

# New York Law Journal

ALM Properties, Inc.

Page printed from: <http://www.nylj.com>

[Back to Article](#)

## Judges Ask Court to Enforce Directive for Review of Pay

The Legislature has ignored a February directive by the Court of Appeals that they conduct an "appropriate and expeditious" review of judges' salaries, say lawyers for judges seeking a raise. A motion for reargument filed yesterday asks the Court to force lawmakers to give serious consideration to legislation that would raise the pay of state judges for the first time since 1999.

Joel Stashenko

11-19-2010

ALBANY - The Legislature has ignored a February directive by the Court of Appeals that they conduct an "appropriate and expeditious" review of judges' salaries, say lawyers for judges seeking a raise.

A motion for reargument filed yesterday asks the Court to force lawmakers to give serious consideration to legislation that would raise the pay of state judges for the first time since 1999.

The attorneys, led by Thomas E. Bezanson of Cohen & Gresser and George Bundy Smith of Chadbourne & Parke, insist that the state's current economic woes do not justify the failure to enact a salary increase.

"The state's current budgetary difficulty... does not excuse its violation of the New York State Constitution," the attorneys said.

The lawyers represented the plaintiff judges in *Larabee v. Governor*, one of the judicial pay cases decided by the Court of Appeals in a 5-1 ruling on Feb. 23.

Writing for the majority, Judge Eugene F. Pigott Jr. said the Legislature was violating the separation of powers doctrine by not considering a judicial pay bill on its own merits, instead using it as a bargaining chip on unrelated issues (*NYLJ*, Feb. 24).

"Judicial compensation, when addressed by the Legislature in present and future budget deliberations, cannot depend on unrelated policy initiatives or legislative compensation adjustments," Judge Pigott wrote.

However, the Court did not order the Legislature to enact a raise. Instead, it directed lawmakers to consider the issue independently of other issues.

Judge Pigott noted that the courts are reluctant to intrude on the functions of other coequal branches of government. But he stressed that although setting judicial salaries is "within the province" of legislators, the Court could intervene if its ruling is not followed.

The Legislature, he wrote, "should keep in mind, however, that whether the Legislature has met its constitutional obligations in that regard is within the province of this Court. We therefore expect appropriate and expeditious legislative consideration."

Messrs. Bezanson and Smith, a one-time judge on the Court of Appeals, argued in their motion that subsequent to the Court's ruling, the Legislature negotiated and enacted a budget for the 2010-11 fiscal year without discussing judicial compensation in the manner in which the Court of Appeals described.

"The Court gave the Legislature the opportunity to remedy its constitutional violation," the motion for reargument states. "Now that the opportunity has been ignored, the time is ripe for reargument."

"We filed these papers in hopes that 11 years of punishment by a pay freeze will end with a remedy that the Court of Appeals might come up with," Mr. Bezanson said yesterday in an interview.

No language was approved as part of the 2010-11 budget authorizing the state to increase judges' pay, although the money to do so was included as part of the Judiciary's budget.

If the Court of Appeals is not willing to entertain a motion to, in essence, enforce its directive, the attorneys for the judges asked that the Court send the judicial compensation case back to Supreme Court in Manhattan so judges can make their case for the imposition of damages.

"Now is the time for this honorable Court to stand up for the Judiciary and our Constitution," the attorneys said. "The defendants have failed to do so."

"In *Larabee*, we are simply asking the Court to do what courts do everyday and that is to award damages for past harm," Mr. Bezanson said

yesterday.

Immediately following the February ruling, the leaders of the Democratic majority leaders in the Assembly, Speaker Sheldon Silver, D-Manhattan, and the Senate, Senator John L. Sampson, D-Brooklyn, issued statements saying that while they personally favored judicial pay raises, the judges would have to wait until the economy improved.

"I have said in the past and I continue to believe that judicial salaries in New York state should be increased," Mr. Silver said. "The Assembly will consider this matter when economic conditions improve."

A spokeswoman for Mr. Silver declined comment yesterday.

A spokesman for Mr. Sampson also declined to comment.

David Bookstaver, a court system spokesman, said it would be inappropriate for him to comment on ongoing litigation. Chief Judge Jonathan Lippman said in an interview before the motion was filed that court officials had continued to lobby the Legislature without success.

Judge Pigott's ruling encompassed three judicial pay raise cases: *Larabee v. Governor*, *Marin v. Silver* and *Chief Judge v. Governor*.

A spokesman for the Court said motions have not been filed by attorneys for plaintiffs in *Marin* and *Chief Judge*.

Plaintiffs in the *Larabee* case are Manhattan Family Court Judge Susan R. Larabee, Cattaraugus County Family Court Judge Michael Nenzo, Manhattan Civil Court Judge Geoffrey Wright and Manhattan Criminal Court Judge Patricia Nunez.

Other attorneys on the motion were Alexandra Wald and Matthew V. Povolny at Cohen & Gresser and J. Carson Pulley at Chadbourne & Parke.

@Joel Stashenko can be reached at [jstashenko@alm.com](mailto:jstashenko@alm.com).