



NEWS IN BRIEF

Judges' Suit Proceeds Over Health Premium Increase

In a decision strongly suggesting that the state violated the Constitution when it increased judges' health insurance premiums—and warning the Legislature not to seek retribution the next time the judges are up for a raise—Manhattan Supreme Court Justice Carol Robinson Edmead has refused to dismiss an action in which judges claimed lawmakers illegally reduced their pay by boosting the cost of their benefits.

Edmead said that increasing the judges' health insurance contribution 6 percent in October 2011 "constitutes an unconstitutional intrusion as applied to the judiciary, whose compensation is guarded by the Compensation Clause." Her decision in *Bransten v. State of New York*, 159160/2012, stemmed from a declaratory judgment action brought by the Association of Justices of the Supreme Court of the State of New York on behalf of current and retired judges. It arose in the wake of two occurrences: the first judicial pay raise in a dozen years and an unrelated decision by the Legislature to reduce the state's contribution for employee health insurance premiums.

At the time, judges had gone without a raise for more than 12

years and the state was struggling with a crushing deficit. In lieu of layoffs, agreements were negotiated with public employee unions increasing the workers' share of health premiums. That deal also increased the premiums of judges, who are not represented by a union.

The judges' group argued that the increased expense amounted to a decrease in salary, in violation of the Constitution. In response, the state moved to dismiss the judges' complaint, claiming that even though the insurance increase reduced the take home pay of judges, it was not an unconstitutional reduction in salary because it did not discriminate against the judges.

Edmead rejected the state's argument and refused to dismiss the case. "While the amendment does not single out judges, the Compensation Clause singly protects judges from overly broad laws that have the direct effect of diminishing that compensation," she wrote. "Here, the diminishment has a unique impact upon the judiciary...by virtue of the fact that it diminishes the compensation the judiciary is guaranteed to receive."

—John Caher

Custody Ruling in Bitter Fight May Turn on 11-Year-Old's Wish

BY ANDREW KESHNER

A MOTHER and father locked in a bitter legal tug-of-war over their 11-year-old son each urged a puzzled appellate panel yesterday to reverse a lower court's compromise ruling and grant them full custody.

Noting an arrangement that awarded residential custody to the mother but decision-making authority to the father, Justice L. Priscilla Hall of the Appellate Division, Second Department, asked, "Is that practical, given the history?"

Likewise, Justice Sandra Sgroi wondered, "How is that going to work?"

Answers to that recurring question varied during oral arguments in *McAvoy v. Hannigan*, 9927/02.

The father's attorney, Audrey Sager of Sager Gellerman & Eisner in Forest Hills, said the arrangement could not work.

But the mother, Annemarie McAvoy, who appeared pro se, said she could "subvert" her parenting views to those of her ex-husband, John Hannigan, later adding, "at least Chad will be where he wants to be."

And Chad's court-appointed attorney, Ronna Gordon-Galchus, urged affirmation of Queens Supreme Court Justice Rudolph Greco Jr.'s April 2012 decision. She said the outcome "struck a balance" giving Chad "his wishes, his comfort and his security." Chad "desperately" wants to live with his mother, his attorney added.

Hannigan, a real estate developer, and McAvoy, an assistant district attorney in Brooklyn, a Fordham University School of Law adjunct professor and a TV legal commentator, finalized their divorce in July 2005. They initially shared custody and decision-making while Chad lived primarily with McAvoy in Queens.

But McAvoy said Chad had autistic tendencies and needed special services. Hannigan did not agree, and the custody fight ensued before several judges in several forums over the years.

In 2007, Queens Supreme Court Justice Sidney Strauss, without a hearing, awarded temporary custody to Hannigan. Chad has lived with Hannigan in New Jersey since then.

As a hearing on permanent custody wore on for about

» Page 9

Housing Court Grants Eviction of