civil litigation by focusing on personal injury defense, but she found she enjoyed the intellectual challenge of complex issues and, over time, her practice expanded to a much broader general commercial civil litigation practice. Although her civil litigation practice involved less courtroom time than her work as a prosecutor, it offered an opportunity for Judge Pettit to develop strong analytical, writing, and advocacy skills.

After approximately fifteen years at Snow Christensen, a few high-profile, contentious matters that had absorbed much of Judge Pettit's time for several years, culminated in successful resolutions for her clients, and she found herself reflecting on her goals. Hoping to get back to the public interest work that drew her to law school, Judge Pettit began to apply for judgeships. In September 2014, Judge Pettit was appointed by Governor Gary Herbert to the Third Judicial District Court serving Salt Lake, Summit, and Tooele counties. Now approaching a year on the bench, Judge Pettit is striving to serve the public with integrity and fairness and aspires to ensuring that the litigants in her court feel heard, respected, and understood. She has enjoyed her transition to the bench but, at times,

has found the most difficult challenge is to be stepping out of the role of advocate and taking the legal arguments as they come.

Judge Pettit prepares for hearings by reading all briefing, significant cases, and considering the issues. She appreciates courtesy copies of briefing in hard copy format. If she was to offer one piece of advice to attorneys on how to write more persuasive briefs, it would be that shorter is often better. Although Judge Pettit commonly grants motions for leave to file over-length briefs, she has found that the most compelling arguments are those that are well-edited and concise. If the briefing presents complicated or novel issues of law, she may have her law clerk prepare bench memoranda. Although Judge Pettit does

not pre-judge issues on the briefing alone, to focus oral argument she will often come to the bench with some preliminary impressions and questions for counsel.

When Judge Pettit has some free time, she enjoys running, biking (both road and mountain), and camping with her husband and three children.



J u d g e K a r a  
P e t t i t

Dear Justice Tongue:

**I sadly write following another American gun slaughter; this one in Roseburg, Oregon of all places. Undoubtedly, others will have followed before this letter is answered. Innocents slaughtered at the hands of another lonely, mentally ill and/or murderous-minded male. The statistics are appalling. This "developed" country has spent hundreds of billions of dollars on "Homeland Security" to protect us from "terrorists." The Centers for Disease Control and Prevention and the U.S. State Department report that since 9/11, 3,380 Americans have died as a result of terrorism. During that same period of time, 406,496 Americans have killed themselves or others with firearms on U.S. soil.**

**The reaction to this recurring carnage is sickening. The left just throws up its hands and the right preaches that we need to accept this slaughter and get more guns. Worse, the President of the United States bemoans the regularity of these events without initiating a single concrete plan to change outcomes. I have heard that one definition of "insanity" is doing the same thing over and over and expecting a different outcome. I am reaching out to you in desperation. Is there no legal means by which we can bring about a change?**

**Yours respectfully,**

**Up in Arms**

Dear Up in Arms:

Oh my. Well, at the outset let me accept your definition of one form of insanity. That said, the reaction to gun violence in the United States is beyond such common conceptions.

Part of this country began as a repository for prisoners, and the West, in particular, as an open field for ADHD adventurers with firearms. They shot damn near everything that moved, including the Native Americans and every mammal that sustained them. Yet, even in those rough and tumble days we are given to understand that places like Dodge City required the guns to be checked in the Sheriff's office.

The outworn and tiresome resignation that we are a violent society and are awash with firearms, (both of which propositions are unfortunately true) is pathetic. That we have no means by which to ameliorate this ongoing tragic occurrence may be, at base, the most tragic aspect of our society's plight.

It has been difficult to come to this conclusion, but I do not believe there is a legal remedy. That said, there certainly could be a political one. In a representative democracy (which we seem to think we have) the population gets the government it deserves. If the population is feckless, spineless, or lives in a world of fiction, the results can be (and are) predictably absurd. It gets worse. In America, in private response to polls, the population clearly signals it wants gun control (and not just in the sense of a steady aim.) The doleful electorate just fails to put any politicians at risk for ignoring their will.

It has been said before, that democracy holds the keys to its own destruction. This is especially so in a world of mass communication. If the electorate are sheepish, uninformed, and ignorant, then powerful forces can control the outcome of its government. Such powerful special interests can cause what should otherwise be a representational government to take actions which are against its citizens' interests or fail to take actions which are necessary to protect them. Both of these results are as unnecessary as they are absurd.

The firearm industry and its handmaiden, the National Rifle Association, have, through consistent and unprincipled assaults on politicians, bought those that it could and scared those that it could not. As a consequence, there is little informed debate in our gun culture concerning the dangers of owning, storing, and/or carrying firearms. The agencies that normally study such deadly epidemics are legislatively barred from such study and/or from publishing the information that would seemingly make any reasonable person stand up and scream

# Justice Tongue

## R e c u r r i n g   C a r n a g e

“enough!” In fact, in 2003 gun stores became upset when the government listed those that sold most of the weapons later linked to crime. So, in response to their Lobby, the Congress barred the government from publishing such information.

This is a public health emergency. If it were a virus we would attack it like Ebola. In fact, we know a public health approach could apply to guns as it did to cars. Nicholas Kristof noted in the New York Times “[w]e don’t ban cars, but we do require drivers’ licenses, seatbelts, airbags, padded dashboards, safety glass, and collapsible steering columns. And we have reduced the auto fatality rate by 95%.”

By comparison, in one year (on average) over 108,000 Americans are shot in murders, assaults, suicides, suicide attempts, unintentional shootings, and by police intervention. Of those, 32,514 people die from gun violence. As you point out, annually that is ten times the number of individuals who were slaughtered at 9/11.

It does not have to be that way. For decades this country accepted, as a necessary evil of alcohol use, that a certain number of men, women, and children would be slaughtered on highways and those perpetrating such mayhem should receive little, if any, punishment because, well “they were drunk.” That changed when an aggressive force of women, under the banner “Mothers Against Drunk Driving (MADD)” moved to change our cultural acceptance of completely irresponsible behavior.

The gay community, after years of abuse and discrimination, through a determined effort has, in record time, changed the cultural view of all human beings and pointed out what should have been plain; namely, that we should never mistake custom for constitutional principle.

That needs to be done here. There has to be risk associated with defending the gun manufacturers who sponsor a legislative agenda that not only protects gun manufacturers from any liability, but allows the weapons to be sold essentially without meaningful restriction. It should occur to anyone beyond the first grade, that if we are willing to spend hundreds of billions of dollars on Homeland Security because there are terrorists among us (and there are and will be more) someone should consider that having guns literally lying around and available at flea markets and gun shows to anyone who can fog a mirror, presents a clear and present danger to our safety and security. There should be fewer guns. Those that own them must take responsibility for the use and abuse of those deadly instruments. It is just that simple.

I am put in mind of the myth of the “Sword of Damocles.” When Damocles accepted Dionysius’ offer to sit on the throne and when Dionysius then suspended the sword by a single horse hair above him, Damocles quickly relinquished the throne. It apparently did not occur to Damocles that, as king, he could simply order the removal of the sword.

This society simply has to decide how it wants to live and what slaughters it will not endure. It needs to recognize that, if there is a constitutional right to possess firearms, then like all other constitutional rights, there can and should be reasonable restrictions imposed, so as not to put other citizens in danger by the exercise of those rights.

All this is not going to come about by you and me writing one another. It is going to come from concerted, courageous, and bold action. Politicians simply have to be put at risk for protecting a dangerous industry and enabling mayhem.

Fondly,

J. Learned Tongue



# Recent Precedents

2015 SLCBA Spring Party



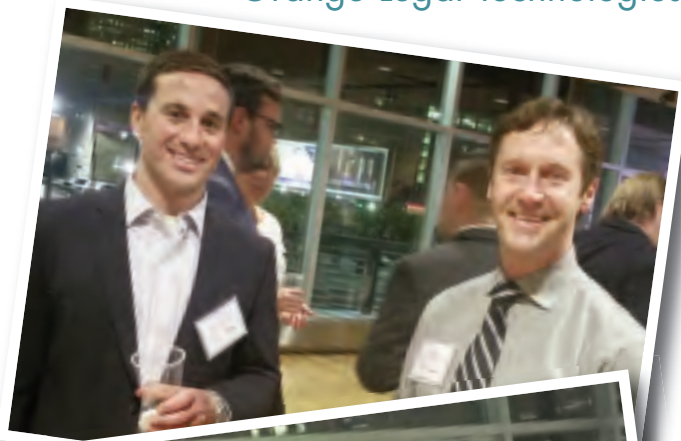
*The Salt Lake County  
Bar Association  
Annual Spring Dinner  
held on  
May 29th, 2015.*



# Recent Precedents

## New Lawyers and Judges Reception

The New Lawyers and Judges Reception was a great success. Over 200 of our members attended. Kudos to our Socials Committee members Jonathan Pappasideris, Jennifer Herold Mastrococco, Sam Meziani and Mark Kittrell, and our president Shane Hillman for putting on this terrific event. And thank you to our sponsors, CitiCourt, The Reporting Group, and Orange Legal Technologies.



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Check us out to connect with other members,  
see pictures of our events, start a discussion  
and other fun stuff.



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Our website address!

[www.slcb.net](http://www.slcb.net)

Check out back issues of the Bar and Bench, a calendar of upcoming events, and other helpful information on the Salt Lake County Bar's website.



You are cordially invited to attend  
the Salt Lake County Bar Association's  
Annual Holiday Dinner

Friday, December 4, 2015  
The Country Club  
2400 East Country Club Drive  
Salt Lake City, Utah

RSVP to Ms. Jeri Tovey  
[jeri-tovey@rbmn.com](mailto:jeri-tovey@rbmn.com) or (801) 531-2099



\$80 per person for SLCBA members and guests  
\$90 per person for non-members  
Limited seating  
RSVP required by November 30

Cocktails 6:30 p.m.  
Dinner 7:30 p.m.  
Black Tie Optional