

NY Daily Record**http://nydailyrecord.com****Judicial pay: Show them the money**

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It seems like everything is going up these days — except judicial pay.

Judges in New York state have not had a pay increase in 11 years and are pushing the Legislature to do something about it.

Included on the agenda for the special session Monday was consideration of creating a commission to evaluate and adjust judicial salaries.

In anticipation of the special session, New York State Bar Association President Stephen P. Younger sent Gov. David A.

Paterson a letter Nov. 26 commending the item's inclusion on the agenda and outlining the issue.

"This is a very serious issue because our judges in New York have not had a pay raise since 1999," Younger said. "This crisis is leading to departures from the bench of our highly qualified judiciary. The time is overdue to do something about it."

As an example, Younger mentioned Judge James M. McGuire, who is stepping down as associate justice of the Appellate Division, First Department.

Younger said there has been no action on the issue other than a February decision by the Court of Appeals that addressed separating the judiciary and legislative branches, as well as pay adequacy.

In *Larabee v. Governor of New York State*, New York County Family Court Judge Susan Larabee and other judges sued the state saying it violated its own constitution's Compensation Clause and the Separation of Powers Doctrine.

"In 2006, the Judiciary submitted to then Gov. George Pataki, as part of its proposed annual budget, a request for \$69.5 million to fund salary adjustments for the approximately 1,300 Article VI judges, retroactive to April 1, 2005," according to court documents. "The intention was to restore pay parity with federal judicial salaries. Although made part of the state budget, the legislature failed to authorize disbursement of the appropriation, because the legislature and the governor could not agree on a pay increase for the legislators themselves."

The following year, the legislature removed a \$111 million provision for judicial pay raises in then-Gov. Eliot Spitzer's budget. And in April 2007, the Senate passed a bill increasing judicial compensation and calling for the creation of a commission to review future salary increases for both judges and legislators. Spitzer refused to support the legislation, however, unless the legislature enacted campaign finance and ethics reform measures.

All parties in the suit agreed the judges deserved a salary increase. The Court of Appeals ruled in the judges' favor.

"By ensuring that any judicial salary increases will be premised on their merits, this holding

aims to strike the appropriate balance between preserving the independence of the judiciary and avoiding encroachment on the budget-making authority of the legislature," the Feb. 23 decision states.

"Therefore, judicial compensation, when addressed by the legislature in present and future budget deliberations cannot depend on unrelated policy initiatives or legislative compensation adjustments. Of course, whether judicial compensation should be adjusted, and by how much, is within the province of the legislature. It should keep in mind, however, that whether the legislature has met its constitutional obligations in that regard is within the province of this court (see *Marbury v Madison*, 1 Cranch 137, 177 [1803]). We therefore expect appropriate and expeditious legislative consideration."

The legislature however, has still not addressed the problem, prompting attorneys for Larabee et. al. to pursue further legal action.

Thomas E. Bezanson of the New York City law firm Cohen & Gresser LLP, and George Bundy Smith, Chadbourne & Parke, filed a motion Nov. 18 with the Court of Appeals, asking for a rehearing to settle the matter.

"The Legislature has now met and ignored the Court of Appeals' suggestion that it remedy the harm that's been done," Bezanson said. "We've gone back to the Court of Appeals, noting we've all waited patiently for the Legislature to act and that the Legislature has not acted. We're asking them to remedy the harm that's been done this past 11 years."

He said the cost of no pay increases to the 1,300 Article VI judges since 1999 is \$350 million.

The last pay adjustment made the state judicial salaries commensurate with their federal counterparts, the decision notes.

According to court papers, New York state now ranks nearly last of the 50 states in its level of judicial compensation with the real value of judicial salaries declining by 25 to 33 percent in the last 11 years.

"I hope that the court grants our motion and, as they are the last best hope for the judiciary of this state, takes appropriate action," Bezanson said.

Younger said the pay inequity is also a morale problem and a problem in recruiting new judges.

"It's a problem just with how we hold judges in terms of societal order," he said. "We try to hold ourselves out as a country that holds in high esteem the Rule of Law and when we're not valuing our judiciary, it creates problems for our government."

Current Annual Pay

Chief judge — \$156,000
Associate judges, Court of Appeals — \$151,200
Presiding justices, Appellate Division — \$147,600
Associate justices, Appellate Division — \$144,000
Presiding justices, Appellate Term — \$142,700
Justices, Appellate Term — \$139,700
Supreme Court justices — \$136,700
Court of Claims judges — \$136,700
County, Family and Surrogate's Court judges — \$119,800 to \$136,700
New York City Civil and Criminal Court judges — \$125,600
District Court judges — \$122,700
New York City Housing Court judges — \$115,400
City Court judges — \$108,800 to \$119,500

Source: *Unified Court System of New York*

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