

# U.S. District Judge Bernard A. Friedman Planning to Take Inactive Status



Federal district judges can labor an entire career without the U.S. Supreme Court scrutinizing one of their decisions. But four of U.S. District Judge Bernard A. Friedman's opinions have gone under the high court microscope.

The Supreme Court upheld Friedman's decisions involving same-sex marriage and the federal Clean Water Act, but rejected his rulings in two other cases, including one to eliminate racial preferences in admissions at the University of Michigan Law School. But the Supreme Court vindicated Friedman this past June by banning colleges nationwide from considering race in admissions.

Friedman's rulings have been praised and panned during his 35 years on the federal bench in Detroit, yet he remains one of the most popular members of the U.S. District Court for the Eastern District of Michigan.

"He's the best-liked judge on the bench," says Robert Harrison, a prominent Detroit criminal defense attorney and former Friedman law partner. "He's made courageous decisions, is highly respected and goes out of his way to accommodate everyone who practices in his courtroom."

Friedman turns 80 on Sept. 23 and has advised his colleagues that he plans to go on inactive status at the end of the year and substitute for federal magistrates on arraignments and other preliminary hearings. He has considered retiring before but changed his mind because he loves his job.

"Being a judge is the best job in the world," Friedman once told a reporter. "Every day it's a new challenge and you can really touch people's lives."

Friedman credits his career to being in the right place at the right time.

## Early years

He was born in Detroit in 1943, the second of three children of David and Rae (Garber) Friedman. His father was a physician who opened a hospital north of downtown Detroit after being shunned by other medical centers because he treated many black patients. Friedman's mother was a homemaker.

The family lived in a predominantly Jewish neighborhood on Detroit's west side before moving to Palmer Woods in the mid-1950s.

Bernard Friedman was a popular student at Mumford High School but said an active social life and difficulty reading caused his grades to suffer. Years later, he learned that he suffered from dyslexia.

"School just wasn't my thing," Friedman told the Historical Society of the U.S. District Court of Eastern Michigan in 2009. "I had lots of hobbies. I loved woodworking, all kinds of things, and was never a good student until I got to law school."

His parents enrolled him at Riverside Military Academy, an all-boys prep school in Gainesville, GA, in his junior year. But his academic performance didn't improve, so he returned to Mumford his senior year and graduated in 1961 with lackluster grades.

Friedman wanted to become a residential builder like his grandfather, but said his father insisted that he get a college degree. So, he enrolled in a few courses at the now-defunct Detroit Institute of Technology.

His life changed the afternoon he decided to drop by the Detroit College of Law to check out the building. He was intrigued that the school's enrollment application was printed on a 5-by-7 index card, so he filled one out. To his surprise, he was accepted.

Friedman said he became hooked on the law the moment his textbooks arrived.

"I loved it," he told the historical society. "I did nothing but study all the time."

He won a law scholarship in the first year while attending classes and working part-time as a runner for a law firm.

Facing the prospect of being drafted during his final year of law school in 1968 at the height of the Vietnam War, Friedman enlisted in the Army Reserves and hoped he would be permitted to finish his studies.

But the Army called him up early. Fortunately, the law school allowed him to take his final exams before reporting for Fort Leonard Wood in Missouri. Friedman returned home seven months later to take the bar exam.

The Army eventually promoted him to lieutenant in the Judge Advocate General Corps. He served until 1973.

## **Career**

In 1968, he landed a job at the Wayne County Prosecutor's Office trying felony cases.

Two years later, he and two other assistant prosecutors – Robert Harrison and Dalton Roberson – decided to open a private law practice. They got a boost when a Detroit newspaper columnist touted the partnership’s unusual demographics: Harrison is an Armenian Protestant, Friedman a Russian Jew and Roberson was a black Catholic. Roberson went on to become chief judge of Detroit Recorder’s Court and died in 2020.

Early clients included the Detroit Police Lieutenants and Sergeants Association and other police unions.

In 1971 they were retained to represent police command officers who were indicted in a major sports betting ring that allegedly operated out of the Anchor Bar, a downtown hangout for reporters and cops. The case against the 151 defendants collapsed three years later because federal investigators had failed to obtain proper authorization for wiretaps.

But the case raised their profile in Detroit’s legal community and the partners later branched into general litigation, labor law and municipal representation.

In 1982, then-Gov. William Milliken, a Republican, appointed Friedman judge of 48<sup>th</sup> District Court, which has jurisdiction for the Birmingham-Bloomfield Hills area. He was endorsed by then-Lt. Gov. James Brickley, a former supervisor at the prosecutor’s office.

Friedman was elated.

“My attitude was always (that) it is the people’s court,” he told the historical society. He set the tone by arriving promptly for work and requiring court employees to treat everyone, including defendants, with dignity and respect.

He also conducted court hearings in local schools, made a video to educate students nationwide about the court system, hosted a legal show on WXYT radio and wrote a legal column for The Oakland Press.

In 1988, President Ronald Reagan, a Republican, nominated Friedman for U.S. District Court judge. Michigan’s two Democratic senators, Donald Riegle and Carl Levin, both endorsed Friedman and he quickly was confirmed.

Friedman, who enjoys interacting with people, said he felt isolated in the federal courthouse in Detroit compared with 48<sup>th</sup> District Court.

“No police officers came down,” Friedman told the historical society. “No FBI agents came down. No attorneys stopped in. It was just a very, very lonely experience for a long time.”

Friedman found workarounds.

While handling his own cases, he periodically sat in for magistrate judges in Duty Court, where lawyers and law enforcement officers gather for arraignments. He also convened court at Michigan law schools, conducted citizenship ceremonies in public schools and sat as a visiting judge in dozens of federal courthouses nationwide.

Lawyers praise Friedman for his legal knowledge, fairness, and pleasant courtroom demeanor.

In 2008, the Federal Bar Association for Eastern Michigan created the annual Julian Abele Cook, Jr. – Bernard A. Friedman FBA Civility Award to recognize a civil lawyer who is an outstanding example of professional excellence and civility.

Unlike his colleagues, Friedman often rules from the bench rather than having litigants wait weeks or months for written opinions. Former law clerks said he rarely gets upset when overruled by higher courts.

### **Court cases**

He has presided over thousands of cases but is best known for striking down the U-M Law School's policy of considering race as a factor in admissions in 2001 and Michigan's same-sex marriage ban in 2014.

In the admissions case, he acknowledged the nation's "tragic" history of racial discrimination but said the law school's goal of achieving a racially diverse student body was unconstitutional because it overemphasized race.

"Whatever solution the law school elects to pursue it must be race-neutral," he concluded. "The focus must be upon the merit of individual applicants, not upon characteristics of racial groups."

The U.S. Supreme Court overturned Friedman in 2003, saying universities needed 25 more years to reverse past discrimination. But in June 2023, it outlawed racial preferences in college admissions nationwide.

"Judge Friedman has a gut instinct about the important cases before him," said Stephen Thoburn, Friedman's longtime former law clerk. "He knows the right result. He will listen to the counter arguments to make sure he's not mistaken but he usually sticks to his instincts."

That's what happened in the same-sex marriage case involving Jayne Rowse and April DeBoer, a lesbian couple who sued because state law barred them from jointly adopting their three children.

In an unusual move, Friedman told the couple's lawyer that he would be forced to dismiss their claims against Michigan's adoption laws but would allow them to amend their lawsuit if they wanted to challenge the state's ban against same-sex marriages.

The couple did so, and Friedman issued his ruling after a nine-day bench trial.

"In attempting to define this case as a challenge to 'the will of the people,' state defendants lost sight of what this case is truly about: people," Friedman ruled.

He added: "No court record of this proceeding could ever fully convey the personal sacrifice of these two plaintiffs who seek to ensure that the state may no longer impair the rights of their children and the thousands of others now being raised by same-sex couples."

Friedman's decision and three others reached the U.S. Supreme Court which ruled in 2015 that same-sex couples have a fundamental right to marry under the U.S. Constitution.

The decision brought Friedman to tears.

"The case is so simple," he told a reporter. "Our forefathers meant everyone would have equal protection. This upholds the concept that we are all entitled to be who we are and have the protection of our Constitution and laws and to enjoy life. No matter what."

Friedman later married the couple.

He credited his parents for both decisions.

"I grew up in a household where injustices just weren't tolerated and that's how (they) taught us," he told PrideSource.com. "So, in terms of the issue of being gay or black or anything, it just wasn't an issue for me, ever, in my life."

Friedman learned about the decision from a former law clerk, Judith Levy, a lesbian who later was appointed a federal district judge and joined Friedman on the Eastern District bench.

Levy called Friedman "the most important person in my entire professional career with no close second. ... From the moment I started as his law clerk, he did everything he could do to support and promote my career and life."

A third Friedman case to reach the Supreme Court involved John Rapanos, a Midland developer who defied the federal Clean Water Act by bulldozing wetlands on his property to build a shopping center and residential homes.

After environmental regulators sued him in 1994, Friedman ruled that Rapanos' wetlands constituted navigable waters under the law because wetlands drain into rivers and lakes.

In 2006, the Supreme Court backed Friedman in a split decision that expanded the scope of the Clean Water Act. Rapanos eventually settled with the government and took corrective action. He died in 2019.

A fourth case involved a California winery and two wine consumers who challenged a state law that permitted Michigan wine sellers – but not out-of-state sellers – to ship products directly to Michigan residents. Friedman upheld the law, but the Supreme Court overruled him in 2005 saying the law violated the Commerce Clause of the U.S. Constitution.

Friedman served as chief judge of the Eastern District's five courthouses from 2004 to Jan. 1, 2009, when he took senior status. He led efforts to upgrade the court's technology, purchasing and personnel systems, as well as interactions with the U.S. Bankruptcy Court and the Federal Bar Association. He also pushed for the creation of a fitness center in the Detroit courthouse to encourage employees to exercise.

In 2016, Friedman and his wife of 52 years, Rozanne, a psychologist, were honored by the Holocaust Memorial Center in Farmington Hills for fighting prejudice, racism, and apathy. They are longtime supporters of the center and often travel to Israel, frequently taking along law clerks and staff to acquaint them with the spirituality of a region fundamental to the world's major religions.

The Friedmans have two children.

Friedman enjoys working with his hands and buying and restoring antiques, such as a 1934 slot machine, parking meters and an antique gas pump and Model A Ford.

He also has survived three bouts with cancer, one of which nearly killed him.

"I've been blessed to be a judge, to be in this position," Friedman told the historical society in 2009. "It's someplace I never, ever thought I would be. And... there doesn't go a day without me knowing that, and that my legacy, I hope, will be that I've done a good job and treated people the way they should be treated."

*Researched and written by David Ashenfelter, former Detroit Free Press reporter who profiled him for the newspaper and who served as the Court's Public Information Officer from 2016-2022.*