

B'fld Hills judge challenges high court incumbent

By TIM RICHARD
STAFF WRITER

If Justice Dorothy Comstock Riley doesn't see a philosophical pattern to her Supreme Court opinions, challenger Marilyn Kelly can.

"One thing Dorothy Riley did that inflamed the legal community was the case of Rowe vs. Montgomery Ward," said Kelly, a Court of Appeals judge who is challenging Riley in the Nov. 3 nonpartisan election.

"She has a distrust of juries. She has not much sympathy or empathy for employees," said Kelly. The case involved discharge of a worker who believed he could be discharged only for cause.

"She starts off saying we can't trust juries to interpret employment contracts," Kelly said. "It (Riley's opinion) stands for big business, big money and big power, and that's where her campaign comes from."

Kelly, 54, of Bloomfield Hills is the Democratic Party's nominee

to take on Riley, 67, of Grosse Pointe, seeking a second eight-year term as a Republican nominee.

"I like to take each case individually, look at the law and apply the facts to the law," said Riley. "I didn't write the law. The people wrote the law."

Riley declined to characterize her own philosophy other than taking "one case at a time."

Crossing lines

Justices on the state's highest court are nominated by parties. In labor and insurance cases, party lines often are clear.

But in criminal cases, the justices cross party lines. Justices Riley and Patricia Boyle, tapped by the Democrats, have teamed up in tough-on-crime dissenting opinions.

Take the 1990 case of Kevin Milbourn, who ripped up his ex-girlfriend's apartment and terrorized her. The 5-2 male majority said the Eaton County circuit judge's 10-15-year sentence of



Marilyn J. Kelly: running for high court

Milbourn violated the state's sentencing guidelines, which called for 18 to 24 months.

Riley, Boyle and Conrad Mallett Jr. (seeking re-election Nov. 3 to a two-year term) were on the short end of a 4-3 decision in which the Supreme Court struck



Dorothy Comstock Riley: incumbent justice

down Michigan's life-without-parole law for drug dealers as unconstitutional.

"It's very important," said Riley, "to distinguish between judging and legislating. The distinction has been blurred — a dangerous blurring. It's important no branch of government overstep its bounds."

In the Milbourn case, Riley

said the high court stepped on the circuit court's discretion; in the drug lifer case, on the Michigan Legislature's interpretation of the people's will.

"I'm not saying I disagree with the ultimate result they were trying to achieve, but that's not our role. Let the legislators play their role," said Riley, a former Court of Appeals and Wayne circuit judge.

On that point Kelly agreed. "I'd come down with her. Mandatory sentences in the drug law are not cruel or unusual. That's delivery, not use."

"I'm very concerned at the effect of the drug culture," said Kelly, a former Grosse Pointe school teacher, Albion College and Eastern Michigan University professor and 16-year State Board of Education member.

Case numbers

The Riley-Kelly duel hasn't attracted the same attention as the rock-'em, sock-'em race for the two-year term between Mallett and GOP nominee Michael Talbot.

Riley and Kelly talk to newspa-

per editorial boards, churches and campus groups around the state. Their advertising images are austere and judicial.

A major issue has been a Detroit College of Law Review article by professor Maurice Kelman of Wayne State University. Kelman last spring charged the Michigan Supreme Court:

■ Has been near bottom in the country in the number of cases it takes and opinions it issues (68 to 79 a year in 1988-90 versus 120 by California's and 157 by Minnesota's).

■ Ignores worthy cases by declining to take them.

■ Should adopt a rule by which three of the seven justices can decide that a case should be taken up.

Riley was chief justice in 1987-90, the years covered by the study.

Said Kelly: "It's an indictment of her because she's been chief justice. What makes her think that at age 67 she will show more vigor than in the last eight years?"

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