

Kilbride in crosshairs of medical community

By Jim Nowlan

Judges are elected in Illinois. Years after election, voters are asked if they wish to retain a judge on the bench. Look for a real donnybrook this fall in the 3rd Supreme Court District over the retention of Justice Thomas Kilbride.

The 3rd District runs from the Mississippi across the middle of the state to Indiana and includes the communities where this newspaper is based.

How could a mild-mannered justice from Rock Island, who has not created a public stir during his 10 years on the state's highest court, be in for a political brawl? Because, in a single case, Kilbride voted with the majority of the seven justices to throw out a state law that would have capped at \$1 million awards for pain and suffering in medical malpractice cases.

For almost four decades, the plaintiffs' trial lawyers have been battling over this issue with the doctors and hospitals.

The trial lawyers declare that their allegedly maltreated clients often deserve more than \$1 million awards for their pain and suffering. The medical community retorts that runaway juries have been jacking up the costs of malpractice insurance and driving doctors to other states, leaving some areas without critical medical services.

As voters in the 3rd District, readers will likely determine which side will win in the future.

Here's why.

Every decade since the mid-1970s, the state legislature has passed legislation that caps awards in medical malpractice cases. Just as regularly, the state Supreme Court subsequently declares the bills unconstitutional.

In 2004, the "docs," the hospital association, the manufacturers and the business community spent \$4.8 million in the deep southern Illinois supreme court district, long a Democratic preserve, to elect a Republican who favors caps. They were opposed tooth

and toenail by the trial lawyers and the Democratic Party, who raised an almost equal \$4.5 million

The taste of political blood has encouraged the docs and hospitals to try again in 2010, this time to knock Kilbride off the bench by preventing him from winning the 60 percent of the vote needed to be retained.

Expect lots of expensive direct mail and 30-second television ads this fall for and against Kilbride.

Ten years ago, the unknown Kilbride was not expected to win election to a seat on the state high court. The district is somewhat balanced between Democrats and Republicans and the latter had an attractive, Harvard-trained state senator for a candidate. The GOP thought their candidate was a shoo-in.

Late in the campaign, however, the Democratic Party of Illinois and the trial lawyers caught the GOP and medical communities napping, and poured hundreds of thousands of dollars into the race for Kilbride, who won narrowly.

This year, the GOP and medical groups see an opportunity to even the score and very possibly shift the court majority to their side in the future.

You see, the decision in the case of *Lebron v. Gottlieb Memorial Hospital* was 4-2 to throw out the caps (one justice expected to favor caps stayed out of the decision). So if Kilbride is not retained and a pro-caps justice is elected to replace him, the majority would become 4-3 in favor of the medical community and its allies.

The rhetoric between the trial lawyers and the docs' representatives can become quite heated. The lawyers call the docs heartless, and the medical community charges the lawyers with taking much, sometimes most, of the awards in lawyers' fees, leaving the client with precious little.

As former state senate president James (Pate) Phillip once reportedly characterized the long-running conflict with his infamous indelicacy: "This is a battle between the butchers and the thieves, and I'm with the butchers."

That is too coarse, of course, yet for voters it frames starkly the issue that will be at the heart of this fall's election to retain, or not, Justice Thomas Kilbride.