

New York Law Journal

ALM Properties, Inc.

Page printed from: <http://www.nylj.com>

[Back to Article](#)

Family Trumps Love of Law for Departing Justice

Daniel Wise

11-15-2010

Justice James M. McGuire said he likes nothing better than ferreting out "a fascinating legal issue lurking in a simple case," a passion that is reflected in the dozens of dissenting opinions he has authored in his five years with the Appellate Division, First Department.

"I love this work," said Justice McGuire. "I love thinking and writing about the law."

Nevertheless, Justice McGuire ([See Profile](#)) said he soon would leave the bench to seek a job in the private sector that is more remunerative than the \$144,000 he earns as a judge. Married to a federal prosecutor with whom he has a 5-year-old son and a 2-year-old daughter, and with no immediate prospects for additional pay as a public servant, Justice McGuire said he had no other choice.

The state's judges have not received a pay raise since 1999. Justice McGuire, like many others, said that he has been forced to dip into savings to make ends meet.

In the private sector, "I can plan for my children's future; it is as simple as that," he said.

Justice McGuire, 57, is not the first appellate judge to cite the lack of a raise as a factor in resigning from a prestigious legal position. Last year, Robert A. Spolizino left the Second Department bench to join Wilson Elser Moskowitz Edelman & Dicker, for the same reason.

Chief Judge Jonathan Lippman said in an interview that the resignation of Justice McGuire at "the height of his powers" shows that the Legislature must act now to raise judicial salaries.

"This is beyond ridiculous," said Judge Lippman. "The judiciary is being torn down brick by brick and we are now losing the judges who shape our jurisprudence."

Judge Lippman worked closely with Justice McGuire when Judge Lippman served as presiding justice of the First Department in 2007 and 2008.

Justice McGuire's immersion in the law is obvious from a glance around his chambers, where a desk and three tables are jammed into quarters smaller than many bedrooms. Every surface is strewn with law books, many of them open, as well as piles of papers, often well over a foot high.

A Westlaw search found 90 dissenting opinions written by Justice McGuire, making him far and away the leader on the First Department bench in that category. Justice James M. Catterson ([See Profile](#)), the runner-up, had 66.

In addition to his dissents, Justice McGuire has authored dozens of concurring opinions and 22 majority opinions, according to a Westlaw search.

'Obligation' to Dissent

A Cornell Law graduate, Justice McGuire is a former Manhattan prosecutor and counsel to Governor George Pataki who was elected to the Supreme Court from Queens in 2004. When he joined the First Department in August 2005, his willingness to dissent raised some hackles on the court.

"When I disagree with my colleagues," he said, "I have an obligation to dissent."

Advised of the Westlaw tally, he chuckled and said, "I'm surprised. I thought my colleagues were wiser."

First Department Presiding Justice Luis A. Gonzalez ([See Profile](#)) said that other judges on the court sometimes got "impatient" with Justice McGuire's focus on "sub-sub-issues." Over time, however, at least some of the judge's critics have come to accept his detailed approach as "a function of intense caring about getting the law right," said Justice Gonzalez in an interview.

Exhaustive Preparation

Justice Catterson said that in preparing a recent dissent, Justice McGuire exchanged drafts with Justice David B. Saxe ([See Profile](#)), the author of the majority opinion, about a dozen times.

In the process, both the majority and minority opinions became sharper and more nuanced.

"The analysis became more complex and lines of cases that had never been thought of were uncovered," said Justice Catterson, who joined in Justice McGuire's dissent.

Justice Saxe also pointed to Justice McGuire's "exhaustive" preparation for oral argument. His performance at oral arguments has stirred "the competitive juices" of other judges who "are now better prepared and sharper in their analysis than ever before," he said.

A veteran criminal defense lawyer, who frequently argues before the court, said that at oral argument, Justice McGuire is "clearly very familiar with the issues and facts—more so than many of his colleagues."

Several lawyers said that Justice McGuire has a reputation as an astute and tough questioner. Brian Shoot, an appellate lawyer at the plaintiff's firm, Sullivan, Papain, Block, Cannavo & McGrath, said the questions are "only hard because he asks good, well-prepared questions that don't have easy answers."

Mr. Shoot also called Justice McGuire a "refreshing" thinker who is willing to examine "whether a rule established by precedent has an adequate rationale."

Justice McGuire is married to Lisa Barone, a veteran prosecutor in the Southern District U.S. Attorney's Office, who has worked on the prosecution of Bernard Madoff for his role in a massive Ponzi scheme and the investigations his arrest spawned.

Justice McGuire said that he has not set a departure date but expects it will be when he finishes work on the cases that have not yet been decided.

He will not start an active job search until after he last hears oral arguments, a date that should come sometime in the next few weeks.

@|Daniel Wise can be reached at dwise@alm.com.

Are you prepared for Dodd Frank?

FIND OUT »

JOIN US FOR A **FREE WEBCAST**

Preparing for Today's Information Management Risks

June 28, 2011
1PM-2PM EDT

REGISTER NOW »

IL

LINKS Transform your business

Copyright 2011. ALM Media Properties, LLC. All rights reserved.