

WIENER, Howard B.

RETIRED ASSOCIATE JUSTICE, COURT OF APPEAL, Fourth Appellate District, Division One

Appointment/Election: Appointed [succeeding Associate, Justice Richard B. Ault, retired] by Governor Brown Jr. April 19, 1978, confirmed by Commission on Judicial Appointments May 26, 1978, oath same day (appointment effective May 30, 1978 on filing of confirmation documents with Secretary of State), confirmed by electorate Nov. 7, 1978, reconfirmed for 12 year term Nov. 2, 1982, and retired from bench Dec. 3, 1993.

Previous Judicial Office: Judge, Superior Court, San Bernardino County, Aug. 1, 1975 (date of oath) to May 30, 1978, appointed July 25, 1975 by Governor Brown, Jr.

Past Employment: Private law practice, West Covina. Calif., 1956-75 (first in association with Paul W. Egly [later a superior court judge and most recently' as partner. Wiener, Neverman, Chrisman & Baldonado). Served as Law Clerk to U.S. Dist Court Judge Benjamin Harrison, Los Angeles. Calif.. 1955-56.

Memberships/Awards: Member: Calif. judges Assn., 1978- (Vice President.. 1989-90; Executive Board, 1987-90, Judicial Ethics Committee, 1990-); American Bar Assn., 1992-; and Univ. of San Diego Law School. Board of Visitors, 1982- (former Chair). President, William B. Enright American Inn of Court 1991-93. Former Chair. Judicial Council's Advisory Committee to Study Legislative Proposals on Trial Court Unification. 1981. Former member: Board of Governors. Slate Bar of Calif., 1972-75 (Vice President, 1974--75): Los Angeles County Bar Assn" to 1975 (Board of Trustees, 1969-71): Pomona Valley Bar Assn., to 1975 (President 1968: Vice President, 1966--67: Secretary Treasurer, 1965--66): and Citrus Bar Assn., 1957-75 (Treasurer, 1959-60): Board of Trustees, Inter-Community Hospital. 1967-74: and Executive Committee. La Verne College Law Center, 1970-71.

Teaching/Lectures/Panelist: Faculty, Calif. Continuing Judicial Studies Program ("CJSP" (Mid Career Judges College) (CJERJ, 1983, Participant: CEB programs. "Recent Developments in Civil Litigation," 1987 (moderator); and "Bad Faith Litigation." 1982 (Judicial Perspective); and The Rutter Group Programs: "Insurance Litigation," 1992 and 1991 Update (faculty); "Punitive Damages," 1992 and 1991 (Judicial Perspective); and "Bad Faith Litigation." 1982 (Judicial Perspective).

Publications: Coauthor (with Jon B. Eisenberg and Ellis *cl.* Horvitz), California Civil Practice Guide, Civil Appeals and Writs. The Rutter Group (1990).

Noteworthy Cases: Significant decisions authored by Justice Wiener include: *Yee v. City of Escondido*. (1990) 224 Cal.App.3d 1349. 274 Cal.1.Rptr. 551 (upholding validity of mobile home rent control ordinance against a constitutional attack that the ordinance denied the mobile home owners fair and reasonable rents); *Holliday v. Jones*, (1989) 215 Cal App. 3d 102, 264 Cal. Rptr. 448 (ruling in a legal malpractice action resulting in plaintiffs unlawful conviction and incarceration that client is entitled to damages for

emotional distress caused by attorney's negligence, but that client's family members whom attorney did not represent are not so entitled): *Marois v. Royal Investigation & Patrol, Inc.* (1984) 162 Cal.App.3d 193, 208 Cal.Rptr, 384 (ruling that security service providing security guards to businesses may be liable to customer injured as result of security guards' failure to reasonably protect customer from assault by vandal on premises); and *A & M Produce Co. v. FMC Corp* (1982) 135 CaLApp,3d 473, 186 Cal Rptr, 114 (ruling that doctrine of unconscionability applies in California and that clauses in preprinted contract for sale of agricultural machinery disclaiming all warranties and excluding consequential damages were under circumstances of case unconscionable and finding requirements of both procedural and substantive unconscionability satisfied, ruling that trial court property withheld presentation of evidence of the clauses to the Jury).

Education: LL.M. (1982, The Judicial Process), Univ. of Virginia Law School. Charlottesville; LL.B. (1955). Harvard Univ. Law School Cambridge, Massachusetts; B.A. (1952, cum laude, Philosophy). Brown Univ. Providence, Rhode Island (Phi Beta Kappa).

Born: Feb, 1, 1931: Providence. Rhode Island.

Admission: Admitted to Calif. Bar Jan. 1, 1956.