

JUDICIAL PROFILE: DALE KIMBALL

by Jonathan O. Hafen

Judge Dale A. Kimball grew up on a dairy farm in Draper, Utah. Those early mornings milking cows taught him the importance of responsibility. He quickly learned that if he didn't do his job, there would be a barn full of unhappy cows and a house full of unhappy parents. In addition to his barnyard responsibilities, Judge Kimball also worked in the fields, where the family raised alfalfa, sugar beets, and grain. He faithfully worked on the family farm throughout his schooling, including law school. These experiences also taught Judge Kimball the importance of working hard, working smart, and finishing tasks on time.



Judge Kimball first became interested in law while taking a commercial law class from E. L. Crawford at Jordan High School. That class opened a fascinating new world for Judge Kimball. Spurred by that fascination, Judge Kimball began reading about lawyers and the lives they led. It seemed to him that law practice offered an intellectually challenging career which could also benefit society. That is when he decided to become a lawyer.

He began his practice at Van Cott, Bagley, Cornwall & McCarthy in Salt Lake City. After seven years at Van Cott, Judge Kimball became a full-time law professor at BYU's J. Reuben Clark Law School. Shortly thereafter, he reduced his teaching to part-time and co-founded the law firm now known as Parr Waddoups Brown Gee & Loveless. Judge Kimball reports that teaching law and writing articles have helped him as a Judge because the rigors of painstaking academic research and analytical thinking he experienced as a law professor are central to his judicial decision-making process.

Since taking the bench nearly five years ago, Judge Kimball has been kept very busy. He had about 25 full trials in 2001, about two-thirds of them involving a jury. Currently, he has approximately 400 cases on his docket, representing 300 civil cases and 100 criminal cases. Judge Kimball reports that the number of civil cases is always higher because criminal cases are much more quickly resolved.

Judicial Philosophy

Judge Kimball believes that the best judges are non-ideological. In other words, they have no axe to grind. At the same time, he believes that people with strong political views can still be good judges so long as they set aside their political views when making decisions.

Judge Kimball also believes that judges should be fully prepared for any hearing. To that end, Judge Kimball carefully reviews all pleadings prior to oral arguments.

In Judge Kimball's view, parties are entitled to a decision within a reasonable time. While Judge Kimball has never had trouble making decisions, he does not believe that delaying even a difficult ruling is fair to the parties. By issuing prompt decisions, Judge Kimball believes that parties then can decide whether to drop the matter, settle the matter, or pursue an appeal.

Judge Kimball also feels that he has no obligation to persuade parties to settle cases. He believes he was hired to hear cases and decide them. It is up to the parties to decide whether or not to settle.

Practice Pointers

Judge Kimball reports that most lawyering before him is very good. Much better than he expected when he took the bench. He finds that lawyers generally are well prepared and don't waste the Court's time.

Tips for practitioners appearing before Judge Kimball include:

- At oral argument, know the cases that you cited in your briefs.
- Behave responsibly and civilly to witnesses, the court, and opposing counsel.
- Don't try to stretch your position. If you have weakness, admit to the weakness, and try to

persuade the Judge that you should win anyway.

- Brevity is appreciated and highly effective as a tool of advocacy. This applies both in briefs and oral arguments.
- If you have a bad argument, leave it out of your brief and your oral argument. Making bad arguments hurts your credibility with the Court.

The Law Clerks' Perspective

Judge Kimball has two experienced law clerks. Anne Whitehead Morgan has clerked for two years with Judge Kimball and plans to continue with the Court for the foreseeable future. For almost six years prior to joining Judge Kimball, Ms. Morgan practiced with Parsons Behle & Latimer. Fellow clerk Susie Inskip Hindley practiced with Holland & Hart for nearly four years before joining Judge Kimball approximately one year ago. Judge Kimball indicates that he intentionally hires experienced lawyers as his full-time clerks because new lawyers "don't know anything yet." Judge Kimball does offer internships to law students.

Ms. Morgan and Ms. Hindley have several valuable practice pointers from their perspectives as Judge Kimball's clerks:

- In both briefs and oral arguments, get to the key issues and confront them head-on.
- Understand the strengths of your opponent's arguments and address them instead of blindly arguing one position and disregarding opposing arguments and case law.
- Lawyers do not call the clerks often enough about case management issues. Judge Kimball is very proactive in case management. For example, if you do not intend to oppose a motion, let the clerks know as soon as you receive the motion so the Court can rule and get the motion off the calendar.
- Along those same lines, the clerks urge counsel to communicate better with the Court with respect to stipulations. For example, if parties grant extensions of time by stipulation but file nothing with the Court, the parties may receive an unexpected ruling on a matter. This is especially true given Judge Kimball's emphasis on issuing rulings quickly. Therefore, where an extension is given, either submit a written stipulation or call the clerks.

If attorneys intend to oppose a motion which is routinely granted, such as for leave to file an overlength memorandum, inform the clerks.

- Remember to submit proposed orders with stipulations.
- Submit your motions in limine well before trial, and communicate with the clerks regarding when those motions will be filed and when they will be heard.
- Think about jury instructions well in advance of trial. Judge Kimball has standard procedures concerning jury trials, which his clerks would be happy to share with interested counsel.