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Judge Is Censured for His Efforts to Secure a Pay Raise: [Metropolitan Desk]

Glaberson, William. *New York Times* [New York, N.Y.] 29 Dec 2009: .22.

Abstract (summary)

Judges say the unusual confrontation between the judiciary and the other branches of government shows the depth of their concerns over the salary issue. Because of the intense emotions on the question, some judges around the state have previously disqualified...

Full Text

New York State's judges have not had a pay raise in 10 years, and at least some of them are angry about it. The delay and subsequent hard feelings have led to suggestions that there has been a secretive judicial job action to pressure the Legislature to give judges more money.

On Monday, in the first case of its kind, the state's Commission on Judicial Conduct censured an upstate county court judge for openly declaring in mass e-mail messages to other judges that refusing to handle certain kinds of cases was "a tactic" and "a weapon" that could help pry a pay increase out of "those clowns" in Albany.

The commission had found that the judge, Larry M. Himelein of Cattaraugus County in western New York, sought to get other judges to refuse to handle cases filed by law firms where the state's part-time state legislators work as lawyers.

"It has nothing to do with whether I could be impartial, I really believe this is the only weapon we have," Judge Himelein wrote. The only punishment more severe than a censure is the removal of a judge from office.

The conduct commission's decision came as the 10-year dispute over judicial salaries is headed to the state's highest court, the Court of Appeals, on Jan 12. The court is to consider three separate lawsuits by judges against the state challenging the long interval without a pay raise.

Justices of the Supreme Court, the state's highest-level trial court, earn \$136,700 a year. County judges earn a minimum of \$119,800. Over the last few years, the Legislature has failed on several occasions to raise judicial pay. With the state's current fiscal problems, the prospects for a raise have not grown any brighter.

The Court of Appeals case has raised a series of awkward questions for the state government, including whether the Court of Appeals would have the power to order another branch of government to increase judicial salaries if it chose to, and how it could enforce such a ruling.

Judges say the unusual confrontation between the judiciary and the other branches of government shows the depth of their concerns over the salary issue. Because of the intense emotions on the question, some judges around the state have previously disqualified themselves from handling some cases by legislators' law firms, saying they could not be impartial.

But the state's chief administrative judge, Ann Pfau, said Monday that there was no evidence of any selective work slowdown. "Judges are working harder than ever," Judge Pfau said in an interview, noting that judges are required by ethics rules to disqualify themselves from cases if they cannot be impartial.

In its decision Monday, the Judicial Conduct Commission outlined an effort by Judge Himelein over 10 months ending in April 2008 to spur action by judges across the state. In mass e-mail messages, he urged

judges to refuse to hear cases filed by many law firms that employ members of the Assembly and the Senate. The commission's decision said the e-mail messages proved that "the driving reason for his recusals was strategic, not ethical" in disqualifying himself from 11 cases.

In one of the e-mails, he called the Assembly Speaker, Sheldon Silver, a "slug" and said that the judges' power to refuse to handle cases involving legislators' law firms was "the only way we have any standing at all with those clowns."

Referring to Mr. Silver, who is associated with the large law firm Weitz & Luxenberg, the judge wrote in a 2007 e-mail message: "When Shelley's firm can't get a divorce heard or will probated or a trial date, see if that doesn't spur some action."

In its decision released Monday, the commission noted Judge Himelein admitted having engaged in misconduct that included disqualifying himself from probate, tax and other cases involving several law firms that employ state legislators.

Although Judge Himelein is a county court judge, he also sits on State Supreme Court, Family Court and Surrogate's Court, as is common in many upstate counties. A decision to refuse certain cases by a judge with so many judicial "hats," could be a major obstacle for affected law firms, lawyers said.

A spokeswoman for Speaker Silver, Melissa Mansfield, declined to comment. A lawyer for Judge Himelein, Terrence M. Connors of Buffalo, said his e-mail "comments were borne out of his frustration over the legislative inaction."

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Indexing (details)

Subjects: Litigation, Wages & salaries, Legislators, Censure, Judicial ethics

Locations: New York

People: Himelein, Larry M

Company/Org: Commission on Judicial Conduct-New York (NAICS: 922120)

Title: Judge Is Censured for His Efforts to Secure a Pay Raise: [Metropolitan Desk]

Authors: Glaberson, William

Publication title: New York Times

Pages: A.22

Publication year: 2009

Publication Date: Dec 29, 2009

Year: 2009

Section: A

Publisher: New York Times Company

Place of Publication: New York, N.Y.

Country of publication: United States

Journal Subjects: General Interest Periodicals--United States

ISSN: 03624331

CODEN: NYTIAO

Source type: Newspapers

Language of Publication: English

Document Type: News

ProQuest Document ID: 434239235

Document URL: <http://0-search.proquest.com.alpha1.suffolk.lib.ny.us/docview/434239235?accountid=35174>

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Last Updated: 2010-08-07

Database: New York Times

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