

New York Law Journal

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State Judges Lose Bid For Retroactive Pay

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New York Law Journal

09-17-2012

A judge has refused to order the state to make retroactive payments to compensate judges for going 13 years without a raise.

Manhattan Supreme Court Justice Richard Braun ([See Profile](#)) said he "regrettably" concluded that the state Court of Appeals settled the pay question in 2010 in a way that left the Legislature free to decide what raises, if any, the state's 1,300 judges should receive.

After that ruling, the Legislature created an independent pay commission and approved its recommendation for a 27 percent judicial pay raise spread over three years. The first 17 percent took effect on April 1 of this year.

The plaintiffs—Manhattan Family Court Judge Susan R. Larabee ([See Profile](#)), Cattaraugus County Family Court Judge Michael Nenno ([See Profile](#)), Manhattan Civil Court Judge Geoffrey Wright ([See Profile](#)) and Manhattan Criminal Court Judge Patricia Nunez ([See Profile](#))—calculated that the purchasing power of their salaries had declined by 40 percent during the pay drought.

A retroactive payment of \$54,680, on top of this year's raise, would be required to make up the losses for state Supreme Court justices. The pay raise approved by the commission will bring the salaries of Supreme Court justices to \$174,000 a year starting on April 1, 2014 ([NYLJ, March 30](#)). It was \$136,700 before the raise.

Braun noted that by the time the last portion of the raise goes into effect, the judges will have lost about 13 percent of their salaries due to inflation and will have received no retroactive pay to make up for the money lost while their pay was frozen.

But Braun concluded in his Sept. 13 ruling that the Legislature had followed the direction of the Court of Appeals. He noted that the court had not ordered the adoption of any raise but merely held that consideration of the matter should not be tied to unrelated issues such as charter schools and campaign finance reform.

"The Court of Appeals has spoken," Braun wrote in [Larabee v. Governor of the State of New York](#), 112301/07. "If it wants to speak differently, upon another appeal, the Court will do so. However, this court cannot speak differently than the Court of Appeals."

Braun said he had not hidden from the parties his "strong feelings" about the Legislature's failure to enact a pay raise for such a long period of time but told the attorneys he could be fair. He added that he had offered to recuse himself, but no party requested that.

"Needless to say, many judges view the salary increase as quite inadequate," he wrote. "Even if the amount of salary received by a judge is sizable compared to most other New York State wage earners, and choosing public service over working at a private law firm is expected to be generally less remunerative, something certainly is wrong in judges receiving less in salary than first year associates at many of the larger law firms and less than some other New York State government employees."

The judge added, "The morale of many members of the judiciary has been negatively impacted by this situation, and anger and bitterness still linger in some. Some very fine experienced jurists have left the Bench early because of this."

Braun observed that Justice Edward Lehner had initially ruled in the plaintiffs' favor in [Larabee v. Governor of State of New York](#), 20 Misc 3d 866 (2008), and ordered that judges receive retroactive pay. But Braun said that the Court of Appeals' ruling on *Larabee* and two other cases had superseded that holding ([NYLJ, Feb. 24, 2010](#)).

He quoted the Court of Appeals as saying that "whether judicial compensation should be adjusted, and by how much, is within the province of the Legislature."

Braun was assigned to the case after Lehner retired.

Thomas Bezanson, an attorney for the Larabee plaintiffs, called the ruling "very disappointing."

"The unconstitutional compensation abuse that the judiciary suffered for 10 years continues to this day without remedy," Bezanson, of Cohen & Gresser, said. "He seemed quite sympathetic to the cause, but interpreted the Court of Appeals' prior ruling as having disposed of the issue. That is where he went wrong, in my opinion. In fact, the court made no mention at all of retroactivity. It goes too far to say that the court has ruled on that issue, much less foreclosed on it."

Bezanson said he would confer with his clients and colleagues on whether to appeal.

Alexandra Wald and Matthew Povolny, both with Cohen & Gresser, also represented the plaintiffs, as did George Bundy Smith, the former Court of Appeals judge, who is now a solo practitioner.

Bezanson said lawyers for the plaintiffs are working pro bono.

Amicus briefs were filed on behalf of the plaintiffs by the Association of Justices of the Supreme Court of the State of New York, the Supreme Court Justices Association of the City of New York, and the New York State Association of City Court Judges.

Assistant Attorney General Joel Graber defended the state. The attorney general's office declined comment.

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