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Cuomo Appointees to Judicial Pay Commission Oppose Salary Increases for State Judges

BY DAN M. CLARK

A PROPOSED pay increase for state judges in New York appeared to have been torpedoed Tuesday by three individuals appointed by Gov. Andrew Cuomo to set those salaries for the next four years, citing a projected \$6.1 billion gap in next year's state budget that could make any additional spending a difficult ask.

The panel tasked with evaluating those salaries, on which Cuomo appoints three of the seven members, agreed to table a final decision on the pay hikes until Dec. 11 at the earliest.

Cuomo's appointees — former State Budget Director Robert Megna, former top Cuomo aide Jim Malatras, and former Revlon Inc. general counsel Mitra Hormozi — each said they opposed an increase. Hormozi also worked in the Attorney General's Office under Cuomo.

"I am deeply concerned at this moment, with the \$6.1 billion budget deficit, to be talking about raises for anyone, frankly," Malatras said.

By the end of the meeting, the trio also appeared to sway the vote of Peter Madonia, who was appointed to the com- » Page 6

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mission by Assembly Speaker Carl Heastie. Madonia was chief of staff to New York City Mayor Michael Bloomberg.

"I'm leaning where the governor's folks are because of the financial facts at this point," Madonia said. "And that's unknown."

Madonia started the meeting in favor of a proposal that would continue linking the pay of state judges in New York to those on the federal level. That's the current model, leaving state Supreme Court Justices with a current annual salary of \$210,900.

Under that model, the pay of state judges in New York would rise and fall with that of federal judges, whose salaries are determined annually through cost-of-living adjustments.

If that model were to stay in place, state judges would likely receive a salary increase next year, though the exact amount isn't clear. The state Office of Court Administration estimates the total cost of the increase would be \$2.7 million, less than 1% of the total budget.

Malatras, Megna and Hormozi said they would find it difficult to support a salary increase for the state's judges for the time being, given the state's fiscal challenges.

"I think at this point I'm uncomfortable with any," Megna said. "Of course, I always try to be open to suggestions people have, but that's where I am right now."

If they're able to convince Madonia to vote the same way by the commission's next meeting, scheduled for Dec. 11, they'll have the majority needed to block any salary increases for state judges in New York for the next four years.

Madonia initially seemed less concerned about the state's fiscal problems, but ultimately said the commission should consider washing its hands of any pay increases altogether and leave that decision, instead, to the Legislature.

Because members of the Legislature negotiate the state budget

with Cuomo every year by the end of March, they may be in a better position to decide whether the money is there to support a pay increase for the state's judges, or if funds should be diverted elsewhere.

"I hate punting, but to me it does feel right to punt this back to the Legislature to change this in a way that if the picture clarifies, we can give raises or not, and not leave it to OCA to make cuts we don't know they're going to make," Madonia said.

Chief Administrative Judge Lawrence Marks testified before the panel during a public hearing last month in support of a continued linkage between the salaries of state judges and their federal counterparts. He said OCA would absorb the increase in its own budget.

"We will fully absorb the cost of those [cost-of-living adjustments] in our operating budget," Marks said.

Cuomo, and other state officials, have meanwhile warned that next year's state budget will be among his most challenging since he took office in 2011. With a \$6.1 billion hole in the state's spending plan, cuts are likely, a midyear report from the state Division of Budget said.

Hormozi argued during the meeting that, without knowing where those cuts would be made, it was difficult for her to pledge a spending increase for the state's judges, who are among the highest paid in the country.

"I don't know what the cuts are throughout the state agencies," Hormozi said. "It does seem odd to guarantee one group increases when the rest of the state is struggling."

Their position was strongly opposed by Randall Eng, a retired presiding justice of the Appellate Division, Second Department who's currently of counsel at Meyer, Suozzi, English & Klein. Eng is an appointee of Chief Judge Janet DiFiore.

Eng argued that, if the state's fiscal concerns result in an unsolvable spending cut for the state judiciary, the Legislature could always

vote to freeze any salary increases approved by the panel. That way, a pay raise would be presumed until reversed.

"There is a safety valve, and has been mentioned already," Eng said. "The Legislature may intervene in each of these years if it becomes acute. That is, if a budget situation becomes acute."

The catch, in this case, is that the panel, formally called the Commission on Legislative, Judicial, & Executive Compensation, has to submit a report by the end of the year with its final determination on a salary increase for the state's judges.

A decision on what should be included in that report would have to be made well in advance to give the panel time to actually create the report, said Michael Cardozo, the chairman of the commission and an appointee of DiFiore. He's currently a partner at Proskauer Rose.

Cardozo appeared in favor of continuing to link the pay of state judges in New York to those at the federal level, saying the commission would be "making national headlines" if it chose to freeze those salaries.

"I trust that judges won't strike, but you're treating the judicial branch as a stepchild," Cardozo said.

The seventh member of the panel, former State Sen. Seymour Lachman, a Democrat from Brooklyn, said he would also support continuing the current model, but suggested that members of the panel come up with a compromise between the two proposals.

"I think that the state's position needs a compromise, and perhaps our position as well," said Lachman, an appointee of Senate Majority Leader Andrea Stewart-Cousins, a Democrat.

Malatras, again citing the state's fiscal condition, said that likely wouldn't be possible.

"I don't think this is a compromise situation," Malatras said. "The facts on the ground are the facts on the ground."

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