

## *Retiring Judge Profile*

# **Mike Wetherell**

*District Judge  
Fourth Judicial District*

*October 17, 2014*

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District Judge Michael E. (“Mike”) Wetherell will retire from the bench at the expiration of his present term effective January 4, 2015 after serving 12 years on the Fourth Judicial District Bench. While we know Mike best from his years on the bench, he has been in the public eye far longer than that. Mike’s Democratic politics were genetically predetermined – his maternal great-grandfather, Edward Hart, had served as a Democrat in the Iowa Senate and both of his parents, Bob and Claire Wetherell, had been prominent Idaho Democrats who served in the Idaho Senate. From 1967 to 1977, Mike worked in the Boise and D.C. offices of Senator Frank Church, including service as chief counsel and administrative assistant from 1973 to 1977. Mike served on the Boise City Council from 1985 to 2003 and was its president from 1987 to 1991 and 2002 to 2003. He held the chair of the Idaho State Democratic Party from 1990 to 1993 and ran for Idaho Attorney General, Idaho House of Representatives and Idaho Supreme Court.

While Mike was very active in Democratic Party politics, his public service has encompassed many more nonpartisan positions. These include, at various times and among many other offices: president of the Idaho Epilepsy League, regional director of the Epilepsy Foundation of America, president of the Boise Kiwanis Club, member of Community Planning Association of Southwest Idaho (COMPASS), board of governors of Idaho Trial Lawyers Association, and editor of Idaho Trial Lawyers Magazine. Among the honors Mike has achieved for his service are listing in at least a half dozen different “Who’s Who” publications, an award for Outstanding Personal Achievement from the Epilepsy Foundation of America, the Idaho Trial Lawyers award for Outstanding Service to the Bar, the James C. Howland Urban Enrichment Award, a Service Award from St. Luke’s Institutional Review Board, and recognition as 2002’s Best City Council Person in Best of Boise by Boise Weekly newspaper.

With Mike’s long history of political involvement and his devotion to service to the community in a myriad of capacities, he has determined to not serve as a senior judge. He prefers to get his “freedom of speech back” rather than go through more years of self-imposed censorship for the sake of a part-time job. He views his future as that of a “recovering judge” rather than a senior judge. This attitude is also reflected in Mike’s comments about how his life changed as a judge. He stated, “I am certainly less in the public eye than I was before, except when handling a controversial high-profile case, and I work at staying out of the papers and off of television and radio rather than getting into or on them.”

Commenting on the challenges of the judicial profession, Mike said, “Seriously the most challenging is to get it right – something which none of us do all of the time. And what I like most is being intellectually challenged. Law is a great profession, since you have the opportunity to learn a lot quickly, even if not always well, about so many topics and issues.” In a jocular mood, he commented, “What I like the most (about being a judge) is everyone laughs at my lousy jokes and the most challenging thing is to bite my tongue and try not to tell them, which will hopefully help keep me out of trouble.”

The author of many scholarly articles and publications and a sought-after public speaker, Mike says that if he were not a judge he would probably be practicing law, writing and possibly teaching. He may become more politically active again, but is not sure if he will run for political office. He looks forward to traveling more in retirement.

When Mike was asked about people he admires, he responded:

*I admire a lot of people. There are a lot of good people out there. I admire the trial attorneys I see in court nearly every day and the great job done by overworked and underpaid court staff and the work ethic of my fellow judges. I admire the judges who take on the task of working in Drug Courts, Veterans Courts, Mental Health Courts and Domestic Violence Courts. Most people do not know that they do this for no added compensation or reduction in workload. They are dedicated folks. It does not come as a surprise to those who know me that I admire former Idaho United States Senator Frank Church, with whom I worked for a decade. I love Idaho's outdoors and remember every time I am in a wilderness area, the Hells Canyon or at Redfish Lake that he was instrumental in preserving those areas and many of Idaho's scenic rivers for my enjoyment as well as the enjoyment of my children and grandchildren and so many others. I admire greatly Bethine Church for all of her work on behalf of Idaho and Cece Andrus who was and is as well committed to what is good about our state. Also my Father Robert Miles Wetherell and my Mother Rose Claire Hart Wetherell both of whom served in the Idaho Senate and emphasized to their children the importance of public service.*

*(I also admire) Perce Hall and Frank Hicks, two attorneys in my hometown of Mountain Home who, by their example, made law an honorable profession to pursue in my eyes when I was growing up. They influenced as well my decision to study law. But perhaps one of the key reasons I finished law school was a conversation I had with Senator Church after I took a year off from law school and was not sure I wanted to go back because it would involve another three years of night school, and he very simply asked, "How old will you be in three years if you don't go?" It was unassailable logic and I returned to law school and graduated and passed my Bar in 1972.*

Finally, Mike adds that he admires his wife, Karen, who has put up with him for more than 45 years and made his life much better during that time.

Asked what advice Mike would give new judges, he waxed philosophical, saying:

*As to advice I would tell a new judge, don't expect to be loved. If you want to be loved become a minister. The best you can hope for is to be viewed as competent and fair and when you think about it that is not a bad goal to strive for. Don't think the robe makes you smarter than you were before you got it, it doesn't. But, as you do the job over time you will become, hopefully, better in exercising good judgment that helps make you a good judge.*

Mike commented about the changes he has seen in the legal profession in the more than 42 years of his practice. When he graduated from law school, there were 94 volumes of the Idaho reports and we are now working on volume 156. He wonders how many of the decisions are really necessary. "We seem to see more of 'How many angels can fit on the head of a pin?' decisions, in my opinion, than common sense ones. I feel there is less deference given to the doctrine of res judicata which results in less certainty in the law and makes the job of the trial courts and the practicing bar more difficult." He also comments on a trend he sees, not just in Idaho but in our legal system in general, that "the doctrines of fundamental error and abuse of discretion appear to be used all too freely to second guess trial courts decisions." Further, he sees "a disturbing tendency to question motives rather than logic in some reversals and dissents." These factors, in his opinion, all make the work of trial judges more difficult and, at times, discouraging.

Commenting on challenging cases he has handled as a judge, Mike said:

*There is no doubt in my mind. Being the Administrative Judge in the Fourth Judicial District when a final last minute appeal was filed in a death penalty case upon which I had to rule was the most difficult decision I had to enter, finding there was no legal basis to grant a further stay. When you are required to make such a ruling the death penalty becomes a very real thing instead of a philosophical discussion. The most challenging civil case was between Saint Alphonsus Hospital and MRI Associates. With both sides represented by highly competent counsel and over 5000 exhibits, the trial lasted two months and the jury ultimately awarded over \$50 million in Damages to the various MRI entities. As I read the verdicts, I had a hard time getting the word "millions" to come out rather than thousands. The last ruling from the Idaho Supreme Court upheld the jury verdict.*

Humor in Mike's courtroom seems to emanate from the bench. Mike tells of an incident during his first criminal trial when the prosecutor said, "Objection, Your Honor!" It was a few moments before Mike realized the attorney was talking to him, whereupon, "I very quickly gave one of the worst evidentiary rulings I have ever made on his hearsay objection. Thank heaven for the doctrine of harmless error." On another occasion, Mike walked into the courtroom to continue a jury trial. After telling everyone to be seated, Mike took a seat at the bench. He describes what happened next. "I sat down in my chair, which at that point, for some reason lost its hydraulic system and dropped about a foot in height leaving me behind the bench with only my head showing above it and with my hands grasping the edge like a small child looking over a fence holding himself up by his hands. Everyone got a good laugh."

Mike's favorite quote comes from his Mother, Claire Wetherell. She said, "Remember, no matter how strongly you feel about something, you could be wrong." He finds this to be really good advice to anyone but especially to a judge. "I have more than once started an opinion, or even thought I had finished one, and then discovered a new case, fact, or statute that made me realize I had it wrong and had to rewrite it. Sometime you just get it wrong and have to redo it. Sometimes you feel the Supreme Court or the Court of Appeals gets it wrong in your opinion but, as we all know, they have the right to get it wrong the last time."

Outside the law, politics and public service, Mike enjoys boating, camping, fishing, watching baseball and football games and sometimes hunting. He adds gardening to the list, saying, "I also like to grow tomatoes because they are basically a weed and not even I can kill them." He acquired these interests largely from his father, growing up in Mountain Home, and continues to enjoy them as an adult.

We'll miss you on the bench, Mike, but somehow we doubt we've seen the last of you in a public forum!