

N.Y. Judge Orders Himself a Raise

Could Cost Taxpayers \$700 Million

By **JOSEPH GOLDSTEIN**, Staff Reporter of the Sun | June 12, 2008

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Setting the stage for a showdown among the three branches of government, a state judge has ordered Governor Paterson and the Legislature to start paying him and his 1,180 fellow state jurists more money.

If each judge on the state bench received the \$600,000 sought by the four plaintiffs, the state's taxpayers would be on the hook for more than \$700 million. The order by Judge Edward Lehner of state Supreme Court in Manhattan appears to instruct the Senate and Assembly to pass a law upping judges' pay within 90 days, which could prove an impossibly fast time frame for slow-moving Albany.

The decision also raises constitutional questions about the authority of judges to perform the legislative job of setting salaries and deciding how best to spend tax dollars.

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Governor Paterson's office released a statement yesterday saying that the court order "flies in the face of the State Constitution which makes clear that only the Legislature has the power to set judicial salaries." The speaker of the Assembly, Sheldon Silver, was reviewing the decision, a spokesman said.

Judge Lehner ruled that it was the other two branches of government that had violated the state constitution by denying judges any pay raises or cost-of-living adjustments for nearly a decade. The judge characterized Albany's unwillingness to raise judicial pay as "an unconstitutional interference upon the independence of the judiciary."

Judges on the state's main trial court make \$136,700 a year, plus benefits.

Even though salaries for New York state judges are close to the national average, the judges say that the cost of living in New York is higher, and they argue that federal judges and corporate lawyers are paid more.

New York's chief judge, Judith Kaye, filed a suit on behalf of the entire judiciary in April seeking a pay raise order of the type Judge Lehner issued yesterday. But yesterday's decision came in an earlier lawsuit filed jointly by four judges seeking more than \$600,000 each. That money, the say, represents the cost-of-living increases that they haven't received over the years, plus interest.

Judge Lehner's decision, however, applies to the entire judiciary, not just the four judges who are plaintiffs. He ordered that judges receive a pay increase commensurate with cost-of-living adjustments over the last decade, which would bring state judge salaries close to their federal counterparts. In addition, Judge Lehner ordered that the judges all receive an "appropriate provision for retroactivity." He did not give any indication of how much that might be, in his view.

Judge Lehner's decision focused less on the dollar amount that judges get paid than on the horse trading that goes on in the legislature every time the pay issue arises. Legislators in the Assembly have only been willing to give judges a raise if they themselves receive a raise. Because Governor Spitzer, and now Mr. Paterson, have been unwilling to agree to a pay raise for legislators, judicial pay has been

stuck at its present rate.

What violated the state Constitution, Judge Lehner said, was linking judicial salaries to all that political dealing.

Linking the salaries of judges to the salaries of legislators, Judge Lehner wrote, "is an abuse of power by the defendants."

Doing so undermined the independence of the judiciary, Judge Lehner wrote, and "is repugnant to our tripartite form of government and the liberties intended to be secured thereby."

Governor Paterson and the Legislature were represented in this case by lawyers from the office of Attorney General Cuomo. Mr. Cuomo declined to provide representation to Mr. Paterson or legislative leaders in the suit brought by Chief Judge Kaye.

A lawyer for the four judges, George Bundy Smith, said that there have been similar suits in Ohio and Pennsylvania that have also resulted in favorable rulings to judges. Mr. Smith, who was once a judge on New York's highest court, said that he has received inquiries from representatives of state judiciaries in "the Middle West and mid-Atlantic" soliciting advice about bringing similar pay raise suits.

It is not clear whether Attorney General Cuomo will appeal. Governor Paterson's statement said his office is "exploring its legal options."

Some judges expected the issue to drag on in the appellate courts. If the Legislature does decide to order a judicial pay raise going forward, the judiciary could still push the issue of retroactive cost-of-living increases in court.

"I admire Judge Lehner's decision, and I think it's beautifully, brilliantly done, but I don't anticipate an immediate increase," one state Supreme Court judge in Manhattan, Emily Jane Goodman, told The New York Sun. "No one knows better than we know how long litigation goes on. My position is still, show me the money."

Judge Lehner is also hearing the suit brought by Chief Judge Kaye. Lawyers for Chief Judge Kaye have demanded that Governor Paterson, as well as the Senate majority leader, Joseph Bruno, and Mr. Silver all be forced to stand trial regarding the issue. It is not yet known whether Judge Lehner's decision yesterday will lead him to decide that such a trial is unnecessary.

"We are pleased with Judge Lehner's thoughtful decision, and we now trust that the governor and the Legislature will do the right thing," the lawyer for Chief Judge Kaye, Bernard Nussbaum, said.

Of the judges who brought the suit decided yesterday, two are from New York: Susan Larabee of Family Court and Geoffrey Wright of Civil Court.