

timesunion

<http://www.timesunion.com/7dayarchive/article/Law-Beat-Judges-their-health-care-It-s-awkward-12278345.php>

Law Beat: Judges, their health care cost. It's awkward

ADVERTISEMENT

Talk about an awkward situation for a lawyer.

On Wednesday, state Assistant Solicitor General Judith Vale stood before seven judges at the state's highest court to tell them why they should rule against the best financial interests of judges.

And the judges – three of whom were filling in at the Court Appeals – had to feel a bit awkward too. The case affects any judge whose health insurance comes through their employment. That means if any of the judges hearing the case fit that description, Vale was there to tell them why they should have less money in their wallets.

Welcome to the latest legal fight in the seemingly never-ending issue of judicial pay – or, in this case, money paid by judges for health care coverage.

It may not be as galvanizing an issue as the drought in pay raises that judges in New York experienced between 1999 and 2011. The details here involve some additional minutia. Nobody should expect Chief Judge Janet DiFiore to come out next January and call this issue the number one issue on her agenda (judicial pay raises became just that for late Chief Judge Judith Kaye and then, at first, for retired Chief Judge Jonathan Lippman).

But we are still talking about the judges suing the state over money.

Here's how we got there: In 2011, amid a budget shortfall and potential state layoffs, the state reduced its contribution to the health care premiums paid by judges and other state workers. That meant judges would be paying more annually for their health care insurance should they use the state plan.

So in 2012, more than a dozen sitting and retired state Supreme Court justices, the Association of Justices of the Supreme Court of the State of New York and the Supreme Court Justices Association of the City of New York, among others, sued the state arguing that the reduction of the state's contribution to health violated the state's Compensation Clause (which guarantees judges' compensation cannot be diminished while they are in office).

ADVERTISEMENT

The state argued that a modest price increase in health insurance costs does not directly diminish judicial compensation and, in turn, the Compensation Clause, because judges are still receiving the same pay protected under the law.

A lower court ruled in favor of the judges. The state appealed and lost at the Appellate Division of state Supreme Court, First Department in Manhattan. And now they have appealed to the Court of Appeals, the state's highest court, which put Vale before the judges Wednesday.

At one point, as reported by the New York Law Journal, Associate Judge Michael Garcia asked Vale if the reduction in the state's contribution to health insurance directly or indirectly had an effect on judicial compensation.

"It may not fit in a particular box," Vale replied, according to the report. "When it comes to talking about the effect on salary this is clearly an indirect effect on protected salary."

Representing the judges was Alan Klinger, a Manhattan attorney. When he suggested compensation can include wages, benefits and anything of value provided by an employer, it prompted questioning from Associate Judge Jenny Rivera.

"If that's the case, where do we draw the line because compensation must mean something," Rivera said, according to the Law Journal. "Otherwise, it means anything and everything and we have no ways to measure the parameters of the compensation clause."

"What's at issue here," Klinger replied, according to the report, "are health benefits and health benefits are akin to pensions in terms of both being viewed as deferred compensation."

Cases at the Court Appeals generally six to eight weeks to decide. This one will be delivered by Associate Judges Garcia, Rivera, Rowan Wilson and Eugene Fahey as well as Appellate Division Justices Erin Peradotto from the Rochester-based Fourth Department, Mark Dillon of the Brooklyn-based Second Department and Robert Mulvey of the Albany-based Third Department.

The judges who recused themselves from the case were DiFiore and Associate Judges Leslie Stein and Paul Feinman.

For them, Wednesday was perhaps a bit less awkward.

© 2017 Hearst Communications, Inc.

