



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

NY Judges Want \$780M In Salary Dispute

By **Martin Bricketto**

Law360, New York (January 11, 2011) -- New York state court judges are seeking at least \$780 million in damages from the state over the failure of lawmakers and governors to increase their pay.

The claim submitted on Monday to the New York State Court of Claims comes nearly a year after the state's highest court ruled that the more than 10-year absence of salary increases for judges violates the separation-of-powers doctrine in the state constitution.

The named judges in the present matter — Nassau County Supreme Court Justice Edward A. Maron, Kings County Supreme Court Justice Arthur Schack and former Nassau County Supreme Court Justice Joseph A. DeMaro — say state officials have breached their constitutional rights under that doctrine.

The action was filed on behalf of all 1,280 judges with the Unified Court System serving during the statute of limitations, with the claim dating back to April 1, 2005.

An attorney for the claimants, Steven Cohn, said Tuesday that the action is based on a summary judgment finding in trial court following the New York Court of Appeals' decision.

The requested damages represent lost salaries and pension benefits for the system's judges since 2005, representing a loss of about \$130 million annually, according to Cohn.

The Court of Claims handles civil litigation seeking damages against the state and affiliated agencies.

In a 5-1 decision in February, the Court of Appeals said the state had undermined the judicial branch's independence in tying pay raises for legislators to increases for the state's judges, whose salaries have been frozen since 1999 despite rising caseloads.

"Simply put, by failing to consider judicial compensation increases on the merits, and instead holding it hostage to other legislative objectives, the Legislature 'weakens the judiciary ... by making it unduly dependent' on the Legislature," Judge Eugene Pigott wrote for the majority.

The court's opinion directed the Legislature to take up the issue of judicial salary increases on its merits, free of "unrelated policy initiatives or legislative compensation adjustments."

The high court issued its long-awaited decision in three consolidated appeals in cases brought by current and former New York state judges, including Chief Judge Jonathan Lippman, who recused himself from the cases.

The governor and Legislature have made attempts to increase judicial pay over the years, but their efforts have been thwarted at various times by political wrangling. The state constitution gives the Legislature authority to set judicial pay.

In December, outgoing Gov. David Paterson signed a bill creating a commission to study and recommend salaries for the state's judiciary.

The appeals court in February noted that unlike the executive branch or the Legislature, judges cannot bargain for their own compensation and are precluded from participating in politics. Instead, they must rely on the good faith of the other branches.

The court rejected the argument that the state had violated the Constitution's compensation clause in allowing inflation to effectively diminish judicial salaries. It said even though the drafters of the clause were concerned about the effects of inflation, they specifically left it up to the Legislature to address.

The present case is Maron et al v. The State of New York, case number unavailable, in the New York Court of Claims.

The cases included in the Court of Appeals decision were Chief Judge of the State of New York v. Governor of the State of New York, case number 18; Hon. Susan Larabee v. Governor of the State of New York, case number 17; and In the Matter of Edward A. Maron v. Sheldon Silver, as Speaker of the State Assembly, case number 16, in the New York Court of Appeals.

--Additional reporting by Jocelyn Allison and Jessica Dye

All Content © 2003-2010, Portfolio Media, Inc.