

# Lawyer appointed as Cook County judge despite losing election, past judicial scoldings

**By John Seasly**

The Illinois Supreme Court has reappointed former Cook County Circuit Judge Michael Gerber even though voters rejected his re-election bid in November and the courts have twice found he committed ethical lapses as a prosecutor that led to wrongful convictions.

An appeals court found last year that in a case in which “the evidence convincingly shows” the defendant was innocent, Gerber won a murder conviction by shifting jurors’ attention away from the lack of evidence and playing on their trust in the police.

In the other case, a Cook County judge overturned an arson and murder conviction, finding that Gerber and his co-counsel won a wrongful conviction at retrial by introducing a false statement that contradicted

Gerber is back on the bench, though, effective Tuesday. He was appointed to fill a vacancy left by the retirement of Cook County Circuit Judge Margarita Kulys Hoffman. His reappointment to the seat in a far northwest suburban subcircuit was recommended by a committee formed by Justice Anne Burke and headed by attorney Kevin Forde.

Forde wouldn’t discuss the decision to recommend Gerber except to say he was a “noncontroversial” candidate.

Gerber had been rated “highly qualified” by the Chicago Bar Association before last year’s primary and rated “qualified” by the Chicago Council of Lawyers, which said that was a “close call” based on the finding he caused a wrongful conviction.

Then 71, Gerber was the longest-serving Cook County prosecutor — with 33 years in the state’s attorney’s office — when he was appointed in December 2016 to temporarily fill a circuit court vacancy.

In March 2018, Gerber ran for a full term but lost a contested Republican primary to Daniel Patrick Fitzgerald, who went on to be defeated by the Democratic candidate, who’d changed his name from Phillip Spiwak to Shannon P. O’Malley.

Julie Koehler was the assistant Cook County public defender who represented the defendant the appellate court declared innocent in the case Gerber prosecuted. Koehler said she was “baffled” by Gerber’s reappointment.

”The voters of Illinois did the judiciary a favor by not re-electing Mike Gerber to the bench,” Koehler said. “But since the entire appointment process is secret, it’s impossible to know why his numerous documented ethical lapses as a prosecutor were not given more consideration.”

Before the primary last year, Associate Cook County Judge Joseph Claps found that Gerber and his co-counsel Mary Lacy engaged in conduct that “amounted to a purposeful due process

violation” with their closing argument in the 2008 retrial of Arthur Brown. Brown had been convicted at his first trial, in 1990, of starting a fire in which two people died and seven businesses were burned down. That first conviction was overturned when another man confessed.

Brown was retried and again found guilty, this time after Gerber and Lacy suggested in their closing argument that officers discovered the gas can used to start the fire based on information Brown had given the police. At Brown’s first trial, a detective testified he found the gas can based on unrelated information.

Brown won a new trial and ended up being released — after 29 years in custody — when State’s Attorney Kim Foxx’s office decided not to retry him.

Gerber couldn’t be reached for comment.