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Judges Lose Bid to Reargue Pay Suit at Court of Appeals

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The state Court of Appeals yesterday refused a motion for reargument in *Larabee v. Governor of the State of New York*, one of three judicial pay cases it decided nearly a year ago. The plaintiffs had hoped the Court would find the Legislature had not complied with its ruling and order an immediate pay raise, plus retroactive compensation for state judges ([NYLJ, Nov. 19, 2010](#)).

The Court had ruled that the Legislature had violated the separation of powers by linking consideration of judges' pay with unrelated issues ([NYLJ, Feb. 24, 2010](#)). It ordered lawmakers to address the issue in an "appropriate and expeditious" way—a review that the *Larabee* plaintiffs contend has never been made.

Without elaboration, the Court dismissed the *Larabee* plaintiffs' motion by a 6-0 vote as untimely under 22 NYCRR §500.24[b] of the Rules of the Court of Appeals. The rule requires motions for reargument to be filed within 30 days of a high court decision. The Court's decision in *Larabee* and two companion matters was handed down on Feb. 23, 2010. The request for reargument was not filed until Nov. 17, 2010. The Legislature did not respond to the motion for reargument.

Lawyers for the *Larabee* plaintiffs argued that since the Legislature has never independently considered the pay issue, the plaintiffs' standing to bring a reargument motion has been preserved. Arguably, the Legislature may be able to contend that it did perform the required review when debating and passing a bill creating a commission to consider judicial pay levels once every four years beginning on April 1 ([NYLJ, Dec. 1, 2010](#)).

Chief Judge Jonathan Lippman took no part in yesterday's decision. He is plaintiff in another judges' pay case decided last February by his Court, *Chief Judge v. Governor*. Lawyers for plaintiffs in the third pay suit, decided last February, recently filed suit in the Court of Claims in *Maron v. State of New York* seeking damages for the violation of the judges' constitutional rights as identified by the Court of Appeals ([NYLJ, Jan. 11](#)).

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