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NY Court Orders Authorization Of Judicial Pay Raises

By **Jessica Dye**

Law360, New York (June 17, 2009) -- A New York court has ordered state legislators to authorize cost-of-living pay increases for state-paid judges, paving the way for an appeals court to decide whether New York's judges will get their long-awaited raises.

Judge Edward H. Lehner of the New York State Supreme Court on Tuesday granted a motion for summary judgment by former New York Chief Judge Judith S. Kaye in her suit against New York's governor and state legislature, ruling that a law linking judges' pay increases with legislators' had put an unconstitutional limit on judicial salaries, making the judiciary an unwitting victim in political spats over pay increases.

Tuesday's ruling marks the second time this month a New York court has given the legislature a directive to bring judges' pay in line with contemporary cost-of-living standards, retroactive to New York judges' last pay increase after 1998.

The order gives the legislature 56 days from Tuesday to bring judges' salaries in line with current New York cost-of-living standards, and include retroactive compensation adjustments from 1998 on to reflect living standard increases along the way.

"We are gratified by the court's decision once again declaring unconstitutional the practice of holding judicial salaries hostage to legislative salaries," said Bernard Nussbaum of Wachtell Lipton Rosen & Katz, counsel for the chief judge and the New York State Unified Court System. "We recognize this matter will ultimately be decided by the Court of Appeals."

Lehner noted that, while Kaye was no longer New York's chief judge, her successor, Jonathan Lippman, supported the litigation. He wrote that finding a similar successor to the State Assembly leader named as a defendant in Kaye's original suit had been shelved for the moment, owing to the unrest in Albany.

However, Lehner rejected two other of Kaye's arguments supporting the unconstitutionality of the frozen pay, ruling that the judicial branch could not claim discrimination by the executive and legislative branches, and that a ruling in a similar case two weeks ago barred Kaye's claims that, by failing to adjust for inflation, the legislature was violating the law by underpaying judges.

Lehner noted the four state judges in the judicial pay question case decided two weeks ago had originally objected to Kaye's inclusion of the two additional — and ultimately unsuccessful — claims, fearing that their inclusion could delay the Court of Appeals hearing for it and three pending related cases from judges seeking to adjust their wages.

However, he said the additional arguments would not hurt the pending cases, fast-tracked by the Court of Appeals.

The four state judges in the Larabee decision won an appeal in a similar suit against the state June 2 in a 5-0 decision by the New York Supreme Court Appellate Division, First Department.

Justice Peter Tom wrote for the court that legislators violated the separation of powers doctrine by tying their own pay increases to legislation that would have ensured raises for judges as well. The bill was never approved because of a political dispute with then-Gov. Eliot Spitzer over campaign finance reform.

Three judges lost a similar appeal in the Third Division appellate court in November.

New York judges' salaries have remained stagnant since 1999, while inflation has actually lowered judges' income by 27 percent, Kaye's complaint said. All other states have granted judges annual raises averaging 3.2 percent, with cumulative increases of 24 percent, according to the complaint.

Kaye argued in her complaint that federal judges' salaries had increased more than 2 percent since 1999, to \$169,300, leaving New York state's high court justices more than \$30,000 behind today.

Kaye is represented in this case by Wachtell Lipton Rosen & Katz.

The case is Chief Judge of the State of New York et al. v. Governor of the State of New York, case number 400763/08, in the Supreme Court of the State of New York, County of New York.

--Additional reporting by Shannon Henson, Christine Caulfield and Jesse Greenspan

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