



## **Submission to the New York State 2011 Commission on Judicial Compensation**

**July 18, 2011**

The Fund for Modern Courts, an independent nonpartisan statewide court reform organization, is committed to improving the court system for all New Yorkers and supports a judiciary that provides for the fair administration of justice and equal access to the courts. Founded in 1955 and led by concerned citizens, prominent lawyers, and business leaders, Modern Courts is the only organization in New York State devoted exclusively to improving the judicial system.

As a result of our mission, we believe that an appropriately compensated judiciary is essential for the preservation of its independence and is absolutely necessary to provide New Yorkers, who rely on the courts for the resolution of so many issues, with the benefit of having their matters resolved by a well-qualified, experienced and diverse judiciary.

Modern Courts has long supported the creation of a judicial compensation commission which would review judicial compensation and non-salary benefits every four years based on a variety of factors, which are outlined in Chapter 567 of the Laws of 2010, and whose recommendations would have the force of law. Therefore, we are pleased that the Governor and Legislature has acted to create this Commission.

We believe that a stable mechanism to provide for increased salaries and non-salary benefits at regular intervals is reasonable, fair and efficient and will maintain the excellence of our current judiciary while providing New Yorkers with a highly skilled judiciary into the future. We look forward to the Commission's recommendations.

### **The Inadequacy of Judicial Compensation in New York State**

The objective statistics attesting to the basic inadequacy of judicial compensation in New York are striking and uncontested. New York's Judges and Justices of the state-paid courts of the Unified Court System and Housing Judges of the of the Civil Court of the City of New York have not received a cost-of-living adjustment - let alone a salary increase - since 1999.<sup>1</sup> Since

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<sup>1</sup> L. 1998, ch. 630 (amending Judiciary Law art. 7-13).

that time, the Consumer Price Index in New York has increased by 41 percent.<sup>2</sup> In other words, once inflation is taken into account, the annual salaries of Justices of the Supreme Court are approximately \$56,000 less than they were when they last received a pay raise in 1999.

The erosion in New York State's judicial compensation looks especially bleak when viewed from a national perspective. Judges in every other state have received pay raises since 1999. Accordingly, New York, once the nation's leader in judicial salaries for Supreme Court Justices, now stands 46th out of 50 states and the District of Columbia when adjusted to take into account the cost of living.<sup>3</sup> This figure simply cannot be reconciled with New York's status as a global economic and commercial capital.

New York's State Supreme Court Justices, once paid at a higher rate than Federal District Court Judges, now trail their federal counterparts, who have at least received regular increases to their salaries to keep pace with inflation. Although the salaries of New York's State Supreme Court Justices were on par with those of Federal District Court Judges as recently as 1999, federal judges now earn \$37,300 more than their counterparts in New York. At a minimum, pay parity with Federal District Court Judges, adjusted upward for cost-of-living considerations, is reasonable given the respective workloads and jurisdiction of those courts.

In addition, New York's judicial compensation falls far short of private-sector salaries. While judges engaged in public service will of necessity receive less compensation than many attorneys in the private sector, the current gap between the pay of judges and the average compensation for private sector attorneys - even attorneys with far less experience than the state's judges - is inordinate and growing.

New York's judicial compensation trails many other state employees, including non-judicial employees working in the judicial branch. In the past decade of salary stagnation and erosion, hundreds of New York State employees, including those with demonstrably less seniority and expertise, have enjoyed salary adjustments and increases. Thousands of professors in the SUNY and CUNY systems, as well as public school administrators employed by the state and District Attorneys, earn more than a State Supreme Court Justice. These figures provide one measure of the salaries provided to other individuals charged with commensurate or lesser responsibility within New York State's governance.

Moreover, non-judicial New York State employees have, almost without exception, received regular cost-of-living increases. It is worth noting, for example, that non-judicial employees of the judicial branch have received regular pay adjustments aggregating to approximately 43 percent since 1999. Thus, many state employees who assist the state's judges in administering justice now, incongruously, earn more than the judges themselves.

## **The Consequences of Inadequate Judicial Compensation**

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<sup>2</sup> Submission to the 2011 Commission on Judicial Compensation, Ann Pfau, Chief Administrative Judge of the State of New York, at 13.

<sup>3</sup> Survey of Judicial Salaries, National Center for State Courts, January 1, 2011.

First, the freezing of judicial compensation since 1999 threatens to subvert the judicial independence that is a hallmark of the judicial system. As Alexander Hamilton wrote to the People of the State of New York in *The Federalist Papers*, No. 79,

Next to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support... In the general course of human nature, a power over a man's subsistence amounts to a power over his will. And we can never hope to see realized in practice, the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resources on the occasional grants of the latter.

Second, judicial salary stagnation undermines the critical policy goal of maintaining a state judiciary of the highest caliber. Fair compensation is needed in order to maintain the excellence that has always been the hallmark of New York's state judiciary, as well as to recruit future generations of New York judges. Simply put, retaining<sup>4</sup> and recruiting diverse and highly-qualified individuals to serve as New York judges requires an overhaul of the judicial compensation system.

The financial strain faced by New York's judges is particularly striking in light of the state's ever growing caseload. In 2010, for example, over 4.7 million cases were filed in New York State courts – an increase of approximately 31 percent since 1999. In the same time frame the total number of judges has increased by only 2.5 percent.

Moreover, as the ABA has noted, the nature of judicial work has exponentially changed as well. "Judges are now called upon to resolve many of the major legal, political and social disputes of our time. Rapid developments in information technology, medical science, ecommerce and globalization are spawning novel and complicated disputes . . . . In short [judges'] jobs demand more and more, but judges are effectively being paid less and less."<sup>5</sup>

Third, given the poor state of the economy, many more litigants in these difficult times are turning to the courts to resolve both family and financial problems. Most often these litigants are unrepresented, requiring the judiciary to take an ever more active role in the resolution of problems. Without an experienced and well-qualified judiciary, courts such as the Family Court and all those civil courts which deal with problems such as foreclosures, evictions and other economic conditions which affect our most needy citizens, the courts in New York will be overwhelmed.

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<sup>4</sup> New York Times, *Pay Frozen, More New York Judges Leave Bench*, by William Glaberson, July 4, 2011, available at [http://www.nytimes.com/2011/07/05/nyregion/with-salary-freeze-more-new-york-judges-are-leaving-the-bench.html?\\_r=1&ref=williamglaberson](http://www.nytimes.com/2011/07/05/nyregion/with-salary-freeze-more-new-york-judges-are-leaving-the-bench.html?_r=1&ref=williamglaberson).

<sup>5</sup> American Bar Association and Federal Bar Association, *Federal Judicial Pay Erosion : A Report on the Need for Reform*, at 15 (Feb. 2001) ("ABA Report"), available at [http://www.americanbar.org/content/dam/aba/migrated/poladv/priorities/judicial\\_pay/fedjudreport.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/poladv/priorities/judicial_pay/fedjudreport.authcheckdam.pdf)

Fourth, a weakened judiciary would have profound implications for New York's economy. Businesses rely on courts to resolve disputes efficiently and capably, and the quality of a state's court system is one factor that can attract or repel a business deciding to stay in New York or relocate. New York's corporate and business executives, recognizing the ramifications of a weakened judiciary from a business perspective, have expressed concern about the state of judicial compensation. For example, the Partnership for New York City - a nonprofit membership organization comprised of a select group of two hundred CEOs from New York City's top corporate, investment and entrepreneurial firms - issued a statement urging adoption of former Chief Judge Kaye's compensation proposals, "Because New York is a center of international business and finance, the commercial caseload facing our judiciary is particularly complex and demanding . . . . Along with numerous other legal, business and civic organizations, we support Judge Kaye's effort to secure both an immediate raise and the adoption of a Quadrennial Commission to determine future salary levels for State officials." <sup>6</sup>

### **Recommendations:**

1. Modern Courts urges the Commission to make immediate and substantial compensation adjustments for all the judges and justices of the state-paid courts of the Unified Court System and Housing Judges of the Civil Court of the City of New York.

We believe it is not acceptable that compensation adjustments be phased in over a four year time period. Given the substantial loss of purchasing power by our judges and justices, fairness requires that the judiciary be made whole now. Any delay or phase in of compensation adjustments merely penalizes the judiciary which was held hostage to government inaction for so many years.

While we rely on the Commission to make a fair and adequate judicial compensation recommendations, we note that the Submission to the 2011 Commission on Judicial Compensation, prepared by the Chief Administrative Judge of the State of New York provides a range of possibilities that fall between \$192,000 and \$220,000<sup>7</sup> based on a variety of factors and values described in that report. Modern Courts believes this is the appropriate range for the Commission's consideration.

2. Modern Courts recommends that the Commission also adopt a cost-of-living mechanism so that when judicial compensation is established by the Commission effective April 1, 2012, that compensation will not be eroded over the course of the next four years when a new compensation commission will be established.

### **Conclusion**

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<sup>6</sup> Statement of Kathryn Wylde, President & CEO of the Partnership for New York City, Urging Immediate Raises for State Judges and a Commission to Determine Salaries of State Officials in the Future (Mar. 31, 2008), available at <http://www.pfnyc.org/pressReleases/2008/tst-033108-judicial-salaries.html>.

<sup>7</sup> Submission to the 2011 Commission on Judicial Compensation, Ann Pfau, Chief Administrative Judge of the State of New York, at 21.

Given that the judiciary has not received any increase in compensation since 1999, not even a cost-of-living adjustment,<sup>8</sup> Modern Courts urges the Commission to provide for such a cost-of-living adjustment, which would bring the compensation of Supreme Court Justices to \$195,754, as well as considering an appropriate raise in salaries above that amount.

We believe that a cost-of-living adjustment is not a “raise” because such an adjustment merely restores the purchasing power judges have lost since 1999. Judges should not be penalized because the state government failed to adjust their salaries for all almost 13 years.

Modern Courts is mindful of the economic and budgetary problems that face the State and recognize that the Commission is charged with taking into account “the overall economic climate” of the State, but we believe that the savings which have accrued from the failure to adjust judicial compensation in the thirteen years leading up to April 1, 2012 should be applied to cover the costs of reasonable, yet substantial, increase to judicial compensation now.

Modern Courts understands that Chapter 567 of the Laws of 2010 limits the power of the Commission to setting prospectively the annual salaries of judges and justices of the state-paid courts of the Unified Court System and Housing Judges of the of the Civil Court of the City of New York. But because Supreme Court Justices, who have been on the bench during this entire time of frozen wages, have lost in excess of \$330,000 in purchasing power<sup>9</sup> as a result of inflation, we ask the Commission to consider how to adjust its compensation recommendations to provide some measure of retroactive relief.

Respectfully Submitted

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Immediate Past Chair, Fund for Modern Courts

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<sup>8</sup> The failure to adjust judicial compensation since 1999 has had a devastating impact on the purchasing power of the judiciary. Because of inflation, which has risen 41per cent since 1999, judicial compensation of Supreme Court Justices has actually been reduced by that percentage so that their current salary of \$136,700 is the equivalent to a mere \$80,653.

<sup>9</sup> Ibid, at 14.