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## NY Court Orders \$51M Pay Raise For Judges

By **Dietrich Knauth**

Law360, New York (February 10, 2011) -- A New York State Supreme Court justice has ruled that the state must raise the salaries of its judges retroactive to 2009, putting into effect a \$51 million legislative appropriation that was approved that year but never enforced.

According to the opinion, issued late Wednesday by Justice Karen V. Murphy, the raise would be the first for judges since 1998.

The suit was filed in July by four Supreme Court justices, a Court of Claims judge, and a County Court judge from Nassau County. According to their four-page complaint, the state has not increased the salary for judges despite the passage of the appropriation in the state's Laws of 2009, Chapter 51, §3.

Under that statute, pay for Supreme Court justices would increase to \$170,000 per year, up from the \$136,700 they currently receive.

In her opinion, Justice Murphy said that previous legislation aimed at increasing judicial salaries had been enacted every year since 2005, but those laws were not self-contained, and required an amendment to the state's judicial law before going into effect.

"In the past, enabling legislation was expressly required to effectuate judicial salary increases, and such enabling legislation was never passed," Justice Murphy wrote.

In granting summary judgment to the judges, Justice Murphy rejected the state's argument that the 2009 law required similar enabling legislation, saying that the New York Legislature had purposefully amended the statute's language to make it self-executing.

"Surely, defendant is not suggesting that this court give credence to the argument that Chapter 51 is merely the Legislature's transparent attempt to, once again, mollify the judiciary by acknowledging the obvious need for salary increases, while, with the other hand, attempting to withhold those earned and deserved increases," Justice Murphy wrote.

She also rejected the state's attempt to use transcripts of New York State Assembly and Senate floor debates to cast doubt about the Legislature's intent.

"While illustrative of the animus and disdain of less than a handful of legislators for the judiciary, a co-equal branch of government, the colloquy is unpersuasive," she wrote. "Ultimately, the Legislature saw fit to pass the appropriation for judicial salary increases."

The state constitution does not mandate a specific format for judicial salaries, and consequently, Chapter 51 is enforceable as it stands, Justice Murphy said.

Although Justice Murphy acknowledged that the case presented an apparent conflict of interest because she would be personally affected by the pay issue, she said that the problem was unavoidable because any judge hearing the case would face the same apparent conflict.

The pay increase will be retroactive to April 1, 2009, according to the opinion.

Judges throughout the state widely supported the suit, which gave them a chance for overdue pay increases, according to Steven Cohn, the plaintiffs' attorney.

"That's like 30 supermodels coming over to your house, saying 'We want you,'" Cohn said. "You're not going to say no."

The battle for judicial raises has been a controversial topic, and it led to the censure of one county judge in December 2009.

Larry M. Himelein, a judge in Cattaraugus County, was censured by the New York State Commission on Judicial Conduct for sending blast e-mails to fellow judges suggesting that they recuse themselves from all cases where a firm employed a legislator or a relative of a legislator until pay increases were enacted by "those clowns" in Albany. Himelein was not a party to the lawsuit.

The plaintiffs are represented by the Law Office of Steven Cohn PC.

The case is Pines et al. v. State of New York, case number 13518-10, in the Supreme Court of the State of New York.

--Editing by John Quinn.

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