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N.Y. Judges' Pay Suit Whittled Down To One Claim

By **Sam Schulz**

Law360, New York (December 5, 2007) -- A trio of New York state judges who sued the state for not giving them pay raises since 1999 have reportedly lost the bulk of their lawsuit.

Judge Thomas McNamara of the New York State Supreme Court tossed all but one of the claims in the suit on Friday, the New York Law Journal reported Monday.

The litigation had been filed by two Nassau County judges – District Judge Edward Maron and Supreme Court Judge Joseph DeMaro – along with Arthur Schack, a Brooklyn Supreme Court judge, in attempts to get \$69.5 million in budget appropriations for the state judges.

Among the claims tossed were two based on New York's constitution: one insisting that inflation has meant that judges' pay has effectively dwindled in violation of the compensation clause, and one saying the eight-year lack of raises violates the equal protection clause.

Though the salaries, which range from \$122,700 to \$151,200 a year, had not technically gone down, inflation has caused each of the state's 1,300 judges to lose tens of thousands of dollars in purchasing power – and has caused many of them to resign or opt not to seek reelection, the suit said.

The plaintiffs also contended that the state's executive and legislative branches were trying to use pay stagnation to punish the judiciary for a slew of unpopular decisions, including one that vacated death sentences for convicts. But McNamara said there wasn't sufficient information yet to suggest that, the Law Journal reported.

The only claim left standing following his order was one contending that the legislature's custom of tying judicial pay raises to bills seeking pay raises for themselves has infringed upon separation of powers and judiciary independence. Even that claim, said McNamara according to the Law Journal, would prove a tough one to litigate.

Earlier in the litigation, Steven Cohn, one of the attorneys for the three plaintiffs, explained the importance of the suit through the lens of the quality of the New York state judiciary.

"We're trying to retain the best judges by paying a living wage. We want to make sure that when we appear before a judge we appear before the best judiciary we can have," he said.

But Friday's ruling could spell bad news not only for Cohn's clients but also for a similar suit that another four judges filed in the state's supreme court back in September.

Joined by Cattaraugus County family court judge Michael Nenno, three New York City judges – criminal judge Patricia Nunez, civil judge Geoffrey Wright, and family court judge Susan Larabee – likewise contrasted their stagnant pay with a rising cost of living and inflation.

Those judges added that New York's lawmakers have historically recognized the need to offset inflation with pay raises to keep pay constitutional, noting that the last raise, voted on in 1998, was explicitly intended as such.

Like the three plaintiffs in the Maron case, those judges suggested the stagnation was because judicial raises have been linked repeatedly in bills to raises for the lawmakers themselves, which Governor Eliot Spitzer has continued to reject, according to the suit.

"By linking judicial salary increases to legislative salary increases, defendants have eviscerated the constitutional divide," the judges said, and have left judges' salaries subject not to lawmakers' considerations of whether the judges need raises but rather to considerations of whether the lawmakers can secure themselves raises.

In the suit on which McNamara just reportedly ruled, the plaintiffs are represented by the Law Offices of Steven Cohn. An attorney from the firm was unavailable for comment Wednesday.

That case is Maron et al. v. Silver et al., case number 2007-4108, in the New York State Supreme Court.

The other suit, filed in September, is Larabee et al. v. Spitzer et al., case number 07-112301, in the Supreme Court of the State of New York.

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