

COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

November 9, 2023

The Honorable Kathy Hochul
Governor of the State of New York
State Capitol
Albany, New York 12224

The Honorable President Pro Tem
Majority Leader Andrea Stewart-Cousins
State Capitol Building
Room 330
Albany, New York 12247

The Honorable Carl E. Heastie
Speaker of the New York State Assembly
Legislative Office Building, Room 932
Albany, New York 12248

The Honorable Rowan D. Wilson
Chief Judge of the State of New York
20 Eagle Street
Albany, New York 12207

Dear Governor Hochul, President Pro Tem, Majority Leader Stewart-Cousins, Speaker Heastie and Chief Judge Wilson:

I am pleased to submit this report on behalf of the Commission on Legislative, Judicial and Executive Compensation. Pursuant to Chapter 60 of the Laws of 2015, amended in the Laws of 2019 Chapter 59, Part VVV, this report sets forth the Commission's recommendations with respect to the compensation levels of judges and justices of the State-paid courts of the Unified Court System, fiscal years 2024 to 2027.

The Commission considered a broad range of data, beginning with the factors delineated in Part E of Chapter 60. The Commission held two (2) day-long public hearings. All public meetings and hearings were broadcast live over the Internet. The Commission carefully reviewed the public testimony and written submissions received.

The recommendations of the Commission are based on our understanding of what is fair compensation for the judges of New York State. We believe that our recommendations are supported by the factual record. Most importantly, the Commission relied upon the criteria set out in L. 2015, Ch. 60 Part E§3:

“[t]he Commission shall take into account all appropriate factors including, but not limited to: the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state’s ability to fund increases in compensation and non-salary benefits”

Further, the Commission reviewed the salary levels and systems of compensation for Federal Court Judges and other State Court Judges.

We believe our Judges are among the best in the nation. The recommended salary levels will help to attract and retain the exceptional lawyers necessary to ensure a strong and independent judicial system. This is what the people of New York deserve.

I would like to thank all the members of the Commission for their time, hard work, and dedication that they have given to our mission. As we move forward to the next phase of our responsibilities - determining appropriate levels of legislative and executive compensation - I look forward to working with them.

Respectfully,

Eugene M. Fahey
Chair

COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

FINAL REPORT ON JUDICIAL COMPENSATION

November 13, 2023

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Members of the Commission on Legislative, Judicial and Executive Compensation

Hon. Eugene M. Fahey (Ret.), Associate Judge of the Court of Appeals (Ret.), is from Buffalo, New York. He attended high school at St. Joseph's Collegiate Institute. Later, he graduated from the State University of New York with a B.A. in political science in 1974 (cum laude), a law degree in 1984 and an M.A. in European History in 1998. Judge Fahey was a member of the Buffalo Common Council from 1978 to 1983 and again from 1988 to 1994. He served as Law Clerk to Judge Edgar C. NeMoyer in the New York Court of Claims before entering private practice in 1985, serving as house counsel for Kemper Insurance Company until 1993. Judge Fahey was elected to Buffalo City Court in 1994.

He was elected to the Supreme Court in 1996, and was re-elected in 2010. As a Supreme Court Justice, Judge Fahey was assigned to handle a civil calendar as well as criminal Special Term and presided over a variety of cases in Erie County as well as the outlying counties in the Eighth Judicial District. He was assigned to the Commercial Division in Erie County in January 2005 until his appointment by Governor George E. Pataki to the Appellate Division, Fourth Department in December 2006. In January 2015, Judge Fahey was nominated to the Court of Appeals by Governor Andrew Cuomo. The New York State Senate unanimously confirmed that nomination on February 9, 2015. In 2021 Judge Fahey retired after reaching the mandatory age of 70. Presently he is an adjunct teacher at S.U.N.Y. at Buffalo School of Law. He and his wife, Colleen Maroney-Fahey live in Buffalo, New York. They are proud parents of Ann B.D. Fahey. Judge Fahey is an appointee of the Chief Judge as Chair of the Commission.

Helene E. Blank, graduated Magna Cum Laude from New York Law School in 1977. She was admitted to practice in New York in February 1978; admitted to practice in the Southern and Eastern Districts in 1980 and admitted to Practice before the Supreme Court of the United States in 1984.

She has been a litigator for most of her career. She has tried major personal injury lawsuits for both plaintiffs and defendants. Over the years, she has expanded her practice involving commercial and real estate matters as well as representing other attorneys in various matters affecting their practices. She has been appointed as a Receiver by Judges in both Kings County and New York.

She is presently a member of the OCA advisory panel on civil practice and has been on that panel for more than a decade. She has written and helped to write revisions of legislation and new legislation affecting civil practice in our Courts.

She was the President of the Brooklyn Women's Bar Association; member of the NYSBA civil practice committee; founding Member of the Brooklyn Women's Bar Foundation and helped establish a scholarship in the name of former associate justice of the appellate division and now corporation counsel Sylvia Hinds Radix; Board of Directors of New York State Trial Lawyers and a Dean of the New York State Trial Lawyers Institute, which oversees and directs its CLE programs. She was the President of the Kings County Inns of Court and one of its founding members; she has been the President of the Metropolitan Women's Bar Association; member of the New York State Bar Association, The New York State Women's Bar Association, The Jewish Lawyers Guild, the Brooklyn Bar Association, the Brooklyn Women's Bar Association, and The

Brooklyn Chamber of Commerce. As an attorney, she has been on numerous Office of Court Administration (OCA) committees. She has lectured for the New York State Supreme Court Judges Association, taught classes for Newly Elected Judges, lectured to Judges of the Civil Court of the City of New York and lectured for the following organizations; the State Bar, the Brooklyn Bar, New York County Lawyers, The Association of the Bar of the City of New York, the New York State Trial Lawyers Institute and the Columbian Lawyers. She has been appointed by various organizations to be their representative on Judicial Screening panels. She is the recipient of awards from the New York State Bar, the Brooklyn Women's Bar and the Civil Court Judges of Brooklyn. Ms. Blank is an appointee of the Chief Judge.

Theresa L. Egan, started her career as an attorney in 1987 with a small general practice law firm in Albany, and in November 1997 was elected the first woman Town Judge in town history. After 7 years on the bench, Terri was elected the first Democratic Town of Bethlehem Supervisor in over 130 years.

In April of 2007, she started her career with State government as a Deputy Commissioner for the Department of Motor Vehicles, and was promoted to Executive Deputy Commissioner and acting Commissioner of the DMV in 2015. While at DMV, she managed agency policy and oversaw all phases of operations of an agency which generated more than \$2 billion annually and had nearly 3,000 staff.

In October of 2020, she was asked to apply her operational abilities to assist the Department of Health during COVID managing all "people, places and money" and then retired from State service in October 2021.

Since her retirement, Terri has been serving as the President of Bethlehem Chamber of Commerce since July 2022, working with nearly 400 businesses to promote a robust business community within her home town and surrounding areas.

Terri has found that to be successful, throughout all of her endeavors, one must engage stakeholders to fully understand different perspectives, focusing on facts not rhetoric, and plainly communicate information, often and respectfully, through many channels. Ms. Egan is an appointee of the New York Assembly Speaker.

R. Nadine Fontaine, General Counsel to the Dormitory Authority of the State of New York, a statewide construction and financing public authority with a construction portfolio of over 1,000 projects valued at approximately \$9 billion, conduit debt bond issuer of approximately \$60 billion in bonds and notes, and other statutory program administration responsibilities. As DASNY's Chief Legal Officer, she is responsible for the management and oversight of all activities of the DASNY's Counsel's Office, which also includes oversight of the Office of Professional Integrity, Office of Diversity & Inclusion, and the FOIL, Ethics, and the Real Property Divisions.

Ms. Fontaine has over twenty-nine years of combined legal experience, including litigation of complex commercial disputes in both state and federal courts and extensive governmental experience. She most recently served as the First Assistant Counsel to the Governor overseeing a

team of assistant counsels, agency/authority general counsels and other legal team members. Prior thereto, she served as the Assistant Counsel to the Governor for Economic Development, Public Finance & Procurement and the Assistant Counsel for Human Services. She holds a Bachelor of Arts degree in Social Sciences/Health & Society from the State University of New York at Stony Brook University and a Juris Doctor degree from Pace University School of Law. Ms. Fontaine is an appointee of the Governor.

Victor A. Kovner, Senior Counsel to Davis Wright Tremaine, where he has practiced law since that firm merged with his prior firm Lankenau Kovner. In 1990-1, he was the Corporation Counsel of the City of New York under Mayor David N. Dinkins. He has served as Chair of the Committee on the Judiciary and as Secretary of the New York City Bar Association. Pursuant to appointments by Governors Hugh L. Carey and Mario M. Cuomo, he served on the New York State Commission on Judicial Conduct from 1976 to 1990, concluding as the Commission's Chair.

He has been a member of the Board of Trustees of the Fund for Modern Courts from 1970 to the present, and was the Fund's chair for four years roughly a decade ago. While Chair of the Fund, he helped draft and advocate for the legislation signed by Governor Paterson in 2010 creating the first Commission on Judicial Compensation.

He has specialized in First Amendment Law, and for two decades was on the faculty of the annual Communications Law Seminar of the Practising Law Institute. Pursuant to appointment of President William J. Clinton, he was for eight years on the President's Commission on White House Fellowships. In recent years, he has served as the Trustee of the Liz Claiborne and Art Ortenberg Foundation, which supports community based wildlife preservation in many parts of the world. Mr. Kovner is an appointee of the Governor.

Robert Megna, President of the Rockefeller Institute of Government. Mr. Megna previously served as senior vice chancellor and chief operating officer of SUNY System Administration. In that role, he oversaw the operations of the chief information officer, the State University of New York (SUNY) Plaza business functions, capital facilities, campus energy management, and the Charter School Institute.

He joined SUNY System Administration from Stony Brook University, serving as senior vice president for finance and administration. Prior to joining Stony Brook, he served as executive director of the New York State Thruway Authority and New York State Canal Corporation.

Mr. Megna served as budget director for New York State Division of the Budget (DOB), during which time the state achieved its highest financial rating in 40 years from three major credit rating agencies and passed four on-time budgets for the first time since the 1970s. Mr. Megna has also served as commissioner for New York State Department of Taxation and Finance, assistant commissioner of the office of tax policy at the Virginia Department of Taxation, and director of tax studies at the New York State Department of Taxation and Finance.

Mr. Megna earned an M.S. in economics from the London School of Economics and Political Science at the University of London and received his B.A. in Economics and M.P.A. from Fordham University. Mr. Megna is an appointee of the Governor.

Hon. Jeremy S. Weinstein (Ret.), he was born in New York City and is a graduate of Jamaica High School, York College of the City University of New York (where he was elected the first president of the school's student body), and Brooklyn Law School. He was admitted to the New York State Bar in March 1975.

Judge Weinstein served in 1975 and 1976 as a Deputy Assistant Attorney General of the State of New York. From 1976 until his election to the State Senate, he was an Associate Counsel to the Speaker of the New York State Assembly. He has been a member of his local community planning board in Queens and a member of many civic, fraternal and religious organizations. He has also served as an Adjunct Professor of Political Science at York College of the City University of New York.

In November 1978, he was elected a member of the New York State Senate. He served in the Senate from 1979 to 1992. In 1985, Senator Weinstein was appointed the Assistant Minority Whip, and in 1986 he was elevated to the position of Minority Whip. In 1991, he was further promoted to Assistant Minority Leader - Floor Operations. During his 14 years in the New York State Senate, then Senator Weinstein served on the Judiciary Committee, the Codes Committee, the Banking Committee, and the Crime and Corrections Committee. Senator Weinstein served as ranking member of the Crime and Corrections Committee and Chair of the Senate Democratic Task Force on Crime and sponsored numerous bills dealing with parole, probation, civil practice and the judiciary.

Judge Weinstein maintained a private practice of law until his election in 1993 as a Judge of the Civil Court of the City of New York. In January 1997, Judge Weinstein was appointed an Acting Supreme Court Justice, and the Supervising Judge of the Queens Civil Court. In November 1999, Judge Weinstein was elected a Justice of Queens Supreme Court.

In March 2007, Judge Weinstein was appointed as the Administrative Judge of Queens Supreme Court, Civil Term. From January 2008 through March 2009, he was also appointed Acting Administrative Judge of Queens Supreme Court, Criminal Term, along with his duties in Civil Term. In March 2009, he was appointed Administrative Judge for Civil Matters in the Eleventh Judicial District.

Judge Weinstein is currently a Neutral with National Arbitration and Mediation. Judge Weinstein an appointee of the President Pro Tem of the Senate.

Introduction

The judiciary of New York State has a long and distinguished history. Our judges draw on the character and minds of jurists as varied as John Jay, Benjamin N. Cardozo, Irving Lehman, Stanley Fuld, Charles Breitel and Judith Kaye. When Judge Cardozo passed, Judge Learned Hand stated “he was a great judge because he successfully reconciled the letter with the spirit of the law” (from the World of Benjamin Cardozo by Richard Pollenberg p. 240).

This spirit runs through to our current judges. We see it in our recent Chief Judge Jonathan Lippman and even in our current Chief Judge Rowan D. Wilson. As New Yorkers, we expect the best from our legal system. It is one of the largest and the busiest in the world. In 2022, there were 2.1 million new cases filed in our courts (civil-criminal-family court). New York had more than twice the number of filings as the entire federal court system.¹

To fairly and efficiently provide justice to the people of the state, we need to ensure that our judges have the support and the resources they need to do the job. Part of that requires that they be properly compensated for the job we are asking them to do.

They have not seen any increase in pay for four and a half years. During this time the Federal Judiciary has seen a continuous rise in compensation. When compared to the judiciary of other states, New York is ranked eighth, behind Illinois, District of Columbia, California, Hawaii, Florida, Pennsylvania and Washington. The buying power of a judge’s salary is now 20% less than it was in 2019. During this same time period, the other branches of government have received well-deserved pay raises. The same is true of employees whose pay is set by collective bargaining.

The Commission recognizes these realities. It’s goal is to responsibly address these issues.

¹(see uscourts.gov/federaljudicialcaseload 775,585 filings - statistics - 2022)

STATUTORY MANDATE

In March of 2015, Part E of chapter 60 of the Laws of 2015 was enacted, providing for a quadrennial commission to “examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits” for judges, members of the Legislature and certain Statewide elected officials and Executive Branch officers named in Executive Law § 169. The Commission is charged, first, with issuing “findings, conclusions, determinations and recommendations” to the Governor, the Legislature and the Chief Judge with regard to judicial compensation, by December 31, 2023. A separate report, relating to legislative and executive compensation, is due by November 15, 2024.

Chapter 60 sets forth a number of factors to guide the Commission’s work of determining appropriate judicial salary levels, including, but not limited to, the overall economic climate in New York; rates of inflation; changes in public sector spending; levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state’s ability to fund increases in compensation.

The Commission is authorized to recommend adjustments in judicial salary levels during the four state fiscal years commencing on April 1, 2024. Pursuant to chapter 60, each recommendation of the Commission for a salary adjustment carries the force of law as of April 1st of the year for which the adjustment has been recommended, unless sooner modified or abrogated by statute.

As prescribed in chapter 60, the Commission consists of seven members appointed by the leaders of all three branches of New York State government. Three members are appointed by the Governor; two (including the Chair) by the Chief Judge; and one each by the President Pro Tem of the Senate and the Speaker of the Assembly. The findings and recommendations require a majority vote but they must also be supported “by at least one member appointed by each appointing authority.” The Commission’s Chair shall preside but not vote on matters relating to legislative and executive compensation.

The Commission may recommend up to two adjustments in legislative and executive salary levels, each commencing on January first, following a November general election of members of the Legislature. The Commission is deemed dissolved following issuance of the report due no later than November 15, 2024.

In furtherance of its statutory mission, the Commission held public meetings in New York City. It also held two, day-long public hearings; one on October 13, 2023 in New York City and one on October 31, 2023 in Albany. A total of 31 witnesses testified at the hearings. The public hearing and meetings were televised live on the Internet. In addition, the Commission invited written commentary and established post office and email addresses (nyscompensation@gmail.com) through which it received 27 written submissions from judicial

associations, bar association, good government groups, and other interested individuals and organizations. The witness lists, written submissions and other information about the work of the Commission including transcripts and videos of the Commission's public hearings and meetings, are all available on it's website at: www.nyscommissiononcompensation.org.

FINDINGS

RECOMMENDATION "A"

- A. Effective April 1, 2024 New York State Supreme Court Justices salary shall be set at \$232,600.
- B. The salaries of all other state judges (including Appellate and Administrative judges) shall be adjusted to reflect their present proportion to the salary of State Supreme Court Justices effective April 1, 2024.
- C. Except that no County Court Judge, Family Court Judge or Surrogate's Court Judge shall earn less than 95% of a Supreme Court Justice's salary. Any such judicial position now being paid a percentage of a Supreme Justice's salary that is greater than 95% shall continue to be paid at that same percentage.
- D. Judges of the New York City Civil Court, the New York City Criminal Court, District Court, Housing Court of the New York City Civil Court and full-time City Court Judges (outside of New York City), shall earn 93% of the Supreme Court Justice's salary.

Part-time City Court Judges shall earn the same proportion of the salaries of the full-time City Court Judges that they now earn.

(Alternative to Recommendation "A")

RECOMMENDATION "B"

- A. Everything remains the same as Recommendation "A" except that the full-time City Court Judges and Housing Court Judges shall earn 90% of the Supreme Court Justice's salary (the present system).
- B. Whatever recommendation adopted shall take effect on April 1, 2024.

RECOMMENDATION "C"

- A. In years 2025, 2026 and 2027, a 2% increase for each year.