

# ABC Update

BY TERESA H. PEARSON

## ABC-Certified Specialist Joins Oregon Bankruptcy Bench

On Jan. 18, 2017, Chief Judge Sidney R. Thomas of the Ninth Circuit Court of Appeals announced the appointment of **David W. Hercher** as a bankruptcy judge for the District of Oregon. Judge Hercher fills the Portland, Ore., position previously held by Judge **Randall L. Dunn** before his retirement. Judge Hercher was officially sworn in on Jan. 23, 2017, and his formal investiture took place on March 24, 2017. As he takes the bench, he joins colleagues Chief Judge Trish M. Brown and Judge **Peter C. McKittrick** in Portland, Ore., and Judges Frank R. Alley III and Thomas M. Renn in Eugene, Ore. Judge Hercher has long been involved with commercial bankruptcy practice and professional activities in Oregon.

Judge Hercher received his B.A. in political science from the University of Oregon, graduating from the Robert C. Clark Honors College in 1977. He received his J.D. from the University of California-Berkeley School of Law (formerly known as Boalt Hall) in 1981. As a student, he served as a managing editor of the Berkeley School of Law's *Ecology Law Quarterly*.

Before joining the bench, Judge Hercher practiced law in both Oregon and Washington. He spent his entire legal career working at Miller Nash Graham & Dunn LLP (formerly known as Miller Nash LLP). During most of his private practice, he primarily worked in the Portland, Ore., office, although he did work for five years in the firm's Seattle office. In addition to local Pacific Northwest cases, he was involved in handling cases in Alabama, California, Delaware, Florida, Georgia, Idaho, Illinois, Kentucky, Nevada, New Mexico, New York and Pennsylvania. As a result of these experiences, he came to appreciate the collegial practice in the Pacific Northwest for commercial bankruptcy and insolvency law.

While in private practice, Judge Hercher represented clients in all aspects of bankruptcy cases, with an emphasis on representing secured creditors in business bankruptcies. He also advised clients on negotiating, documenting and enforcing rights under secured loans, including loan workouts, forbearance agreements, repossessions and foreclosures. Although his private practice primarily involved work for creditors, some of his favorite cases were ones where he represented business debtors. He enjoyed the complexity and challenges of those cases and the need to think quickly on his feet.



Hon. David W. Hercher

Judge Hercher is highly regarded for his technical understanding of the Bankruptcy Code, federal and local bankruptcy rules, and the Uniform Commercial Code. His colleagues particularly enjoyed and benefited from his thoughtfulness, collegiality and kindness. He never hesitated to

lend a hand in handling even the most difficult of legal issues. He is well recognized among his colleagues for always being both patient and kind. He liked working with young lawyers at his firm, often serving as a mentor on both legal and practical topics.

An ABI member since 1997, Judge Hercher has been board-certified in business bankruptcy law by the American Board of Certification since 1993. For those unfamiliar with this certification, it involves taking and passing a day-long examination on bankruptcy law (akin to a bar examination). Judge Hercher was also recognized by his peers for his excellence in the legal field, having been named an *Oregon Super Lawyer* for 2006-16 and in *The Best Lawyers in America* for 2009-16.

One of the things that Judge Hercher loves best about bankruptcy work is the fact that it is multilateral and involves the interplay of various constituencies who both litigate and make deals to bring matters to conclusion. Bankruptcy cases require not only familiarity with the law, but also a practical understanding of business and the challenges facing consumer borrowers.

In addition to his work as a lawyer, Judge Hercher also devoted a substantial amount of time to professional activities while he was in private practice. Throughout his career in Oregon, he has been active in the Oregon State Bar's Debtor/Creditor Section and has served on many of its committees, including the Legislative Committee, Local Bankruptcy Rules Committee and Award of Merit Committee. His efforts have made the practical aspects of the practice of bankruptcy and debtor/creditor law easier and clearer for the bar. He served in all of the officer roles for the section, including secretary, treasurer, chair-elect, chair and past chair. He has also served as a speaker, including at programs for the Northwest Bankruptcy Institute.



**Teresa H. Pearson**  
Miller Nash Graham  
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Portland, Ore.

*Teresa Pearson of Miller Nash Graham & Dunn LLP in Portland, Ore., practices in creditors' rights, insolvency and reorganization. She represents lenders, trade creditors, creditors' committees, trustees, receivers, debtors and other clients in forums where debtor/creditor issues appear.*

Judge Hercher has authored a number of articles and publications in the debtor/creditor area. For the Oregon State Bar CLE Publications, he wrote chapters on bankruptcy and receivership for the *Real Estate Deskbook*, wrote the “Chapter 11 Overview” chapter for *Bankruptcy Law*, and wrote “Bankruptcy Issues for Real Estate Practitioners” for *Fundamentals of Real Estate Transactions*. He is an expert on service issues, having written a comprehensive overview of the subject for the Oregon State Bar’s Debtor/Creditor Newsletter. He was also a frequent contributor of summaries of cases decided by the Ninth Circuit Court of Appeals and Bankruptcy Appellate Panel, published by ABI’s Volo First Responder project ([volo.abi.org](http://volo.abi.org)).

While he was living in Seattle, Judge Hercher volunteered at the King County Bar Association’s *pro bono* legal clinic, providing advice to indigent debtors. In Oregon, he has been participating in the Credit Abuse Resistance Education program ([care4yourfuture.org](http://care4yourfuture.org)), educating local high school students about the responsible use of credit.

One benefit of participating in bar and professional activities is that Judge Hercher has had the opportunity to meet and work with many members of the Oregon and Washington debtor/creditor bars. He finds the collegiality of the bar to be one of its great strengths: He appreciates that there are many opportunities for judges and lawyers to get to know each other and work together for the benefit of the debtor/creditor community outside a formal courtroom setting.

Judge Hercher also actively participated in the legal profession outside of the debtor/creditor area. He served on the Oregon State Bar’s Disciplinary Board and Local Professional Responsibility Committee for Multnomah County, which he chaired from 2008-10.

Judge Hercher is a native Oregonian, having grown up in Medford. He feels fortunate to have had the opportunity to attend the excellent public schools there. He first became interested in becoming a lawyer after competing on his high school speech and debate team, participating in both Oxford debate and extemporaneous speaking. Many of his teammates also became lawyers and remain his lifelong friends (including one who was a partner in his law firm for several years).

He spent two summers during college working in a plywood mill. During one summer, he worked in a moulding mill in Tigard. He also helped out at his grandparents’ orchards in Winston and Garden Valley. After high school, he spent a few years traveling around the U.S. and Europe. In the end, he decided to remain in Oregon.

Outside of his legal activities, Judge Hercher spends time with his family. He has a special affinity for the rural areas of Oregon and enjoys spending time soaking in the natural beauty and peacefulness of Eastern Oregon. For those who have read this far, here is one practical tip: Judge Hercher’s name is pronounced as if the “ch” were an “sh.”

At this point in his career, Judge Hercher is pleased to enter public service and give back to the community. He is happiest when he is learning new things. While there is a lot to learn as a new judge, there is no doubt that he will master his new role. He has been very impressed with the quality and collegiality of court staff and case administrators, who have been extremely helpful to him.

On March 24, 2017, the U.S. Bankruptcy Court for the District of Oregon held a formal investiture ceremony for Judge Hercher at the Mark O. Hatfield U.S. Courthouse in Portland. In addition to his friends and colleagues in the bar, Judge Hercher was joined by his parents, his son and daughter, some of his siblings, and his close personal friends. Clerk of Court Charlene M. Hiss opened the program and welcomed everyone. Hon. Edward Leavy of the Ninth Circuit Court of Appeals commented on the selection process, emphasizing that bankruptcy judges are chosen on merit. Chief District Judge for the District of Oregon Michael Mosman commented on the professionalism and practicality of the bankruptcy judges.

Next, Judge Hercher’s close friend Herb Grey spoke warmly about him, emphasizing his caring and integrity. Judge Hercher’s former law partner **Teresa H. Pearson** spoke about him as a colleague, noting that his new judicial colleagues are lucky to have him, as he is interested in everything, always available to discuss difficult issues and always willing to lend a hand. His former law partner **Geoffrey Groshong** (Groshong Law PLLC; Seattle) then played the first movement of Handel’s Sonata No. 2 on oboe, accompanied by former law partner Mary Ann Frantz on keyboard. Oregon State Bar Debtor/Creditor Section Chair Clark Balcom shared remarks regarding Judge Hercher’s service to the section, and acknowledged the importance of the collegial and close-knit bankruptcy bar in Oregon. Finally, Judge Hercher’s wife, Alicia, commented that while he is “not a saint,” he is nonetheless devoted to the law and is a terrific mentor.

Chief Judge Brown then administered the oath of office, and Judge Brown and Mrs. Hercher helped him don his judicial robe. Judge Hercher then made remarks, expressing his many thanks to his family, colleagues old and new, and friends. He noted many people who had traveled far and wide to attend, including his brother who lives in Prague, Czech Republic. After the closing, attendees adjourned to a reception in the ground floor of the courthouse.

As Judge Hercher takes the bench, he joins colleagues who work hard to administer bankruptcy cases in a way that is fair to all parties and achieves the purposes of the Bankruptcy Code. Oregon is fortunate to have another judge who cares strongly about deciding cases in compliance with the law and with compassion. Judge Hercher is not the only Oregon judge certified by the ABC. Judge McKittrick has also been board certified in business bankruptcy law since 1996. Judges Hercher and McKittrick are members of the following esteemed group of board-certified judges:

*Business Bankruptcy Law*: Hon. Theodor C. Albert (U.S. Bankruptcy Court (C.D. Cal.); Santa Ana), Hon. Jeffrey E. Bohm (U.S. Bankruptcy Court (S.D. Tex.); Houston), Hon. **James M. Carr** (U.S. Bankruptcy Court (S.D. Ind.); Indianapolis), Hon. **Laurel E. Davis** (U.S. Bankruptcy Court (D. Nev.); Las Vegas), Hon. Keith P. Ellison (U.S. District Court (S.D. Tex.); Houston), ABI Director Hon. **Michael A. Fagone** (U.S. Bankruptcy Court (D. Me.; Bangor), Hon. **Jeffrey J. Graham** (U.S. Bankruptcy Court (S.D. Ind.); Indianapolis), Hon. **Stephani W. Humrickhouse** (U.S. Bankruptcy Court (E.D.N.C.); Raleigh), Hon. **Stacey G.C.**

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**Jernigan** (U.S. Bankruptcy Court (N.D. Tex.); Dallas), Hon. **Brian F. Kenney** (U.S. Bankruptcy Court (E.D. Va.); Alexandria), Hon. **Wendelin I. Lipp** (U.S. Bankruptcy Court (D. Md.); Greenbelt), Hon. Joan A. Lloyd (U.S. Bankruptcy Court (W.D. Ky.); Louisville), Hon. **Randal S. Mashburn** (U.S. Bankruptcy Court (M.D. Tenn.); Nashville), Hon. **Howard R. Tallman** (U.S. Bankruptcy Court (D. Colo.); Denver), Hon. **James J. Tancredi** (U.S. Bankruptcy Court (D. Conn.); Hartford), Hon. **Mary F. Walrath** (U.S. Bankruptcy Court (D. Del.); Wilmington), Hon. **Lawrence S. Walter** (U.S. Bankruptcy Court (S.D. Ohio); Dayton) and Hon. **Michael G. Williamson** (U.S. Bankruptcy Court (M.D. Fla.); Tampa).

*Consumer Bankruptcy Law:* Hon. **Jeffrey P. Norman** (U.S. Bankruptcy Court (W.D. La.); Shreveport), Hon. **Marcia P. Parsons** (U.S. Bankruptcy Court (E.D. Tenn.); Greeneville) and Hon. **Madeleine C. Wanslee** (U.S. Bankruptcy Court (D. Ariz.); Phoenix).

*Business Bankruptcy and Consumer Bankruptcy Law:* Hon. **Robert D. Berger** (U.S. Bankruptcy Court (D. Kan.); Kansas City), Hon. **Joseph N. Callaway** (U.S. Bankruptcy Court (E.D.N.C.); Greenville), Hon. Peter H. Carroll, III (U.S. Bankruptcy Court (C.D. Cal.); Santa Barbara), Hon. **Peter G. Cary** (U.S. Bankruptcy Court (D. Me.); Portland), Hon. **Benjamin A. Kahn** (U.S. Bankruptcy Court (M.D.N.C.); Greensboro), Hon. **Gregory R. Schaaf** (U.S. Bankruptcy Court (E.D. Ky.); Lexington) and Hon. **David M. Warren** (U.S. Bankruptcy Court (E.D.N.C.); Raleigh).

*Creditors' Rights Law:* Hon. **Bruce T. Beesley** (U.S. Bankruptcy Court (D. Nev.); Reno), Hon. **Rene Lastreto, II** (U.S. Bankruptcy Court (E.D. Cal.); Fresno), Hon. **Jerry C. Oldshue, Jr.** (U.S. Bankruptcy Court (S.D. Ala.); Mobile) and Hon. **Ronald H. Sargis** (U.S. Bankruptcy Court (E.D. Cal.); Sacramento). **abi**

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