

# Judicial tenure panel accuses Gilbert

By Tim Richard  
staff writer

Circuit Judge Alice Gilbert, recovering from a winter skiing accident, has a new challenge to face — a complaint from the state Judicial Tenure Commission.

The nine-member panel filed a four-page complaint with the state Supreme Court charging "irresponsible and improper conduct" in a famous medical malpractice case in which she reduced a \$7 million jury verdict to \$544,000.

"She has 14 days to reply," said commission chairman John Abbott, chancellor of the Detroit College of Law in Southfield. "I don't remember who the grievant was," he said, adding that that wasn't a matter of public record.

AFTER HER answer, Abbott said, the commission can ask the Supreme Court to appoint a master to make findings about the substance of the complaint.

Both sides can reply to the findings in an open hearing in the commission's headquarters, 910 Lafayette Building, Detroit.

"The commission will make a recommendation to the Supreme Court as to any sanction," Abbott said.

The state constitution says that the high court "may censure, suspend with or without salary, retire or remove a judge for . . . misconduct in office . . ." The Supreme Court shall make rules implementing this section and providing



**A \$5 million judgment, reasonably invested, would yield the boy, by age 18, some \$1.4 million a year income — 'a most luxurious and extravagant living, which is available to few in the world . . . excessive to the point of being outrageous, and a large windfall to Robert Kolosowski.'**

— Judge Alice Gilbert  
from case opinion

for confidentiality and privilege of proceedings."

The procedure generally takes four to six months, Abbott said.

Last year the Supreme Court removed Flint District Judge Vera Lloyd from the bench in a misconduct case.

JUDGE GILBERT was contacted recently by this newspaper for a general interview on the liability question, on which she is considered an expert. The request was rebuffed by her staff.

Contacted through court administrator Joan Young, who reported the judge was in some pain, Gilbert declined to be interviewed.

A former Birmingham district judge, Gilbert was elected to six-year terms on the non-partisan Circuit Court in 1976 and 1982. She was the 1978 Republican Party nominee in a non-partisan race for the Supreme Court.

THE JUDICIAL Tenure Commission was added to the state constitution by voters in 1968 to handle complaints about judges.

Four of its members are judges selected by other judges, three are selected by the State Bar Association and two are appointed by the governor.

Currently the panel includes Abbott; Oakland Circuit Judge Hilda Gage; Oakland Probate Judge Barry Grant; Court of Appeals Judge Harold Hood; Wayne Circuit Judge Thomas J. Foley; Livonia District Judge James McCann; Marjorie Peebles-Meyers, Detroit attorney; Leo A. Farhat, Lansing attorney; and Rabbi Irwin Groner of Southfield.

ACCORDING TO the commission's complaint, Gilbert told the plaintiffs' attorney prior to jury selection that she had "discussed the case with dinner acquaintances, and everyone agreed it could not be won."

She allegedly suggested he either settle out of court or drop the case.

When attorney David Christensen won a \$7 million jury award, the judge "expressed her anger and disappointment in their findings and award," lectured the jurors, called the complaint "preposterous" and later reduced the award, according to the complaint.

Christensen took the case to the state Court of Appeals.

It was one of many multi-million-dollar decisions cited last year when the Michigan Legislature sought to limit liability judgments to \$250,000.

PLAINTIFF Robert Kolosowski, now 7, was awarded \$5 million; his mother, Jadwiga, \$1.3 million; and his father, Stanley, \$500,000. The parents are Polish immigrants.

Defendants were Dr. Christopher Marlowe, an obstetrician whom the jury found 70 percent at fault; and

Beaumont Hospital, found 30 percent at fault.

There was confusion in a hospital room because Mrs. Kolosowski spoke almost no English. A woman friend acted as interpreter but was unable to get her to follow instructions. Robert was born while his unattended mother was standing. He fell head-first to the floor, fractured his skull and became mentally retarded.

Christensen said Robert's IQ is 60, and he never will be able to shop, make change, live independently, keep a checkbook or carry on a marriage relationship. He said the boy is incontinent and non-verbal, and that he drools and plays with much younger children.

Gilbert said Robert was shown to be "quite attractive . . . educable and can make change . . . can provide some care for himself in the way of hygiene and clothing." She heard "no evidence" that marriage and children would be impossible.

CHRISTENSEN'S APPEAL reveals his dissatisfaction with the judge.

"Unbeknownst to plaintiffs at the time immediately after the verdict, Judge Gilbert spoke with the jurors without having the court reporter present. Even before defendants made any complaint about the size of the award, Judge Gilbert admonished the jury for returning a verdict, which the court thought was 'too great' and vowed that she 'could' or 'would' reduce the award."

"The court's comments were made in the context of her belief that Dr. Marlowe's liability insur-

ance limits were \$250,000, that the doctor would never be able to practice again, and that the verdict would adversely affect insurance rates and health care costs."

In a footnote, Christensen noted that "Judge Gilbert's husband is a doctor and, at the relevant times, the judge herself served on the advisory board of Providence Hospital."

Gilbert vacated the jury awards to the parents and reduced Robert's award, ordering that Marlowe and Beaumont would be awarded a new trial if plaintiffs didn't agree to the reduction.

JUDGE GILBERT'S opinion said she found insufficient evidence of physical injury or mental anguish to the parents to justify an award to them.

"When a verdict is so grossly excessive so as to 'shock the judicial conscience,' the court has the power to order recommitment or a new trial," she wrote, citing a 1982 state Supreme Court decision.

She said a \$5 million judgment, reasonably invested, would yield Robert by age 18 some \$1.4 million in assets and \$1.4 million a year in tax-free income by age 50, his assets would be worth \$225 million and income \$22.5 million, to which she commented:

"In sum, by rendering this verdict, the jury has provided for Robert Kolosowski a most luxurious and extravagant living, which is available to few in the world . . . The court, therefore, finds the jury verdict excessive to the point of being outrageous, and a large windfall to Robert Kolosowski."

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