

THE DAILY RECORD

LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Fourth Department Judge Donald J. Wisner Retiring At End Of August

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His sense of humor and tremendous humility are evident in even a brief conversation with Appellate Division, Fourth Department Judge Donald J. Wisner. Quick witted, intelligent, discrete, energetic and a bit playful in the last days of his judicial career, the judge is looking forward to more time for fishing, boating and enjoying Florida winters.

"God only gives you so many years," he quipped. "Years ago, I promised myself I'd have time for other things and I decided that time is now."

A Surveyor's Son

A Rochester native, Judge Wisner graduated from McQuaid Jesuit High School in 1959 before embarking on his undergraduate studies at Notre Dame. Earning his bachelor's degree in history, he had met a number of attorneys during school breaks while delivering survey maps for his father's business.

"One of our neighbors was Art Agnello, a fine lawyer," Judge Wisner noted. "I'm sure he influenced my choice to go to law school."

In addition to highway and survey work for Monroe County between school terms, Judge Wisner also spent time during law school working at the New York State Senate as an aid to Senator Laverne.

Receiving his juris doctor degree from Union University, Albany Law School in 1966, Judge Wisner passed the bar exam and joined the U.S. Army as a captain in the Judge Advocate General's Corps where he served from January 1967 through January 1971.

The Practice Of Law

With experience in military justice, government contracts and related areas, Judge Wisner returned to Rochester to join the Monroe County District Attorney's Office under the leadership of Jack Lazarus. Starting in the Appeals Bureau and quickly moving on to city court, Judge Wisner was assigned to county court within seven months of his arrival at the DA's office. (Today, that range of assignments usually takes a young prosecutor three or four years.)

"In the early 70s, there were only 13 attorneys in the DA's office," Judge Wisner noted, trying to minimize his stellar progress in prosecution assignments. "And, in those days, we were also allowed to do some private practice, so I gained civil experience working in Gene Cusker's office."

During his 12 years with the DA's office, much of that under former DA Larry Kurlander, Judge Wisner served as chief of the County Court Trial Team for Narcotics Part (1974-1975),



PHOTO BY NORA A. JONES

ENVISIONING THE FUTURE — In his office at the Appellate Division, Fourth Department, Judge Donald Wisner spends a few minutes talking about the change of pace to come with his retirement as he wraps up his duties on the bench. In the background, the scenic screensaver on his computer is from a photograph he took.

chief of Special Investigations (1975) and chief of the Homicide Bureau (1976-1978) before becoming Chief Trial Attorney (1978-1982). During the late 1970s, he was tapped twice to serve with the U.S. Attorney's Office as a special assistant.

In 1978, Rochester was only the second city in the country to cross-designate local prosecutors to work with the Justice Department. In this work for the Justice Department Strike Force, Judge Wisner demonstrated his skills in *United States v. Barton*, 677 F2d 224 and *United States v. Russotti*, 717 F2d 27.

As Chief Trial Attorney of the Monroe County DA's Office from 1978 to 1982, Judge Wisner supervised some 25 trial attorneys and was the prosecutor in the "Mad Dog" Sullivan case (103 AD2d 1035).

"I can't think of a better place to get trial experience than the DA's office," Judge Wisner reflected.

The County Bench

In November 1982, Judge Wisner won the local election for a seat on Monroe County Court. To begin his term, he was assigned to Family Court for a year.

"Up until then, if I got off the elevator at the third floor in the Hall of Justice, it was typically a mistake," he joked, admitting he had prosecuted only one youth in the family court set-

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ting during his years with the DA's office.

It was during his service in County Court that Judge Wisner was regularly in the news as the presiding judge in *People v. Arthur Shawcross*. Pleadings and motions in the multiple-personality serial killer case (10 Rochester victims) consumed much of the judge's time that year, leading to a 10-week televised trial involving nearly 70 witnesses and some 300 exhibits.

"Between Prosecutor Chuck Siragusa and Defense Counsel Tom Cocuzzi and Dave Murante, there was another motion every other day," Judge Wisner remarked. "Channel 9 cut its teeth on that trial, and I think cameras in the courtroom worked out fine in that case."

It was also during his County Court years that Judge Wisner was assigned to Erie County Supreme Court for one term each year in 1983 through 1986. He also filled in for Judge Rosenbloom for a few months, taking over Rosenbloom's calendar during an illness. Another notable fact for his term in county court — Thomas Van Strydonck was Judge Wisner's law clerk through the 1980s.

New York Supreme Court

After nine years in County Court, Judge Wisner moved on to the New York State Supreme Court in Monroe County in January 1992, following a successful election bid. Bill Pixley became his law clerk and Rosa Thompson became his secretary.

"They are terrific! I've been carried by excellent staff throughout my career," the judge remarked, again minimizing his own success.

"Supreme Court was baptism by fire," Judge Wisner recalled. "Each of the sitting judges could elect to jettison their worst cases to the new judge, and I was still light on civil experience. I learned a lot very quickly. Civil law is fascinating and diverse."

Along with his local duties, Judge Wisner was assigned to Manhattan Supreme Court for one term each year, 1992 through 1996.

On Aug. 17, 1997, Gov. George Pataki selected Judge Wisner for a seat on the appellate bench in the Fourth Department.

"I was taken back. I no sooner got off the phone with Justice [Dolores] Denman than the stacks of briefs and records for my first term rolled through the door. I guess she made her point. Work here is very much a team effort. You can't get anything decided with one vote. It is a daunting task to understand the issues and make clear, hopefully unanimous decisions. There is enough confusion in the law without splitting 3-2 all the time," acknowledged Judge Wisner, noting his seventh anniversary this month as he prepared to sit for his last term.

Family And Future

Judge Wisner and his wife, Marilyn, have five children and 11 grandchildren between them. They include: Todd Wisner (lawyer); Amy Galbraith (former teacher, full-time mom); Sue Duebner (former teacher, full-time mom); Marilee (Lee) Sercu (lawyer and mom); and Sunny Brisco (mom and manager at Old Castle Domine).

"I've signed a contract to serve 'of counsel' for Todd, Lee and Steve [Lee's husband, soon to leave the DA's office]. I'll work and they'll get paid. Sound like a fair deal to you?" Judge Wisner asked. "I made it a 30-year contract, so I think I'll get the better of them on that part."

His wife has a jewelry design business, MD Jewels, and will be exhibiting at this year's Clothesline Festival.

"Chances are you'll see me there, too, as I've already been commissioned to help man the booth," Judge Wisner laughed.

He also plans to spend more of the winter months at their Florida condominium, which narrowly escaped the devastation of hurricane Charley. Having recently downsized their Rochester residence, the Wisners are looking forward to more time for boating and fishing — both locally and in the south.

As a counselor for Camp Good Days and Special Times, Judge Wisner has helped the children with their angling skills and served on various committees for the camp. Other community activities have included service on the board of trustees for the Monroe County Legal Aid Society and several other law related posts.

He has fished in the Gulf, the Pacific and Lake Huron, but has mostly enjoyed Seneca Lake. In addition to fishing, Judge Wisner enjoys hiking and photography.

Asked about golfing, he said, "I own golf clubs, and that about sums up my game."

A Few Words From A Friend

"I first met Don Wisner when I started at McQuaid," stated Michael R. Wolford, president of the Monroe County Bar Association and long-time friend of the judge.

"Several years later I was assigned a murder case and Donald was the prosecutor. We tried the case in front of Judge Hy Maas. Thereafter, our paths crossed a number of times and I've had cases before him on the trial bench and at the Appellate Division," Wolford continued.

"In my mind, he has always epitomized the true professional and he has never taken himself too seriously. He was a very capable prosecutor, a fine trial court judge and an excellent appellate justice. More importantly, he has continued to remain a good friend."

Celebration

A retirement dinner is planned for Oct. 1 at Logan's Party House. For details, contact Rosa Thompson at (585) 530-3228.