

R. Michael Wetherbee



Michael Wetherbee was an attorney known for his efforts spearheading the fight to legalize gay marriage. Wetherbee was the first openly gay attorney to be hired in any of the American Civil Liberties Union affiliates. He received his undergraduate degree from the University of Wisconsin and graduated in 1970 from the University of Minnesota School of Law.

When a local church voted to give a grant in January 1971 to support the endeavor, a group of gay and lesbian activists decided to open the first gay community center in the Twin Cities. Wetherbee offered to provide legal counseling to those in need.

After he was hired by the Minnesota Civil Liberties Union in 1971, Wetherbee assumed the representation of Jack Baker and Michael McConnell, the first gay couple in the nation to apply for a marriage license. In January 1971, the license had been denied and the couple had appealed to the Minnesota Supreme Court. When Wetherbee rose to argue in favor of the marriage during oral argument, one of the judges turned his chair and refused to look at him – not a single question was asked. In October 1971, the court denied their request, stating, “The institution of marriage as a union of man and woman ... is as old as the book of Genesis,” the marriage statute “does not authorize marriage between persons of the same sex and that such marriages are accordingly prohibited.”

Wetherbee appealed the case to the United States Supreme Court. However, in October of 1972, the Court slapped them down hard – dismissing the appeal for want of a substantial federal question. This order haunted the LGBTQ community for decades.

Wetherbee’s tenacity and willingness to undertake this difficult legal challenge started a process that would ultimately become the 2015 success of *Obergefell v. Hodges*.

Wetherbee handled other gay rights and civil liberties cases before leaving the Minnesota Civil Liberties Union and moving to Los Angeles in 1975. Among them was the employment discrimination case of Michael McConnell, one of the gay marriage plaintiffs. McConnell, a librarian at Park College in Missouri. He accepted a job offer from the University of Minnesota library before he and Baker applied for a marriage license. When news of the marriage case reached university officials, they withdrew the offer. Wetherbee represented McConnell in a federal lawsuit challenging the recision as unconstitutional. The case wound its way through the federal judiciary all the way to the

Supreme Court which in April 1972 refused to grant a hearing. Only Justice William O. Douglas voted to take the case.

On December 22, 1972, Wetherbee appeared with Jack Baker at a hearing called by the Minnesota Board of Bar Examiners. Baker, who was notorious at this point, was called to testify about the circumstances of the marriage applications (plural) that he and McConnell had filed – first, the unsuccessful one in Minneapolis and second, the successful one in Mankato, Minnesota. The couple were granted the license in Mankato and in September 1971 were married by a United Methodist minister. The hearing called by the bar examiners committee focused on whether Baker had committed fraud about being a resident of Mankato. No fraud was found. Although the committee knew that Baker was an openly gay applicant, it voted to recommend him for admission to the bar.

In 1973, Wetherbee filed a lawsuit in federal court challenging a Minneapolis ordinance requiring “adult bookstores” to receive a special permit from the city in order to operate. There was no such requirement for stores selling books without “adult” content.

In 1974, Wetherbee lobbied the Minneapolis City Council to pass an ordinance prohibiting employers in the city from discriminating on the basis of “affectional or sexual preference.” The ordinance was unanimously approved by the council.

Wetherbee resigned as an ACLU staff attorney in August 1974 and moved to Los Angeles the following year. He was admitted to the bar in California in 1978. During the mid-1970s, Wetherbee worked with attorney Thomas F. Coleman who was publisher of the Sexual Law Reporter. Wetherbee served as an editor for the all-volunteer project.

References

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