

Supreme Court of N.Y.S. - County of NY - IAS Part 19
ARLENE R. SILVERMAN, Acting Justice, New York
State Supreme Court,

Plaintiff,

-against-

**SUPPLEMENTAL
 COMPLAINT**

**SHELDON SILVER, in his official capacity as Speaker
 of the New York State Assembly, THE NEW YORK
 STATE ASSEMBLY, DEAN G. SKELOS, in his official
 capacity as Temporary President of the New York State
 Senate, THE NEW YORK STATE SENATE, DAVID A.
 PATTERSON, in his official capacity as Governor of the
 State of New York, THOMAS P. DI NAPOLI, in his
 official capacity as Comptroller of the State of New York,
 and THE STATE OF NEW YORK,**

Index No. 117058/08

(Hon. Saliann Scarpulla)

Original

Defendants.

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**Plaintiff pro se alleges upon information and belief for her supplemental
 complaint as follows:**

INTRODUCTION

- 1. Plaintiff is a retired New York State Judge originally appointed to New
 York City Criminal Court in August 1984. Approximately four years later, plaintiff was
 assigned as an acting Supreme Court Justice to the Bronx County Supreme Court Criminal Term
 and then to the New York County Supreme Court Criminal Term, where plaintiff served until her
 retirement on December 21, 2008, after a total service of over twenty four years.**
- 2. Plaintiff's salary upon her retirement was \$136,700 which was last raised
 by the defendants in April, 1998, effective January 1, 1999. Plaintiff served for ten years at that**

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**COUNTY CLERK'S OFFICE
 NEW YORK**

salary, which was never increased, and is currently receiving a New York State pension based upon that January 1, 1999 salary.

3. By contrast with plaintiff and other Judges similarly situated, approximately 1,400,000 people work for the State of New York. Each one has received a regular cost of living raise over the past 13 years.

4. Social Security recipients have received 35.9% in cumulative raises over the same 13-year period and the minimum wage has been raised by 41%.

5. While the Judges received 0% in salary increases, the Judges grade 18 Court Clerks over this 13-year period received 13% in cumulative salary increases.

6. From 1999 to 2012, over 600 New York State Judges, approximately half of the total number of Judges employed by the State at any given time, will have retired without receiving any salary increase during that period, thereby reducing their retirement pay for the duration of their lives.

7. The Legislature and Executive are already on record supporting a retroactive raise for the Judges. The Governor and the Legislature in 2006-2007 enacted a budget which approved \$69.5 million for judicial raises that would have been retroactive to April 1, 2005 but failed to appropriate money for this raise. This raise would have provided for a retroactive salary increase of \$162,100 in April, 2005 and \$165,200 in April, 2006 and thereafter and given New York State Judges some parity with federal judges who received \$165,200 in 2006. In 2007 and 2008, their salary increased to \$169,300. The Legislature failed to act on the request because the Legislature and the Governor were unable to agree on a salary increase for the Legislators themselves.

8. In April 2007, the Governor included an \$111 million dollar judicial pay increase in his executive budget retroactive to April 1, 2005 which would have roughly established parity with the pay of the federal district court judges. This provision was removed from the budget by the Legislators for reasons unrelated to the merits of the proposal.

9. In April 2007, the Senate passed a bill increasing judicial pay retroactively to January 2007. Governor Spitzer refused to support this raise unless the Legislature supported his campaign finance and ethics reform initiatives.

10. Again in 2007, the Senate passed another bill raising judicial salaries. The Assembly refused to act on this bill because it did not provide a raise to members of the New York State Legislature.

11. In 2008, Governor Paterson approved a 2008-2009 budget that included \$48 million for increased judicial salaries. The money was never appropriated by the legislature for reasons unrelated to the merits of the request.

12. In 2010, the New York Court of Appeals decided Maron v. Silver, 14 N.Y.3d 230, holding that the above recited actions violated the Separation of Powers doctrine of the New York State Constitution due to the failure of the defendants to consider judicial compensation on the merits, unrelated to other policy issues and objectives of the Executive and Legislative branches. The Court stated that it expected future "appropriate and expeditious legislative consideration" with respect to judicial compensation in light of its ruling holding that whether the Legislature has met its constitutional obligations in that regard is within the province of this Court.

13. At the end of December 2010, the Legislature established a Judicial Compensation Commission to make recommendations with respect to levels of compensation for

sitting Judges and Justices of the State-paid Courts of the Unified Court System no earlier than April of 2012. Notwithstanding that plaintiff and other Judges similarly situated were judicially determined to have been damaged by defendants' constitutional violations, defendants took no action whatsoever to remedy those violations.

14. The Commission issued a report on August 29, 2011 recommending raises commencing in April 2012 for Judges sitting at that time. Accordingly, neither the Governor nor the Legislature has taken any action to date to remedy the constitutional violation suffered by plaintiff and many others since 1998.

THE PARTIES

15. Plaintiff Arlene R. Silverman, as noted above, is a New York State Judge.

16. The defendants, all sued in their official capacities, are the Speaker of the New York State Assembly, President Pro Tempore of the New York State Senate, the Governor of New York, the New York State Assembly and Senate and the Comptroller of the State of New York.

17. Defendant State of New York was at all times the employer of the plaintiff. Judiciary Law § 39.

AS AND FOR PLAINTIFF'S CAUSE OF ACTION

18. Plaintiff repeats and realleges the allegations of paragraphs 1 through 17.

19. The Separation of Powers Doctrine of the New York State Constitution imposed on the State defendants an obligation to consider plaintiff's judicial compensation during her tenure as a New York State Judge on the merits and without regard to unrelated policy considerations which the defendants failed to do.

20. The Constitution as interpreted by the New York Court of Appeals in 2010 directed that the defendants take future expeditious and appropriate action to remedy their past and repeated failure to consider judicial compensation on the merits.

21. To date, the defendants have taken no action to address plaintiff's judicial compensation since 1998 on the merits and have thus failed to act appropriately and expeditiously with respect to plaintiff's judicial compensation.

22. The failure to consider that compensation is a violation of plaintiff's rights pursuant to the New York State Constitution Art. VI, and constitute manifest violations of the judicial determination of the Court of Appeals in Maron.

23. A judicial determination is necessary to resolve the legal issues and to provide a remedy for the violations set forth in the complaint.

24. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

25. In order in her favor for a retroactive yearly cost of living pay increase in parity with Social Security cost of living adjustments since the last enacted increase of April 1998, effective January 1, 1999 or, alternatively, a salary adjustment in parity with United States District Court Judges as set forth in the 2006-2007 budget, or alternatively, the increase recommended for Judges sitting in April 2012, by the Judicial Compensation Commission retroactive to all Judges sitting as of April, 2005, and a recalculation and increase of plaintiff's pension in accordance with plaintiff's retroactive increased salary, and

October 17, 2011



ARLENE R. SILVERMAN,
Plaintiff, Pro Se
1050 Park Avenue
New York, New York 10028
212-534-8016

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