

Rebecca Wiseman

Justice Rebecca Wiseman uses warmth and grace to dig into cases and win over colleagues.



Rebecca A. Wiseman
5th District Court of Appeal
Fresno County (Fresno)

Career highlights: Appointed by Gov. Pete Wilson to the 5th District Court of Appeal, 1995; judge, Kern County Superior Court, 1991-95; judge, Kern County Municipal Court, 1986-91; deputy district attorney, Kern County, 1981-86; attorney, Law Firm of Kuhs & Parker, 1980-81.

Law school: UC Davis School of Law, 1980

Age: 59

By Emily Green

To know Justice Rebecca Wiseman is to know her history. Her father, now 91 years old, was a glider pilot for the army during World War II when he landed in enemy territory. A German family housed him and a fellow pilot for the night. The next day the Gestapo found them and murdered the family for housing them, as well as her dad's co-pilot. They spared her dad, not thinking he was an officer. He survived a year of prison camp. After the war, in route to California, he met his wife - Wiseman's mother - on an Amtrak train. He later did finance work for a cotton-ginning company in the Central Valley.

Wiseman said her father had a huge impact on her. "He was a man of very strong conviction. And he came from absolutely nothing," she said. "He would always do whatever he thought was right, no matter the consequences."

Like her father's, Wiseman's life story is one of optimistic persistence. She is in many ways a trailblazer - she was the first woman appointed to the Kern County Superior Court and the second woman named to the 5th District Court of Appeal - but she doesn't dwell on this aspect of her career. Since her appointment to the appellate court in 1995, Wiseman has racked up a considerable number of noteworthy opinions that run the ideological gamut. In cases that aren't clear cut, she sometimes draws on her extensive education in matters outside the law to make decisions, and she expects her staff attorneys to have life experiences outside the court that inform their work.

Now the senior jurist on the 5th District Court of Appeal, Wiseman has a reputation for being an active questioner from the bench and a persuasive voice among her colleagues. She is also a co-founder of the court's mediation program.

"She is very, very conscientious," said fellow justice Rosendo Pena, who was one of Wiseman's first staff attorneys. "She is very careful to make sure she puts out a quality work product."

Pena said Wiseman encourages her staff attorneys to work in their communities, because, in part, she wants them "to get the life experience that would be helpful when resolving the issues that come before her." He said Wiseman, a registered Republican, also encouraged him and another former staff attorney, Fresno County Superior Court Judge Kimberly A. Gaab, to seek judgeships. Pena recently became the first Latino appellate court judge in the Central Valley.

'She is not formal at all. She is very friendly. And that is part of the reason she is able to do what she does on the court.'

- Justice Betty L. Dawson

"She's delightfully warm and engaging. Very approachable," said 9th U.S. Circuit Court of Appeals Judge Consuelo Maria Callahan, who has known Wiseman since they attended baby judges' college together 27 years ago. "She's very passionate about judicial education and general civic education to the public."

Wiseman uses her charm and seniority on the bench to effect, her colleagues say, even if it's not always apparent. She had significant influence on a recent decision involving land use and water rights, said recently retired Justice Betty L. Dawson, who sat on the panel. The homeowners of a secluded subdivision sued a developer who planned to offer public access to the San Joaquin River via a road that ran through their subdivision. *Sumner Hill Homeowners' Association v. Rio Mesa Holdings LLC*, 205 Cal. App. 4th 999 (2012).

Dawson said Justice Stephen Kane, who wrote the unanimous opinion, strongly disagreed with her and Wiseman on one of the main issues in the case. Wiseman convinced Kane to decide the case on different grounds than the disputed issue, Dawson said, who declined to go into detail about the case. In the opinion, the justices opted not to decide on the navigability of the San Joaquin River - a relevant concern because laws provide for public access to navigable waters - and ruled for the homeowners.

"She was non-confrontational and gracious in her approach to Justice Kane about her position on the case," Dawson. "She is not formal at all. She is very friendly. And that is part of the reason she is able to do what she does on the court." Dawson said Wiseman and the court's presiding justice, Brad Hill, "are the glue that keeps collegiality going in that court."

Wiseman may be best known among judges around the state as an educator. She writes books for the Rutter Group, which provides continuing legal education classes to judges and attorneys, and regularly teaches classes sponsored by the group.

Wiseman herself is a poster child for continuing education. In 1997, already an appellate court justice at the time, she enrolled at the University of Virginia to earn a master of laws degree. She spent two summers in Virginia taking classes and wrote her thesis on how judges' names affected the likelihood that voters would support them in retention elections.

The experience wasn't just an intellectual exercise. Wiseman said the economics classes she took at the university played a significant role in shaping her view, as an assigned justice on the state Supreme Court, in a case determining an amusement park's liability for injuries incurred by riders. Wiseman was one of three dissenting justices who opposed expanding liability for the park operators. Her view was that if you impose too high a safety standard, businesses would deem it unattainable and abolish the ride. But if the standard were a little bit lower, businesses would have an incentive to make the ride as safe as possible in order not to lose customers.

"This was not a concept I would have embraced or even thought of without studying 12 weeks of hardcore economics," she said. "I want [the rides] to be impossibly safe, but I felt this was the way to achieve that."

Law wasn't Wiseman's first love. Growing up, and into her early twenties, she wanted to become a journalist. That trajectory took a drastic turn after one interview in which she was informed the paper would never hire a woman to become an account executive. Two days later, Wiseman applied for law school. The idea, she said, was not to sue the paper, but to "have a credential." She thought she might become a legal reporter.

But living in the Central Valley never afforded Wiseman the journalism opportunities she sought, and after law school she practiced engineering malpractice law for a year before joining the district attorney's office, where she worked for five years. In 1986, at 32, Wiseman was appointed to the Bakersfield County Municipal Court, and at 37, to the Kern County Superior Court.

For the past nine years, Wiseman has lived in Moraga, in the East Bay, and commuted to Fresno, where she also keeps an apartment. Her family left the Central Valley, she said, because the poor air quality there exacerbated her son's asthma. Wiseman's husband works for the state Department of Resources, where he helps establish marine parks.

Lawyers who appear before her said she is probing but respectful.

"She is going to ask thoughtful questions," said Supervising Deputy Attorney General Louis Vasquez. "But expect that your presentation will go just fine."

"I can't think of times where Justice Wiseman will not be actively involved, whether she is authoring the opinion or not," said Todd W. Baxter, a partner with McCormick, Barstow, Sheppard, Wayte & Carruth LLP. "Win or lose, I've always found her opinions extremely well written and well reasoned."

Wiseman's independent streak was on full display in 2011 in a death penalty case she sat on at the state Supreme Court. The defendant appealing her sentence had been found guilty of murdering her 4-year-old niece, who suffered multiple injuries over an extensive period of time and ultimately died from scalding.

The justices agreed with the defendant on one key issue: The trial judge erred in allowing the prosecutor to read to the jury an emotional letter he wrote to the murdered child. But Wiseman alone said that the letter could have prejudicially influenced the jury, and therefore that the death sentence should be reversed. "In my opinion, the prosecutor's letter crosses the line," she wrote in her dissent and warned that the court's decision could lead to overzealous prosecutors pushing "the limits without serious fear of reversal."

"I'm going to call them the way I see them," Wiseman said in an interview, "and not necessarily the way my background might suggest."

Here are some of the cases over which Wiseman has presided and some of the lawyers involved:

Gomez v. Superior Court (2005) 35 Cal 4th 1125 - assumption of risk

For the petitioner: Barry B. Novack, Beverly Hills

For the real parties in interest: Richard A. Derevan, Snell & Wilmer LLP, Costa Mesa

San Bernardino County Children and Family Services v. Andrew J., (2012) F065414 - dependency

For plaintiff and respondent: Stacy A. Moore and Jamila Bayati, deputy county counsel, San Bernardino

For defendant and appellate: Linda Rehm, Fullerton

Ralph's Grocery v. United Food & Comm. Workers Union Local 8 (2011) F058716 - unions' right to picket

For plaintiff and appellant: Miriam Vogel, Morrison & Foerster LLP, Los Angeles

For defendant and respondent: Elizabeth A. Lawrence, Davis Cowell & Bowe LLP, San Francisco

People v. Gonzales (2011) 51 Cal. 4th 894 - death penalty

For defendant and appellant: Mark E. Cutler, Cool

For plaintiff and respondent: Holly D. Wilkens and Annie Featherman Fraser, attorney general's office, San Diego

Tuolumne Jobs & Small Business Alliance v. Superior Court (2012) 210 Cal.App.4th 1006 - California Environmental Quality Act

For petitioner: Brett S. Jolley, Herum Crabtree, Stockton

For real party in interest Wal-Mart Stores Inc.: Edward P. Sangster, K&L Gates LLP, San Francisco

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