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Citing Lack of Raises, OCA Trims Curbs on Judicial Moonlighting

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Citing the financial burden faced by judges whose salaries have remained stagnant for more than a decade, Chief Judge Jonathan Lippman said last week that he had temporarily relaxed the rules barring judges from outside employment.

The news was announced Wednesday by the chief judge in a webcast to the judiciary. Judge Lippman's comments followed a more general update on the judiciary's battle to receive its first pay raise in nearly 12 years.

In his address, Judge Lippman said he would do everything in his power to make sure the state's 1,300 judges receive fair and equitable salaries, adding that discussions with the Legislature and Governor David A. Paterson are continuing.

In the meantime, he said he and Chief Administrative Judge Ann Pfau were taking measures to ease judges' financial burden, including temporarily suspending the rules limiting outside employment.

Judge Lippman stressed that judges were banned from practicing law and could not take jobs that would detract from the dignity of the profession. But he said that in light of the unresolved salary issue, a relaxation of the rules was appropriate.

He also told judges they would soon be reimbursed for health care premiums that now come out of their own pockets.

"Judge Lippman more than anyone else appreciates the enormous financial burden placed on the judiciary who have not had even so much as a cost-of-living increase in 12 years. This is an effort to in some way help alleviate that burden by, on a case-by-case basis, allowing outside employment," said David Bookstaver, spokesman for the Office of Court Administration.

There is no one rule banning judges from accepting extra-judicial employment. But Judge Pfau explained in an interview that there are a "host" of rules that come together and limit a judge's ability to secure an outside job.

For example, §100.2 of the Rules of the Chief Administrative Judge states that a "judge shall not lend the prestige of judicial office to advance the private interests of the judge."

Section §100.4 further provides that judges shall conduct all extra-judicial activities in a manner that does not cast reasonable doubt on their impartiality, detract from the dignity of their office or interfere with the proper performance of their duties.

Moreover, §100.4(D) bars most full-time judges from serving as an "officer, director, manager...employee or other active participant of any business entity."

Judge Pfau said these rules will be more "loosely interpreted."

The basic principles of impartiality and dignity still apply, but OCA's counsel's office will conduct a "case-by-case check" on each judge's request for outside employment to assure it would not pose an actual or general conflict, Judge Pfau said.

"Clearly, what a judge can't do is practice law. A judge can't be a mediator or arbitrator. There are some black letter things that are just prohibited," she said.

No Boat Pilots

Before Judge Lippman's announcement, judges who wished to moonlight had to seek guidance from the Advisory Committee on Judicial Ethics.

In June, the committee concluded in Joint Opinion [09-192/09-231](#) that judges could receive compensation for "occasional" outside artistic endeavors (NYLJ, June 8).

In an interview following the release of the opinion, George Marlow, the committee's chairman, told the Law Journal that judges facing

"tremendous financial pressure" are "looking for more ways to earn some extra income that will not interfere with their main job of being a judge and not cross ethics lines."

He said yesterday that this year the committee had received more than a dozen inquiries seeking guidance on the ethics of performing extra-judicial work.

In the past, the committee has concluded that it would be unethical for a full-time judge to teach dancing lessons at a private performing arts studio, take outside employment as a licensed boat pilot, serve as an advisor to a for-profit TV group, appear in a minor role in a film or TV commercial, or accept employment at a gas station, security company, beach club or taxi company.

Among the lines of work that have been approved are holding an adjunct teaching post at a not-for-profit school, owning and renting real property, passive participation in a business entity, writing and lecturing.

Manhattan Supreme Court Justice Emily Jane Goodman said that she found it "disgraceful" that judges have to resort to taking outside jobs to support themselves.

"But it's a reality. Some of us are broke," she said in an interview.

While she welcomed Judge Lippman's relaxation of the rules, she said the measure has clear limitations.

"You can't practice law, which is pretty much all we know how to do," she said.

Justice Goodman said she recently asked the ethics advisory committee if she could perform a wedding and read poetry during the ceremony for about \$500, which is in the range of what clergy would be paid.

The committee said no.

Stephen Gillers, an ethics professor at New York University School of Law, said there were a number of jobs a judge might take beyond writing and teaching, from starting a small business to lecturing at a bar association's continuing legal education course.

He said in an interview he saw no reason to "categorically prohibit judges from doing outside work."

"Indeed, beyond the monetary benefit for the judges, there could be a benefit for the profession and society more broadly," he said.

Ultimately, Mr. Gillers said, "the judicial conflict and recusal rules will define the perimeter of what's allowed."

But while performing extra-judicial work might give judges a temporary salary boost, Judge Pfau said, the "last thing that judges need to do is to be looking for outside employment."

"Their caseloads are heavy. They are working hard," she said, adding that the permanent solution is to obtain a "fair and equitable salary system."

In the meantime, Judge Pfau added, "We have to identify every way we can to help judges get through this difficult time."

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