

## Top Judge Was Mother's Lawyer

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**Abstract (Abstract):** In addition, [Kevin Fogarty] stated in his ruling, [Jacqueline Silbermann] "was retained to represent [Deborah Gardner] by the adoptive family's attorney and [her] fee was paid by the adoptive parents." Fogarty's decision only referred to the lawyer who represented Deborah Gardner as "Ms. S," possibly because of the confidentiality surrounding adoption proceedings. Yesterday, Silbermann admitted that she was the lawyer involved in the case but denied any wrongdoing. Silbermann said the allegations of misconduct were "handled many years ago and found not to be the case."

Attorney Fred Magovern, who represented the biological father, Anthony Russini, and Deborah Gardner when the adoption was nullified, also recalled the allegations of misconduct against Silbermann, as well as the filing and dismissal of the grievance.

**Full text:** One of the state's top administrative judges was the lawyer who represented Matthew Propp's 19-year-old unwed mother when she gave him up for adoption-and came under attack at the time for her handling of the case, according to court papers and those involved in the case.

Jacqueline Silbermann, now the state's administrative judge for matrimonial matters, allegedly urged Matthew Propp's biological mother, Deborah Gardner, to say she didn't know the identity of the baby's father when she gave her consent to the adoption, according to the 1979 court decision that returned the baby to his biological parents.

By claiming she did not know the identity of the child's biological father, the necessity to get his consent was eliminated, the decision by Queens Family Court Judge Kevin Fogarty explained.

In addition, Fogarty stated in his ruling, Silbermann "was retained to represent Deborah Gardner by the adoptive family's attorney and [her] fee was paid by the adoptive parents."

The retaining of Silbermann as a private attorney by Lorraine Backal Israel, the lawyer for the adoptive parents, appeared to be a possible conflict of interest, according to the decision.

Asked about the case yesterday, Fogarty, now 70 and retired, said, "The case was decided on fraud. That they had defrauded the natural mother. The lawyer told them to say she didn't know who the father was."

In his decision, Fogarty quotes Terry Gardner, the biological mother's twin sister, corroborating in court that Silbermann told Deborah Gardner, to "'Say you don't know who the father was.'"

Fogarty said, "The lawyer never came to court to refute that statement. So it was kind of open and shut."

Fogarty's decision only referred to the lawyer who represented Deborah Gardner as "Ms. S," possibly because of the confidentiality surrounding adoption proceedings. Yesterday, Silbermann admitted that she was the lawyer involved in the case but denied any wrongdoing. Silbermann said the allegations of misconduct were "handled many years ago and found not to be the case."

Silbermann was apparently referring to a grievance that was filed against her with the attorney disciplinary committee.

"It was dismissed," Silbermann said of the complaint.

Attorney Fred Magovern, who represented the biological father, Anthony Russini, and Deborah Gardner when the adoption was nullified, also recalled the allegations of misconduct against Silbermann, as well as the filing and dismissal of the grievance.

"Nobody was interested in pursuing it-for force of the personalities involved, or so I'm told," said Magovern.

In explaining her involvement in the case, Silbermann said she represented both Deborah Gardner and her twin sister. She also said the law firm of Israel and Roberts, representing the Smileys, had "referred" the case to her,

but that she was hired by the biological mother.

"I had two sisters who both were pregnant...the babies were born virtually within a week," she said. The law firm "couldn't handle the adoptive parents and the girls. The girls needed separate [representation]." The adoption of Terry Gardner's baby went smoothly, she added.

Silbermann went on to become a civil court judge in 1983, then supervising judge of the civil court in New York. She was also elected to the State Supreme Court in 1990.

Backal Israel, who represented the adoptive parents, went on to become a Bronx civil court judge and an acting Supreme Court justice. She resigned in 1994 after being implicated in a drug trafficking and money-laundering scheme. She was disbarred in 1995.

#### **Illustration**

Caption: Photos - 1) Judge Silbermann 2) Judge Kevin Fogarty

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