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Cuomo's Appointees to Pay Commission Oppose Final Report

Andrew Keshner, New York Law Journal

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Gov. Andrew Cuomo's three appointees to a judicial pay commission are dissenting from a majority recommendation that would raise the salaries of state Supreme Court justices to match those of federal district judges.

Commission chairwoman Sheila Birnbaum, a partner at Quinn Emanuel Urquhart & Sullivan, had said in [the report sent to legislative leaders, the chief judge and the governor](#) Thursday that its recommendations would mean "equitable, appropriate and competitive" judicial salaries that entice talented judicial candidates on the bench. The commission voted 4-3 on Dec. 14 to adopt the recommendations.

But the dissenters argued that the report clashed with the Cuomo administration's efforts to promote fiscal restraint and failed to consider the inflationary implications of the salary recommendations for other state employees.

Furthermore, the dissenters said, the majority of the Commission on Legislative, Judicial, & Executive Compensation "effectively defers the commission's statutory duty to recommend state judicial salaries to a remote federal process, and adds an unnecessary element of uncertainty to budgeting each year" by adopting the federal salary level as a benchmark.

The majority was composed of Chief Judge Jonathan Lippman's appointees, Birnbaum and Barry Cozier, senior counsel at LeClairRyan and a former Appellate Division, Second Department justice; the Assembly's appointee, Roman Hedges; and the Senate's appointee, James Lack.

The dissent was joined by Cuomo appointees Fran Reiter, a partner at the Reiter Giuliani Group, a government relations firm; Mitra Hormozi, general counsel and chief compliance officer for Revlon; and Gary Johnson, executive legal counsel at Medgar Evers College.

The majority embraced a plan under which Supreme Court justices in 2016 would make 95 percent of the federal district judge salary.

Federal judges are expected to make \$203,100 next year, meaning Supreme Court Justices would make \$193,000 ([NYLJ, Dec. 15](#)). Supreme Court Justices now make \$174,000.

In 2017, justices would continue to make 95 percent of the federal salary, but receive any cost-of-living adjustment that their federal counterparts would receive.

By 2018, Supreme Court pay would increase to completely match federal pay. State court pay also would mirror federal pay in 2019, when the new commission convenes to consider judicial salaries for the next four years.

The recommendations will become law for 2016-17 unless the Legislature passes and Cuomo signs a bill by March 31 of each year changing them.

The same process holds true for 2017 through 2019; if lawmakers want to alter pay recommendations, a bill would have to be passed and signed before March 31.

The first pay commission report also was adopted by a 4-3 vote, with the three dissenters pushing immediate pay hikes, rather than the staged 27 percent raise (NYLJ, Aug. 29, 2011). Cuomo's three appointees and the Assembly pick in 2011 did not dissent from that recommendation. Lippman's appointees and the Senate representative were in the minority.

The 2015 majority said all the evidence before it suggested the state could afford immediate pay parity in 2016—a move urged by the Office of Court Administration and a number of bar groups.

But explaining the phased-in approach, the commission majority said it "understands that a commitment to conservative budgeting and spending has contributed greatly to the state's present economic health."

But the dissenters responded that the approximately 11 percent salary raise in 2016 and the approximately 5 percent raise in 2018 were "far out of alignment with the fiscal restraint that has contributed to the state's improved economic outlook."

The dissent noted that five consecutive state budgets have kept spending growth below 2 percent.

In 2016, the commission will consider legislative and executive branch salaries. It has a Nov. 15, 2016, deadline to make a recommendation on compensation for the two branches.

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