

Gilbert cleared in misconduct case

By Tim Richard
staff writer

A state fact finder has cleared Oakland Circuit Judge Alice L. Gilbert of misconduct charges in a controversial case where she reduced a \$7 million jury award.

The fact finder, or "master," was John W. Fitzgerald, a justice on the Michigan Supreme Court from 1974-83.

"It's a vindication of Alice Gilbert," said her attorney, Robert

Webster of Birmingham, a former circuit judge.

The case is bigger than Judge Gilbert alone. It was begun during an intense political debate over "tort reform" — legislative attempts to curb high jury awards and soaring liability insurance costs.

"Any remedy lies not in disciplinary proceedings but in civil appeal (of her decision)," Fitzgerald said. "To hold otherwise would subject every trial judge in the state to ex-ecution and hindsight allegations by losing parties and would inter-

minably clog the entire judicial discipline process."

FITZGERALD criticized Gilbert's prosecutor, Joseph Regnier, executive director of the state Judicial Tenure Commission.

At one point in his 31-page report, Fitzgerald said there was "less than a scintilla of evidence" Gilbert had done wrong.

At another point, Fitzgerald said Regnier's complaint "falls far short of stating an actionable incident." Fitzgerald said that count "plainly should be dealt with only on appeal" to higher courts from Gilbert's decision, not at the judicial conduct level.

On still another complaint — about Gilbert's conduct on a radio talk show — Fitzgerald commended her.

THE JUDICIAL Tenure Commission, a nine-member state agency, will review Fitzgerald's findings. Final authority is the Supreme Court.

Regnier can still argue before those bodies that Gilbert should be disciplined. Fitzgerald encouraged a full review of the materials — more than 1,100 pages of hearings, two volumes of pre-hearing transcripts, and final oral arguments of 87 pages.

The 1981 lawsuit from which the tenure case arose was Kolosowski vs. William Beaumont Hospital and Dr. Christopher Marlowe. A non-English speaking woman was unattended at the time she gave birth. Her newborn son fell to the floor and suffered head injuries that made him retarded.

Gilbert called the jury award of \$7 million "so grossly excessive so as to shock the judicial conscience" and reduced it to \$544,000, including interest.

The case is being appealed by the Kolosowskis' attorney, David Christensen.

Fitzgerald observed: "This civil appeal and the (complaint against Gilbert) are, unfortunately, almost inextricably linked . . . Speculation should not be allowed to spill over from one proceeding to another, the outcome of neither affecting the other . . ."

THE COMPLAINT against Gilbert was started by Regnier and the tenure commission staff, Webster said.

"We were never permitted to see the motions or minutes" of the proceedings that led to the complaint, he said.

The complaints covered Gilbert's

conduct before, during and after the trial. In short, they painted a picture of her pressuring Christensen into an out-of-court settlement, discussing the case at a social gathering and improperly quizzing jurors about their verdict.

Fitzgerald found, after conducting a hearing last July, that the charges weren't proven "by the preponderance of evidence."

Gilbert, 55, was a Bloomfield Township justice of the peace and 48th District Court judge before winning her Circuit Court seat. Her current term expires this year. In 1978 she was the Republican nominee for the non-partisan state Supreme Court post. She could not be reached for comment by deadline time.



Judge Alice Gilbert vindicated

Gariepy runs for appeals court

Robert L. Gariepy, a Birmingham area attorney, is running for the state Court of Appeals in the Aug. 2 non-partisan primary.

Gariepy, 36, of Bloomfield Township will seek one of two new seats in the 2nd appeals court district, which includes Oakland, Macomb and 13 other counties stretching to Lansing and Midland.

A trial attorney for 10 years, he is a member of the Association of Defense Trial Counsel and Oakland County Bar Association, serving as chairman of its district court committee.

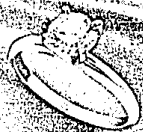
He is a hearing panelist for the Michigan Attorney Discipline Board and a mediator for Wayne and Oakland circuit courts.

Gariepy has been admitted to practice before the U.S. District Court and U.S. Court of Appeals.



Robert L. Gariepy in court race

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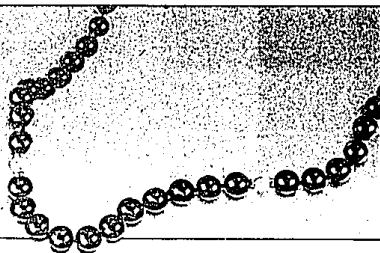


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