SUBMISSION TO THE

2015 COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE OF THE STATE OF NEW YORK
SUBMISSION TO THE

2015 COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION

EXECUTIVE SUMMARY ................................................................. 3
I. THE MANDATE OF THE COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION ......................................................... 6
   A. 2015 Commission on Legislative, Judicial and Executive Compensation ........................................... 6
   B. 2011 Commission on Judicial Compensation ............................................................................. 7
   C. The Judiciary's Submission to the 2011 Commission on Judicial Compensation ................. 8
II. THE NEW YORK STATE JUDICIARY .................................................................................. 9
    A. The Judges of the New York State Unified Court System ...................................................... 9
    B. A Snapshot of the Work of the New York State Courts ......................................................... 9
    C. A Brief History of Judicial Compensation in New York ...................................................... 10
III. GUIDING PRINCIPLES ................................................................................................. 13
    A. Fairness .................................................................................................................................. 13
    B. Objectivity .......................................................................................................................... 14
    C. Regularity. ........................................................................................................................... 14
    D. Institutional Integrity .......................................................................................................... 14
IV. EVALUATION OF FACTORS RELEVANT TO JUDICIAL SALARY LEVELS FOR NEW YORK STATE JUDGES ........................................................................................................... 15
    A. Parity Should Be Re-Established Between the Salary of a Supreme Court Justice and That of a Federal District Court Judge ................................................................. 16
    B. Re-Establishing Parity Between the Salary of a Supreme Court Justice and That of a Federal District Court Judge Will Protect New York's Judicial Salaries Against Inflation ........................................................................................................... 17
    C. New York State Judges Are Significantly Under-Compensated Compared to Judges in Other States When Judicial Salaries Are Adjusted for Cost of Living .................................................. 18
    D. New York State Judges Are Under-Compensated Compared to Many Professionals in Government, Academia and the Private and Non-Profit Sectors ................................................................. 20
    E. The State's Strong Fiscal Condition Supports an Equitable Judicial Salary Adjustment That Re-Establishes Parity With the Federal Judiciary and Brings the Value of State Judicial Pay Into Line With Inflation ........................................................................................................... 22
V. PROMOTING PAY PARITY BETWEEN AND WITHIN COURTS .................................................. 24
VI. PROVIDING FOR COST-OF-LIVING ADJUSTMENTS FOR 2017, 2018 AND 2019 .................................................. 27
VII. CONCLUSION .................................................................................................................. 28
EXECUTIVE SUMMARY

ON BEHALF OF THE NEW YORK STATE JUDICIARY, Chief Administrative Judge Lawrence K. Marks presents this Submission to the 2015 Commission on Legislative, Judicial and Executive Compensation to assist it in fulfilling its mandate, pursuant to chapter 60 of the Laws of 2015, to establish appropriate levels of compensation for New York State judges and justices for the four-year period commencing April 1, 2016.

This Commission has an historic mission. Its predecessor, which sat in 2011, represented the State’s first effort to determine judicial compensation levels through a fair, independent and rational process. Building upon the success of that effort, the present Commission’s mandate has been extended beyond the Judiciary to address the appropriate compensation of senior officers of all three branches of government.¹ Never before has the State so committed itself to adjusting the salaries of senior officers of all three branches of government in a regular, objective and transparent manner, and on the basis of rational, predictable and nonpolitical criteria. Indeed, only four other states have established compensation commissions for all three branches whose recommendations have the force of law.²

The Judiciary strongly recommends that four widely accepted fundamental principles guide the Commission’s work:

**Fairness.** Senior government officials should receive fair compensation, determined in an equitable manner, that maintains its economic value over time.

**Objectivity.** Compensation of senior State officials should be based on criteria that are objective and easily evaluated by the public.

**Regularity.** A regular and predictable process must ensure that salaries are adjusted at recurring intervals so that they do not become inadequate over time due to increases in the cost of living.

**Institutional integrity.** The structure of compensation for senior State public officials should promote public confidence in the excellence and diversity of each of our branches of government, and promote the effective management of public personnel and resources.

¹ Chapter 60 is reproduced in Appendix A. The public officials addressed by chapter 60 include State-paid judges and justices, State legislators, the Attorney General and Comptroller and agency heads listed in Executive Law § 169. This group does not include the Governor or Lieutenant Governor. Article IV of the State Constitution provides that the salaries of the Governor (section 3) and the Lieutenant Governor (section 6) are set by joint resolution of the Senate and Assembly.

² The four other states are Arkansas, Hawaii, Missouri and Washington. In Hawaii and Missouri, the Commission’s recommendations have the force and effect of law, unless affirmatively overridden by the Legislature within a specified time period. Arkansas established a binding salary commission in 2014 with the authority to make salary recommendations that cannot be overridden by the state’s legislature. In Washington, the Commission’s recommendations become law within 90 days of being filed by the secretary of state, subject only to a referendum petition by the people. See Michigan, Oregon and Nevada Legislatures Look at 3 Different Approaches to Judicial Salaries http://gaveltogavel.us/2015/04/07/.
The Judiciary presents the following facts for the Commission’s consideration in applying these four core principles:

**A STRONG JUDICIARY IS VITAL TO NEW YORK STATE.** A strong Judiciary is vital to every aspect of civil society, assuring protection of civic freedoms, swift resolution of civil and commercial disputes, and fair and timely redress of criminal complaints. Adequate judicial salaries contribute to a strong Judiciary by attracting and facilitating retention of the best-qualified lawyers to serve on the bench, and preserving the institutional and decisional independence of the courts.

**JUDICIAL SALARIES IN NEW YORK HAVE NOT KEPT PACE WITH SALARIES OF THE FEDERAL JUDICIARY.** In 2016, the appropriate benchmark upon which to base the salary of a Supreme Court Justice is the salary level of a Federal District Court Judge — as was the case in 1999 and again in 2011, the last two occasions when New York’s judicial salaries were adjusted.

A principle of fundamental importance to the 2011 Commission on Judicial Compensation was maintaining parity between the salaries of New York State Supreme Court Justices and those of Federal District Court Judges:

“The Federal Judiciary sets a benchmark of both quality and compensation—New York State should seek to place its judiciary on par. That is where New York State judicial compensation was in the late 1990’s and our recommendation is to re-establish this benchmark . . . .”

Since the 2011 Commission raised the salary of a Supreme Court Justice to $174,000 — the salary level of a Federal District Court Judge at that time — the latter has risen to $201,100, and is expected to be reset to $203,100 on January 1, 2016, reflecting changes in the cost of living since 1989.5

**JUDICIAL SALARIES IN NEW YORK HAVE NOT KEPT PACE WITH INFLATION.** The 2011 Commission’s phased-in salary adjustment, though welcome, only partially addressed the damaging effect of inflation on judicial salaries, which had been eroded by 41% between 1999 and 2011.

---

3 The Supreme Court is the trial court of general statewide civil and criminal jurisdiction in New York State. See N.Y. Const., art. VI, § 7(a). For this reason, the salary of a Justice of the Supreme Court will be used as the benchmark for State judicial salaries and statistical salary comparisons throughout this Submission. This is consistent with national practice. The National Center for State Courts publishes biennially a Survey of Annual Salaries, which updates and ranks the actual and cost-adjusted salaries of general jurisdiction trial court judges in all 50 states and the District of Columbia. See http://www.ncsc.org/FlashMicrosites/JudicialSalaryReview/2015/resources/CurrentJudicialSalaries.pdf.

4 The annual salary of a Supreme Court Justice was increased from $136,700 to $174,000 over a three-year period: to $160,000 in April 2012, to $167,000 in April 2013, and to $174,000 in April 2014, where it currently remains. Salaries of judges and justices of other courts were adjusted proportionately.

5 In August 2015, President Obama announced a 1% pay adjustment for General Schedule federal employees, effective January 1, 2016. Pursuant to the rulings in *Beer v. United States*, 696 F.3d 1174 (Fed. Cir. 2012) **cert. denied 133 S.Ct. 1997**, and *Baker v. United States*, No. 12-826 (Fed. C.Filed Nov. 30, 2012), federal judges will receive the same percentage adjustment (see section IV.A., infra). Accordingly, it is expected that the salary of a Federal District Court Judge will be $203,100 as of January 1, 2016.
JUDICIAL SALARIES IN NEW YORK TRAIL THOSE OF OTHER STATE JUDGES. The current salary of a Supreme Court Justice ranks 47th among all states when adjusted for New York's high cost of living. Restoring pay parity between Supreme Court Justices and Federal District Court Judges would only lift New York’s ranking to 33rd among all states when adjusted for cost of living.

INTER- AND INTRA-COURT PAY DISPARITIES. The salaries of hundreds of judges having the same rank and responsibilities vary greatly around the state. These inter- and intra-court pay disparities, which persist as vestiges of the State’s assumption of responsibility for paying the salaries of county and city-level judges nearly four decades ago, are inequitable and unwise.

NEW YORK STATE’S ECONOMY AND ABILITY TO FUND A JUDICIAL SALARY ADJUSTMENT ARE HISTORICALLY STRONG. The State’s economy and fiscal outlook are strong. The 2011 Commission’s sensitivity to the State’s “unprecedented budget crisis” at that time prevented it from prescribing a salary adjustment reflecting historic cost-of-living factors. Since 2011, the State has seen a remarkable economic turnaround, from dire multi-billion dollar budget deficits to multi-billion dollar surpluses. No aspect of the State’s current or projected fiscal condition should prevent this Commission from recommending an equitable salary adjustment that restores judicial pay to appropriate inflation-adjusted levels.

RECOMMENDATIONS

RESTORE PARITY WITH FEDERAL DISTRICT COURT JUDGES. The Judiciary respectfully requests that the Commission direct an increase in the salary of a Supreme Court Justice so that it will equal that of a Federal District Court Judge beginning April 1, 2016 and continuing thereafter, together with a proportionate increase for all other New York State judges.

PROVIDE FOR COST-OF-LIVING ADJUSTMENTS. Judicial salaries in New York should be made subject to cost-of-living adjustments to take effect on April 1 of each of the years 2017, 2018 and 2019, premised on the annual cost-of-living adjustments provided to the federal judiciary on each preceding January 1st.

REDRESS INTER- AND INTRA-COURT PAY DISPARITIES. The Commission should redress the long-entrenched judicial pay anomalies that exist between and within various courts by adopting a pay schedule for non-Supreme Court judges that fixes their compensation at fair and practical uniform percentages of a New York State Supreme Court Justice’s salary.

In adopting these recommendations, the Commission would restore judicial salaries in New York to equitable levels benchmarked to the inflation-adjusted salary of a Federal District Court Judge; ensure that judicial salaries are protected against inflation going forward; address the unfairness and damage caused by the unprecedented pay freeze of 1999-2012; eliminate inappropriate judicial pay disparities; and, ultimately, strengthen the institutional independence and integrity of our State’s judicial branch.
I. THE MANDATE OF THE COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

A. 2015 COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

MANDATE

Part E of chapter 60 of the Laws of 2015 provides for appointment of 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, certain State-wide elected officials, commissioners and certain other high-ranking executive branch officials. The Commission is charged with issuing two separate reports setting forth its “findings, conclusions, determinations and recommendations” to the Governor, the Legislature, and the Chief Judge. One report is to address judicial compensation and the other legislative and executive compensation.

The Commission’s report addressing judicial compensation is due by December 31, 2015. The Commission’s report on legislative and executive compensation is due by November 15, 2016. The Commission may recommend up to four adjustments in judicial salary levels, commencing on April 1 of each of the four years (2016-2019) following the Commission’s creation. The Commission may recommend up to two adjustments in legislative and executive salary levels, each commencing on January 1 following a November general election of members of the Legislature (January 1, 2017 and January 1, 2019). The Commission’s recommendations for salary adjustments shall carry the force of law and take effect on the above scheduled dates, unless sooner modified or abrogated by statute. The Commission is deemed dissolved following issuance of its second report on November 15, 2016.

FACTORS TO GUIDE THE COMMISSION’S WORK

Chapter 60 provides that in discharging its responsibilities, the 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
■ levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and the federal government
■ levels of compensation and non-salary benefits received by professionals in government, academia and private and non-profit enterprise, and
■ the State’s ability to fund increases in compensation and non-salary benefits.

COMMISSION MEMBERSHIP AND VOTING

The Commission consists of seven members, appointed as follows: three by the Governor; two by the Chief Judge, including the Chair of the Commission; and one each by the Temporary President of the Senate and the Speaker of the Assembly.
The Commission’s findings and recommendations must be supported by majority vote, and the findings and recommendations concerning executive and legislative compensation must, in addition be supported “by at least one member appointed by each appointing authority.” With regard to matters addressing legislative or executive compensation, the Chair of the Commission shall preside but not vote. See Appendix A for the full text of Chapter 60.

B. 2011 COMMISSION ON JUDICIAL COMPENSATION

On December 10, 2010, after more than a decade during which New York’s judges received no pay adjustments, the Governor signed into law chapter 567 of the Laws of 2010, providing for creation of a Commission on Judicial Compensation. Composed of seven members appointed by the Governor, the Chief Judge, the Temporary President of the Senate and the Speaker of the Assembly, the Commission was charged with examining the adequacy of judicial salaries and benefits and determining whether adjustments were warranted. Each Commission recommendation to adjust judicial pay would carry the force of law, unless modified or abrogated by statute prior to April 1 of the year as to which it applied.

The Commission, chaired by Hon. William C. Thompson, Jr., conducted a public hearing, held three public meetings, and issued its report and recommendations on August 29, 2011. The Commission acknowledged the “economic harm that has befallen New York’s judges” resulting from twelve years of salary stagnation, including the fact that pay for Supreme Court Justices ranked “last in the nation when salary is adjusted for cost-of-living.” The Commission noted that cost of living, as determined by the Consumer Price Index – Northeast Urban Region, had increased by approximately 41% since 1999, and that caseloads for State judges had steadily increased over that same period.

Notwithstanding these findings, the Commission was “mindful of the current economic climate of the State,” including a then-projected $2.5 billion budget deficit for the next fiscal year, and of how a salary increase would affect the State’s precarious financial status. The Commission determined that New York State judges should receive a salary increase phased in over three fiscal years, starting on April 1, 2012, with no increase in April 2015: $160,000 in April 2012; $167,000 in April 2013; and $174,000 in April 2014.

This phased-in increase was designed to bring the salaries of Supreme Court Justices into parity with Federal District Court Judges by 2014. The reasoning behind the Commission’s recommendations was succinct:

The Commission has determined that the appropriate benchmark at this time for the New York State Judiciary is the compensation level of the Federal Judiciary. The Commission recognizes the importance of the New York State Judiciary as a co-equal branch of government and recognizes the importance of establishing pay levels that make clear that the judiciary is valued and respected. The Federal Judiciary sets a benchmark of both quality and

---

6 All other State judges received proportionate salary increases over the same period.
compensation—New York should seek to place its judiciary on par. That is where New York State judicial compensation was in the late 1990’s and our recommendation is to re-establish this benchmark with a phase-in period that takes account of the State’s current financial challenges.

Three members of the Commission filed dissenting statements that mainly urged higher salary levels and objected to the phased-in nature of the recommended increase. See Appendix B for the Commission’s final report.

C. THE JUDICIARY’S SUBMISSION TO THE 2011 COMMISSION ON JUDICIAL COMPENSATION

In its Submission to the 2011 Commission (Appendix C), the Judiciary provided detailed factual and comparative data addressing the devastating effect of the prolonged judicial salary freeze of 1999-2011 on individual judges and the Judiciary as an institution. The Judiciary did not recommend a specific compensation amount, but rather offered a range of possible values for the salary of a Supreme Court Justice, each keyed to a criterion the Commission was charged with considering.

- **Inflation.** An adjustment designed to restore the purchasing power of judicial pay to its 1999 level consistent with the rate of inflation: ($195,754).
- **State rank.** An adjustment designed to move New York from last to 25th among the states on a cost-adjusted basis ($220,836), or to 40th on a cost-adjusted basis ($194,068).\(^7\)
- **Non-judicial staff compensation.** An adjustment designed to re-establish the 1999 salary ratio between senior law clerks and the justices they serve ($192,218).
- **Federal judicial salaries, adjusted for inflation.** An adjustment designed to calibrate New York salaries to those of federal judges, with an adjustment for inflation since January 2006 ($193,813).

\(^7\) These rankings were based on judicial salary data published by the National Center for State Courts in its biennial Survey of Judicial Salaries.
II. THE NEW YORK STATE JUDICIARY

A. THE JUDGES OF THE NEW YORK STATE UNIFIED COURT SYSTEM

New York’s Unified Court System consists of twelve State-funded courts. There are three courts of appellate jurisdiction: the Court of Appeals, the Appellate Divisions of the Supreme Court, and the Appellate Terms of the Supreme Court. There are nine trial courts: Supreme Court, Court of Claims, County Court, Family Court, Surrogate’s Court, the Civil and Criminal Courts of New York City, District Courts on Long Island, and City Courts outside New York City.

The judges of all these courts must be lawyers and, in most instances, must have been admitted to practice law in New York for at least ten years. Service in the New York State Judiciary is, with rare exception, a full-time occupation. Judges are barred generally from engaging in outside employment or earning outside income, and must comply with the Rules of Judicial Conduct (22 NYCRR § 100), which impose ethical restrictions limiting judges’ public and private conduct and activities. Appendix D provides a summary of the qualifications, terms of office and jurisdiction of New York’s trial judges.

Current judicial salary levels for New York’s trial judges, established in April 2014, are as follows:

- Supreme Court $174,000
- Court of Claims $174,000
- County, Family & Surrogate’s Court $152,500 to $174,000
- NYC Civil & Criminal Court $159,900
- New York City Housing Court $146,900
- District Court $156,200
- City Court (Full-time) $138,500 to $152,200

Appendix E provides a court-by-court summary of judicial salary levels.

B. A SNAPSHOT OF THE WORK OF THE NEW YORK STATE COURTS

In 2014, more than 3.7 million cases were filed in the New York State courts — more than two and a half times the number of filings for the entire Federal Judiciary. Due to differences in jurisdiction, it is difficult to draw meaningful comparisons between the workloads of state and federal judges. However, there can be no doubt that the New York State court system is one of the busiest

---

in the world or that its judges handle challenging, complex and significant cases. New Yorkers turn
to their courts by the tens of thousands each day to secure fundamental freedoms, enforce rights
and obligations, resolve civil and commercial disputes, protect the vulnerable and fairly adjudicate
alleged crimes. Each day, New York’s judges handle major commercial and real estate disputes, home
foreclosures and evictions, divorces, and consumer credit defaults in our civil courts; high-stakes
murder and felony trials, organized crime and gang violence, and drug-related crime and recidivism
in our high-volume criminal courts; domestic violence, juvenile delinquency, child custody and
support, and critical child abuse and neglect cases in our family courts; as well as probate of wills,
administration of decedents’ estates, adoptions, and guardianship of incapacitated persons in the
surrogate’s courts.

A strong Judiciary is essential to a healthy State economy and to attracting and retaining busi-
nesses that generate jobs and tax revenues and contribute to economic prosperity. Businesses rely
on the courts to resolve their disputes, and the quality and efficiency of the courts are significant
factors in deciding where to locate and do business. The New York State courts, including the Com-
mmercial Division of the Supreme Court, have played an important role in maintaining New York’s
longstanding national and international prominence in law and commerce, and have earned the
praise of many leading business and commercial law groups, including the Business Council of New
York State; American Corporate Counsel Association; American Bar Association Business Law Sec-
tion; New York State Bar Association Commercial and Federal Litigation Section; and The Partnership
for New York City.

C. A BRIEF HISTORY OF JUDICIAL COMPENSATION IN NEW YORK

In 1976, the Legislature enacted the Unified Court Budget Act (“UCBA”), conferring full respon-
sibility upon the State for the funding of all courts (other than Town and Village Justice Courts), and
transferring formerly locally-paid judges to the State payroll. In the ensuing 39 years, State-paid
judges received seven pay increases – six by statute and one by recommendation of the 2011 Com-
m ission. Four of the seven increases took effect in the first 10½ years after enactment of the UCBA.
The remaining three increases took effect over the next 26 years. See Appendix J for a comprehensive
history of judicial compensation in New York.

The 1979 Judicial Salary Increase. The first judicial pay increase following the UCBA’s enactment
took effect in April 1979. It was coupled with pay raises for legislators and executive branch
officials. For judges, the increase consisted of a series of percentage adjustments: a 7% increase
retroactive to October 1978; a 7% increase in October 1979, and a 3.39% increase in October
1980. These adjustments were recommended by an ad hoc advisory panel established by Gov-

sion has earned widespread praise as demonstrably good for business and good for New York and has served as a case study of
how the courts and the business community can work together to foster greater expertise and efficiency in commercial litigation
through innovative dispute resolution services.”)

10 Kathryn Wylyde, President & CEO, Partnership for New York City, June 18, 2015 (“New York City is the leading center of global
commerce and finance, thanks in no small measure to the contributions of the Commercial Division of the Supreme Court.”)
The 1980 Judicial Salary Increase. This increase was enacted during a special legislative session in late 1980 and consisted, for judges, of a 5% increase effective January 1981, followed by a 7% increase in January 1982. This increase also was coupled with salary adjustments for legislators and executive branch officials.

The 1984 Judicial Salary Increase. In December 1984, the Legislature enacted an increase for judges, legislators and executive branch officials, effective January 1985, and retroactive to July 1, 1984. Most trial judges received increases ranging from 24% to 27%.

The 1987 Judicial Salary Increase. In 1987, the Legislature increased salaries for all three branches, with the Judiciary receiving a single increase as follows: 24% for Associate Judges of the Court of Appeals; 15.9% for Supreme Court Justices; up to 20.6% for County-level Judges; 21% for Civil and Criminal Court Judges; and 18.3% for full-time City Court Judges.

The 1993 Judicial Salary Increase. In 1993, the Legislature enacted a new pay schedule for judges based on the report of an advisory commission appointed by the Governor. The increases varied widely: 8.7% for Associate Judges of the Court of Appeals; 18.9% for Supreme Court Justices; up to 20.7% for County-level Judges; and 15.4% for full-time City Court Judges and New York City Housing Court Judges. The adjustments took effect in four stages over an 18-month period, beginning April 1993.

The 1999 Judicial Salary Increase. In December 1998, the Legislature increased salaries for all three branches. The pay increase approved for the Judiciary, effective January 1, 1999, established pay parity for Supreme Court Justices with Federal District Court Judges, at $136,700, together with proportionate increases for all other State-paid judges.

The 2012 Judicial Salary Increase. In August 2011, pursuant to chapter 567 of the Laws of 2010, the first in a series of quadrennial commissions on judicial compensation recommended a salary adjustment intended to achieve pay parity between Supreme Court Justices and Federal District Court Judges over a three-year-period, at $174,000 as of April 1, 2014. All other judges received proportionate salary increases.

This brief history reveals a troubling pattern of judicial compensation in New York: long periods of salary stagnation interrupted by ad hoc “catch-up” increases. The timing and amounts of these increases lacked any regularity or predictability. No deliberate effort was made to keep judicial salaries in line with inflation. After 1984, no judicial pay adjustment contained a retroactive component to make up for prior years of earnings lost to inflation. Equally troubling is the fact that the increases of 1980, 1984 and 1999 were all enacted shortly after elections, during lame-duck legislative sessions, with minimal public debate or disclosure. This history represents the antithesis of fairness, objectivity, regularity and institutional integrity — the hallmarks of how government should go about compensating highly qualified and experienced public servants entrusted with the weighty responsibility of delivering justice and adjudicating the rights of their fellow citizens.
We are gratified that the Legislature has responded to these concerns by creating a permanent Quadrennial Commission process pursuant to which this Commission now sits. It is our hope and expectation that this process will ensure regular review and adjustment of judicial compensation to meet the financial exigencies of the times and ensure that the judicial profession in New York continues to attract capable men and women of all backgrounds.
III. GUIDING PRINCIPLES

In the general course of human nature, a power over a man’s subsistence amounts to a power over his will. And we can never hope to see realized in practice, the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resources on the occasional grants of the latter. *** It will be readily understood that the fluctuations in the value of money and in the state of society rendered a fixed rate of judicial compensation in the Constitution inadmissible. *** It was therefore necessary to leave it to the discretion of the Legislature to vary its provisions in conformity to the variations in circumstances, yet under such restrictions as to put it out of the power of that body to change the condition of the individual for the worse.

—Alexander Hamilton
Federalist 79

Since the founding of our Republic, it has been universally understood that there can be neither liberty, justice, nor public security without an independent and strong judicial branch. Maintaining equitable judicial salaries over time is vital to judicial independence, to ensuring that judges are never made to be — in reality or perception — subordinate to the other branches of government or to outside forces. Fair compensation strengthens the judicial branch by attracting and retaining well-qualified attorneys in judicial service, avoiding compromise of ethical duties, and eschewing personal wealth as a qualification for judicial office.

Consistent with the Judiciary’s constitutional status as a separate, non-partisan and apolitical branch of government, commentators have recognized several core principles as fundamental to the determination of appropriate compensation for judges—fairness, objectivity, regularity, and preservation of institutional integrity. While we believe these principles are equally applicable to the task of setting appropriate salary levels for all three branches of government, the remainder of this Submission will focus exclusively on the application of these principles to the compensation of New York State judges.

A. FAIRNESS

Careers in public service entail financial sacrifice. While most judges would agree that the satisfaction that comes with public service outweighs the financial sacrifices involved, they also expect to be compensated fairly. Judicial salaries should be broadly comparable to the remuneration received by attorneys taking similar career paths and by other public servants having comparable responsibility, training and experience.

B. OBJECTIVITY

Judicial compensation should be set and revised by reference to an agreed-upon set of objective criteria that can be easily evaluated by the public. The process also should be transparent to the public. Fortunately, the process and factors that the Legislature has directed the Commission to consider and employ (e.g., rates of inflation, compensation of professionals in government, academia and private and non-profit enterprise) reflect a State commitment to objectivity and transparency. Objectivity serves several purposes: it helps achieve wise, consistent results; it demystifies the salary-setting process and avoids the appearance of arbitrariness or irrationality; it allows the considered factors to be candidly assessed and debated; and it promotes public confidence in the ultimate result.

C. REGULARITY

As a corollary to fairness in fixing judicial salaries, there must be a predictable mechanism to ensure that salaries, once adjusted, do not lose ground to inflation. The real value of judicial compensation should be maintained through regular review and adjustments that respond to changes in the cost of living so that the salary a judge accepts upon joining the bench is not thereafter eroded to the detriment of his or her family. The statutorily created quadrennial commission process sets the stage for regularity by authorizing this Commission to provide for prospective and automatic adjustments gauged to economic forces that otherwise could erode judicial pay and render compensation unpredictable for judges and their families in the future.

D. INSTITUTIONAL INTEGRITY

The proper adjustment of salaries has implications far beyond fairness to individual judges. As the New York Court of Appeals recognized, the adequacy of salaries has an important impact on the diversity and quality of judges. If salaries are too low, “only those with means will be financially able to assume a judicial post, negatively impacting the diversity of the Judiciary and discriminating against those who are well qualified and interested in serving, but nonetheless unable to aspire to a career in the Judiciary because of financial hardship that results from stagnant compensation over the years.”\(^{12}\)

In any large public institution, successful long-term governance also requires rational pay distinctions commensurate with the relative authority and responsibility of officeholders. Salary systems must calibrate appropriately between judicial and staff salaries in ways that recognize distinctions in seniority, experience, authority and responsibility. This is particularly important for the court system, where constitutionally-derived powers are exercised exclusively by elected and appointed judicial officers.

IV. EVALUATION OF FACTORS RELEVANT TO JUDICIAL SALARY LEVELS FOR NEW YORK STATE JUDGES

The quadrennial commission process established by Chapter 60 of the Laws of 2015 permanently enshrines the fundamental principles of fairness, objectivity, regularity, and institutional integrity as the prism through which adjustments in judicial compensation are to be made. In creating this process, the Legislature has filled a conspicuous, longstanding void in New York, a void evidenced most dramatically by the pay freeze of 1999-2012, when State judges failed to receive a single pay increase or cost-of-living adjustment despite steady inflation that seriously eroded the real value of their compensation.

The salary increase of 2012-2014 was greatly needed and welcomed. Nonetheless, it only partially restored the value of State judicial salaries. Even today, New York’s judicial salaries—which once ranked highest in the nation—as lag behind those paid to judges in other states and the federal judiciary. Indeed, when adjusted for New York’s high cost of living, the $174,000 salary of a Supreme Court Justice ranks 47th in the nation according to the nonpartisan National Center for State Courts, which has published a biennial Survey of Judicial Salaries for more than 40 years.

The following addresses in greater detail the factors delineated in chapter 60 to guide the Commission in carrying out its responsibilities.

---

13 As recently as 1994, New York State Supreme Court Justices were the highest paid trial court judges in the nation at $108,500. See National Center for State Courts, Annual Survey of Judicial Salaries, July 1994.

14 See National Ranking of Judicial Salaries, at page 19 of this Submission. The National Center for State Courts (NCSC) Survey of Judicial Salaries rankings are based on the Council for Community and Economic Research (C2ER) Cost-of-Living Index, the most widely accepted U.S. source for measuring regional differences in living costs. While this Submission relies on the C2ER Index to show the comparative real value of New York’s judicial salaries nationwide, we note that the C2ER Index is not weighted for population density and therefore does not fully account for the reality that living costs in New York’s urban communities, where the great preponderance of New York’s judges live and sit, are considerably higher than in the State’s rural communities. If weighted for population density, New York’s judicial salaries would actually rank worse than 47th.
A. **PARITY SHOULD BE RE-ESTABLISHED BETWEEN THE SALARY OF A SUPREME COURT JUSTICE AND THAT OF A FEDERAL DISTRICT COURT JUDGE**

The **inflation-adjusted salary of a Federal District Court Judge** provides the appropriate benchmark for the New York State Judiciary in 2016. As the 2011 Commission concluded, “the Federal judiciary sets a benchmark of both quality and compensation — New York should seek to place its judiciary on par.” The Commission’s decision in 2011 to re-establish pay parity between Supreme Court Justices and Federal District Court Judges was supported by history, as evidenced by the 1978 and 1999 salary increases, which equalized their respective salaries. Indeed, during a six-year period in the late 1980s, the salaries of Supreme Court Justices exceeded those of their federal counterparts.

On January 1, 2016, the salary of a Federal District Court Judge is expected to be adjusted to $203,100. This salary level has been calibrated to reflect increases in the cost of living since enactment of the 1989 Ethics Reform Act (Public Law 101-94), which limited outside earnings of federal judges in exchange for providing them with cost-of-living increases received by other federal employees.

In 2011, the Judiciary took the position that parity with Federal District Court Judges, while certainly appropriate in the past, was not then the “best comparative metric,” because the federal judiciary had itself been denied a number of statutory cost-of-living adjustments over the years. As a result of not receiving those adjustments, Federal District Court Judges in 2011 were earning $174,000 a year, when they should have been earning approximately $194,000, had their pay properly been adjusted to keep pace with inflation. As we stated in 2011, “federal judicial salaries provide an appropriate standard for New York judicial compensation only when adjusted for inflation.” (emphasis added).

In 2009, six federal judges brought a lawsuit claiming that Congress had violated the Compensation Clause of the U.S. Constitution by withholding cost-of-living salary adjustments authorized by the Ethics Reform Act of 1989. In October 2012, in *Beer v. United States*, the U.S. Court of Appeals for the Federal Circuit held that legislation blocking cost-of-living adjustments in 1995, 1996, 1997 and 1999 was an unconstitutional deprivation of judicial compensation in violation of the Compensation Clause. The Court further held that two more cost-of-living adjustments for 2007 and 2010 were improperly withheld by Congress.

In December 2013, the holding in *Beer* was applied to all Article III judges through *Barker v. United States*, and the salary levels of all federal judges were re-adjusted to reflect the six annual cost-of-living adjustments previously withheld by Congress. As a result, the salary of a Federal District Court Judge was reset at $197,100 for 2013, and subsequently updated to $199,100 for 2014, and $201,100 for 2015, based on changes in the cost of living. On January 1, 2016, it is anticipated that this salary level will again be adjusted, to $203,100. Furthermore, approximately 1,600 current and former federal judges were found entitled to back pay awards representing the salary amounts they would have been entitled to had their salaries been properly adjusted.

---

15 696 F.3d 1174, 1185 (Fed. Cir. 2012), cert. denied, 133 S.Ct. 1997. See Appendix F.

16 696 F.3d at 1185-86 (2001 amendment to prior appropriations act did not override provisions of 1989 Ethics Reform Act).

17 No. 12-826 (Fed. Cl. filed Nov. 30, 2012). As directed by these decisions, the salaries of Federal District Court Judges were reset at $197,100 for 2013. This salary level was further updated to $199,100, effective January 1, 2014, based on the cost-of-living adjustment provided to federal government employees and officials in accordance with Executive Order No. 13655 (Dec. 23, 2013), and by Executive Order No. 13686 (Dec. 19, 2014), which adjusted the salary level to $201,100, effective January 1, 2015.
 earned had Congress not withheld the cost-of-living adjustments for 2007 and 2010.\textsuperscript{18}

As a result of these developments, the 2011 Commission’s specific recommendation of establishing pay parity between Supreme Court Justices and Federal District Court Judges soon became outdated. As of January 1, 2016, a New York State Supreme Court Justice is expected to earn $29,100 less than a Federal District Court Judge annually, and $12,682 less than Federal Magistrate Judges and Bankruptcy Judges.\textsuperscript{19}

\section*{B. RE-ESTABLISHING PARITY BETWEEN THE SALARY OF A SUPREME COURT JUSTICE AND THAT OF A FEDERAL DISTRICT COURT JUDGE WILL PROTECT NEW YORK’S JUDICIAL SALARIES AGAINST INFLATION}

\textbf{Analysis of the impact of inflation on judicial compensation} in New York supports reliance on the salary of a Federal District Court Judge as an appropriate benchmark. As noted above, federal judicial salaries have been calibrated to ensure that they are in line with changes in inflation since 1989. Using 1987 as a base year to measure the impact of inflation on New York judicial pay — a year when the salaries of Supreme Court Justices were raised from $82,000 to $95,000 — and compounding CPI-U inflation from that point forward, results in an inflation-adjusted salary of $207,975 in 2015 dollars, a salary level higher than the present salary of a Federal District Court Judge. This calculation relies on the Consumer Price Index — Northeast Urban (CPI-U Northeast), which provides the most appropriate measure of New York’s high cost of living.

The phased-in 27\% salary increase of 2012-2014, welcome though it was for ending a 13-year pay freeze, only partially addressed the damaging effect of inflation on New York’s judges.\textsuperscript{20} As the 2011 Commission noted in its report, the cost of living as determined by the CPI-U Northeast had actually eroded salaries by 41\% since the last adjustment in 1999.\textsuperscript{21} Moreover, as with previous catch-up increases, the 2012 adjustment did not at all recognize the devastating cumulative effect of earnings lost to inflation. For example, a Supreme Court Justice serving since January 1999 had lost about $352,000 salary dollars to inflation by the time of the 2012 increase; while the same Justice serving through 2015 has lost approximately $463,000 to inflation — or about two and two-thirds years of current salary. It is instructive that when federal judicial salaries were reset as a result of the \textit{Beer} litigation, federal judges received lump sum awards of back pay reflecting lost earnings resulting

\textsuperscript{18} \textit{Beer v. United States}, 11 Fed. Cl. 592 (2013).

\textsuperscript{19} Magistrate Judges preside over pretrial proceedings in civil and criminal cases, motions, settlement conferences, initial appearances, and bail hearings. Magistrate Judges also preside over jury and nonjury trials upon consent of the parties, as well as trials and dispositions of misdemeanor cases. See 28 U.S.C. § 636. The maximum salary for full-time Magistrate and Bankruptcy Judges is set at 92\% of the salary of a District Court Judge. See \textit{Judiciary Appropriations Act of 1988}, Pub. L. No. 100-202, Title IV, § 408, 101 Stat. 1329-26 and 27 (Dec. 22, 1987).

\textsuperscript{20} It is noteworthy that on January 1, 1999, Supreme Court Justices and Federal District Court Judges both earned $136,700. However, by 1999, even that salary level had already fallen behind the rate of inflation. As discussed above, Congress had blocked cost-of-living adjustments for the federal judiciary in 1995, 1996, and 1997. Thus, 1999 is not a proper base year for measuring the true impact of inflation on the salary of a Supreme Court Justice.

\textsuperscript{21} The 2011 Commission relied on the Consumer Price Index - Northeast Urban Region ("CPI-U"), which is computed monthly by the U.S. Department of Labor, Bureau of Labor Statistics, and provides an official statistical measure of average price changes in a fixed market basket of goods and services for the Northeastern states. This standard index weighs core living expenses – food, housing, health care, transportation – and is widely recognized as an accurate, sample-based price measure against which to calibrate salaries and benefits for most Americans, including professionals and managers most comparable to judges and attorneys eligible for judicial service.
from cost-of-living increases withheld by Congress in 2007 and 2010. The foregoing makes clear the importance of bringing judicial salaries into line with the historic impact of inflation and of providing for cost-of-living adjustments going forward.

C. NEW YORK STATE JUDGES ARE SIGNIFICANTLY UNDER-COMPENSATED COMPARED TO JUDGES IN OTHER STATES WHEN JUDICIAL SALARIES ARE ADJUSTED FOR COST OF LIVING

Analysis of where New York’s judicial compensation ranks in comparison to other states strongly suggests that pay parity between State Supreme Court Justices and Federal District Court Judges would be fair and appropriate. Though such an adjustment would place New York first among the states in nominal dollars, we emphasize that nominal judicial pay is not a meaningful or equitable metric given New York’s traditionally high cost of living. When regional cost of living is taken into account, it reveals the true extent to which the salaries of New York’s judges are in need of adjustment.

According to the nonpartisan National Center for State Courts, when adjusted for cost of living, the $174,000 salary of a Supreme Court Justice ranks 47th in the nation today among state trial courts of general jurisdiction, and it is strikingly low when compared on this basis with the high-population states to which New York typically compares for policy purposes.

<table>
<thead>
<tr>
<th>State</th>
<th>Current Salary</th>
<th>Ranking</th>
<th>State</th>
<th>2015 Adjusted Salary*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illinois</td>
<td>$190,758</td>
<td>1</td>
<td>Illinois</td>
<td>$170,096</td>
</tr>
<tr>
<td>California</td>
<td>$189,041</td>
<td>2</td>
<td>Delaware</td>
<td>$169,885</td>
</tr>
<tr>
<td>Delaware</td>
<td>$180,733</td>
<td>3</td>
<td>Pennsylvania</td>
<td>$153,769</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>$176,572</td>
<td>4</td>
<td>Virginia</td>
<td>$149,404</td>
</tr>
<tr>
<td>New York</td>
<td>$174,000</td>
<td>5</td>
<td>Texas</td>
<td>$146,784</td>
</tr>
<tr>
<td>New Jersey</td>
<td>$165,000</td>
<td>6</td>
<td>California</td>
<td>$140,369</td>
</tr>
<tr>
<td>Virginia</td>
<td>$162,878</td>
<td>7</td>
<td>Florida</td>
<td>$139,683</td>
</tr>
<tr>
<td>Texas</td>
<td>$149,000</td>
<td>8</td>
<td>Michigan</td>
<td>$139,123</td>
</tr>
<tr>
<td>Florida</td>
<td>$146,080</td>
<td>9</td>
<td>New Jersey</td>
<td>$135,881</td>
</tr>
<tr>
<td>Michigan</td>
<td>$139,919</td>
<td>10</td>
<td>New York</td>
<td>$113,960</td>
</tr>
</tbody>
</table>

*The salaries in this column were adjusted to reflect local cost of living, based on data from the Council for Community and Economic Research.

22 While the cost of living is not the same in all areas of New York, it is consistently high in the State’s major metropolitan areas, which far and away have the greatest number of resident judges. While some observers, in the past, have suggested that differences in the cost of living across the State should be grounds for setting different salaries based on where high-ranking State officials – Legislators, Statewide elected Executive Branch officials and State commissioners – happen to live and work, the fact remains that the State historically has declined to adopt such a policy and pay geographic differentials to such officials. We do not urge an approach that relies on such geographic differentials.
# National Ranking of Judicial Salaries—
**Trial Courts of General Jurisdiction as of October 2015—50 States**

<table>
<thead>
<tr>
<th>State</th>
<th>Current Salary</th>
<th>Ranking</th>
<th>State</th>
<th>2015 Adjusted Salary*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hawaii</td>
<td>$193,248</td>
<td>1</td>
<td>Tennessee</td>
<td>$176,845</td>
</tr>
<tr>
<td>Illinois</td>
<td>$190,758</td>
<td>2</td>
<td>Illinois</td>
<td>$170,096</td>
</tr>
<tr>
<td>California</td>
<td>$189,041</td>
<td>3</td>
<td>Delaware</td>
<td>$169,885</td>
</tr>
<tr>
<td>Alaska</td>
<td>$185,088</td>
<td>4</td>
<td>Arkansas</td>
<td>$169,073</td>
</tr>
<tr>
<td>Delaware</td>
<td>$180,733</td>
<td>5</td>
<td>Pennsylvania</td>
<td>$153,769</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>$176,572</td>
<td>6</td>
<td>Nebraska</td>
<td>$150,707</td>
</tr>
<tr>
<td><strong>New York</strong></td>
<td><strong>$174,000</strong></td>
<td>7</td>
<td>Nevada</td>
<td><strong>$150,544</strong></td>
</tr>
<tr>
<td>Tennessee</td>
<td>$170,352</td>
<td>8</td>
<td>Georgia</td>
<td>$150,324</td>
</tr>
<tr>
<td>Connecticut</td>
<td>$167,634</td>
<td>9</td>
<td>Virginia</td>
<td>$149,404</td>
</tr>
<tr>
<td>New Jersey</td>
<td>$165,000</td>
<td>10</td>
<td>Utah</td>
<td>$147,770</td>
</tr>
<tr>
<td>Virginia</td>
<td>$162,878</td>
<td>11</td>
<td>Louisiana</td>
<td>$147,651</td>
</tr>
<tr>
<td>Arkansas</td>
<td>$160,000</td>
<td>12</td>
<td>Texas</td>
<td>$146,784</td>
</tr>
<tr>
<td>Nevada</td>
<td>$160,000</td>
<td>13</td>
<td>Colorado</td>
<td>$146,619</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>$159,694</td>
<td>14</td>
<td>Missouri</td>
<td>$145,828</td>
</tr>
<tr>
<td>Colorado</td>
<td>$159,320</td>
<td>15</td>
<td>Hawaii</td>
<td>$144,851</td>
</tr>
<tr>
<td>Georgia</td>
<td>$155,252</td>
<td>16</td>
<td>Iowa</td>
<td>$143,565</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>$155,235</td>
<td>17</td>
<td>Wyoming</td>
<td>$141,012</td>
</tr>
<tr>
<td>Maryland</td>
<td>$154,433</td>
<td>18</td>
<td>Alabama</td>
<td>$140,984</td>
</tr>
<tr>
<td>Nebraska</td>
<td>$153,697</td>
<td>19</td>
<td>Alaska</td>
<td>$140,890</td>
</tr>
<tr>
<td>Utah</td>
<td>$152,850</td>
<td>20</td>
<td>California</td>
<td>$140,369</td>
</tr>
<tr>
<td>Washington</td>
<td>$151,809</td>
<td>21</td>
<td>Florida</td>
<td>$139,683</td>
</tr>
<tr>
<td>Wyoming</td>
<td>$150,000</td>
<td>22</td>
<td>Michigan</td>
<td>$139,123</td>
</tr>
<tr>
<td>Texas</td>
<td>$149,000</td>
<td>23</td>
<td>Minnesota</td>
<td>$138,873</td>
</tr>
<tr>
<td>Louisiana</td>
<td>$148,108</td>
<td>24</td>
<td>Indiana</td>
<td>$138,326</td>
</tr>
<tr>
<td>Missouri</td>
<td>$146,803</td>
<td>25</td>
<td>Mississippi</td>
<td>$136,709</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>$146,236</td>
<td>26</td>
<td>Arizona</td>
<td>$136,537</td>
</tr>
<tr>
<td>Florida</td>
<td>$146,080</td>
<td>27</td>
<td>Maryland</td>
<td>$136,118</td>
</tr>
<tr>
<td>Arizona</td>
<td>$145,000</td>
<td>28</td>
<td>New Jersey</td>
<td>$135,881</td>
</tr>
<tr>
<td>Iowa</td>
<td>$143,897</td>
<td>29</td>
<td>Washington</td>
<td>$135,646</td>
</tr>
<tr>
<td>Minnesota</td>
<td>$143,851</td>
<td>30</td>
<td>North Dakota</td>
<td>$135,439</td>
</tr>
<tr>
<td>Michigan</td>
<td>$139,919</td>
<td>31</td>
<td>South Carolina</td>
<td>$135,132</td>
</tr>
<tr>
<td>Vermont</td>
<td>$139,837</td>
<td>32</td>
<td>Oklahoma</td>
<td>$134,482</td>
</tr>
<tr>
<td>North Dakota</td>
<td>$139,679</td>
<td>33</td>
<td>Kentucky</td>
<td>$130,513</td>
</tr>
<tr>
<td>Indiana</td>
<td>$137,062</td>
<td>34</td>
<td>Wisconsin</td>
<td>$128,686</td>
</tr>
<tr>
<td>South Carolina</td>
<td>$136,905</td>
<td>35</td>
<td>West Virginia</td>
<td>$128,543</td>
</tr>
<tr>
<td>Alabama</td>
<td>$134,943</td>
<td>36</td>
<td>Connecticut</td>
<td>$125,646</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>$131,835</td>
<td>37</td>
<td>North Carolina</td>
<td>$124,253</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>$131,187</td>
<td>38</td>
<td>Ohio</td>
<td>$123,222</td>
</tr>
<tr>
<td>Mississippi</td>
<td>$128,042</td>
<td>39</td>
<td>South Dakota</td>
<td>$122,845</td>
</tr>
<tr>
<td>North Carolina</td>
<td>$126,875</td>
<td>40</td>
<td>Idaho</td>
<td>$122,485</td>
</tr>
<tr>
<td>Montana</td>
<td>$126,131</td>
<td>41</td>
<td>Rhode Island</td>
<td>$121,619</td>
</tr>
<tr>
<td>West Virginia</td>
<td>$126,000</td>
<td>42</td>
<td>Montana</td>
<td>$121,390</td>
</tr>
<tr>
<td>Kentucky</td>
<td>$124,620</td>
<td>43</td>
<td>Massachusetts</td>
<td>$118,791</td>
</tr>
<tr>
<td>Oregon</td>
<td>$124,468</td>
<td>44</td>
<td>Kansas</td>
<td>$117,870</td>
</tr>
<tr>
<td>Idaho</td>
<td>$124,000</td>
<td>45</td>
<td>New Hampshire</td>
<td>$116,600</td>
</tr>
<tr>
<td>South Dakota</td>
<td>$123,024</td>
<td>46</td>
<td>New Mexico</td>
<td>$114,244</td>
</tr>
<tr>
<td>Maine</td>
<td>$121,472</td>
<td>47</td>
<td>New York</td>
<td>$113,960</td>
</tr>
<tr>
<td>Ohio</td>
<td>$121,350</td>
<td>48</td>
<td>Vermont</td>
<td>$113,031</td>
</tr>
<tr>
<td>Kansas</td>
<td>$120,037</td>
<td>49</td>
<td>Oregon</td>
<td>$108,880</td>
</tr>
<tr>
<td>New Mexico</td>
<td>$118,383</td>
<td>50</td>
<td>Maine</td>
<td>$99,557</td>
</tr>
</tbody>
</table>

*The salaries in this column were adjusted to reflect local cost of living, based on data from the Council for Community and Economic Research.*
The preceding table presents the latest national picture, including New York’s ranking in terms of both nominal salary paid and salary purchasing power based on regional cost of living. Even the benchmark salary level of a Federal District Court Judge urged in this Submission would only bring New York up to 33rd in rank among the states on a cost-adjusted basis.

Judicial salaries ultimately gauge the strength of our commitment to attract the very best and brightest of legal minds into responsible roles of civic governance, coloring public perceptions of the importance we attach to the rule of law. They measure our understanding, relative to that of other states, that exceptional judges are not a luxury but a necessity in a state of national and international prominence that seeks to maintain the constitutional checks and balances of vibrant government; assure continued excellence in adjudication of commercial disputes to help promote a strong job-producing economy; ensure the swift, fair resolution of criminal complaints; preserve the civil rights of our citizens; and bring about the swift and wise resolution of the myriad of private and public disputes that are the Judiciary’s primary task.

D. NEW YORK STATE JUDGES ARE UNDER-COMPENSATED COMPARED TO MANY PROFESSIONALS IN GOVERNMENT, ACADEMIA AND THE PRIVATE AND NON-PROFIT SECTORS

Chapter 60 of the Laws of 2015 directs the Commission to consider, among other factors, the levels of compensation and non-salary benefits received by professionals in government, academia and private and non-profit enterprise. To facilitate this review, Appendix G provides data relating to the compensation of state and local government officials and comparable professionals in the private, public, academic and non-profit sectors.

New York’s judges earn less than many public officials in New York and less than many professionals of comparable education and experience in the private and non-profit sectors, while the magnitude of the disparity between judges and attorneys in larger law firms remains striking.

NEW YORK CITY

- Chief Administrative Law Judge, Office of Administrative Trials and Hearings $192,198
- Corporation Counsel, New York City $214,413
- Director, Mayor’s Office of Criminal Justice $214,413

23 According to the National Center for State Courts, 21 states have increased the salaries of their judges in 2015.
24 The Council for Community and Economic Research ("C2ER") is the most widely accepted U.S. source for cost-of-living indices and regional differences in living costs. It has long been used by the nonpartisan National Center for State Courts to compare judicial salaries across different jurisdictions, and to publish its biannual Survey of Judicial Salaries. The C2ER index examines average costs of goods and services for the latest four fiscal quarters in nearly 400 reporting jurisdictions across the nation.
25 While the Judiciary has provided the Commission with comparative data relating to the salaries of New York State government officials, such data is likely to be of limited value to the task of setting appropriate judicial salary levels given that these officers – whose salaries the Commission will address in 2016 – generally have not received pay adjustments since 1999. A listing of salaries of statewide elected officials and state officers referred to in Executive Law § 169 is provided in Appendix G.
26 On September 18, 2015, Mayor DiBlasio announced the appointment of an independent Quadrennial Advisory Commission for the review of compensation of elected New York City officials, including the mayor, public advocate, comptroller, borough presi-
Counsel to the Mayor, New York City $209,000
Director, Mayor’s Office to Combat Domestic Violence $200,847
District Attorneys within New York City $190,000
New York City Commissioners up to $219,773
Chancellor, NYC Department of Education $222,182
Borough Presidents, New York City $160,000
Chancellor, City University of New York $670,000
General Counsel, City University of New York $273,202

ACADEMIA AND PUBLIC EDUCATION

Deans of New York’s law schools earn salaries ranging from $258,724 to $318,000 at public law schools, and $254,724 to $496,000 at private law schools.

Several hundred public school administrators across the State, including some elementary school principals, earn significantly more than judges:

Albany Superintendent of Schools $193,800
Garden City Superintendent of Schools $281,466
Hempstead Superintendent of Schools $265,000
Levittown Superintendent of Schools $225,000
Niagara Falls Superintendent of Schools $168,295
Utica Superintendent of Schools $178,231
Glen Cove Elementary School Principal $183,400
Oceanside High School Principal $202,346
Manhasset Elementary School Principal $196,257

PRIVATE LAW PRACTICE

The pay disparity between judges and attorneys in private law firms remains striking, with many first-year associates at large New York City law firms earning more than $174,000 annually, and fifth-year associates at such firms earning base salaries between $218,00 and $260,000.

On October 28, 2015, New York City’s five District Attorneys sent a joint letter to the Quadrennial Advisory Commission requesting that their annual salaries be raised to $250,000, retroactive to 2011. See http://www1.nyc.gov/site/quadrennial/index.page.
According to a 2014 survey of over 2,000 partners at the nation’s 350 largest law firms, the average compensation of law firm partners was $716,000, with median compensation of $475,000. In New York City, the average compensation of large law firm partners was $1.1 million.\(^{28}\)

According to a 2015 study of salaries of legal professionals, lawyers in private practice with 10-plus years of experience (not necessarily partners) earn salaries within the following ranges: \(^{29}\)

<table>
<thead>
<tr>
<th>Location, Firm Size</th>
<th>Salary Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York City, large firm (75+ lawyers)</td>
<td>$259,350 to $378,350</td>
</tr>
<tr>
<td>New York City, midsize firm (35-75 lawyers)</td>
<td>$214,550 to $362,250</td>
</tr>
<tr>
<td>Long Island, large firm (75+ lawyers)</td>
<td>$222,300 to $324,300</td>
</tr>
<tr>
<td>Long Island, midsize firm (35-75 lawyers)</td>
<td>$183,900 to $310,500</td>
</tr>
<tr>
<td>Albany, large firm (75+ lawyers)</td>
<td>$179,700 to $262,145</td>
</tr>
<tr>
<td>Albany, midsize firm (35-75 lawyers)</td>
<td>$148,650 to $251,000</td>
</tr>
<tr>
<td>Buffalo, large firm (75+ lawyers)</td>
<td>$176,000 to $256,740</td>
</tr>
<tr>
<td>Buffalo, midsize firm (35-75 lawyers)</td>
<td>$145,000 to $245,800</td>
</tr>
</tbody>
</table>

### PRIVATE ARBITRATION

- The average hourly rate for private arbitrators at the American Arbitration Association ranges from $250 to $350.\(^{30}\) An arbitrator paid $250 an hour while averaging 30 hours a week over the course of 48 weeks would earn a salary of $360,000. Other private arbitrators can charge significantly more.

- AAA arbitrators receive an average of $850 a day for fast-track and expedited cases involving disputes of less than $75,000. Such an arbitrator would earn $204,000 over the course of 48 weeks.

### NON-PROFIT SECTOR

- Most executives of large not-for-profit organizations earn $300,000 or substantially more.

### E. THE STATE’S STRONG FISCAL CONDITION SUPPORTS AN EQUITABLE JUDICIAL SALARY ADJUSTMENT THAT RE-ESTABLISHES PARITY WITH THE FEDERAL JUDICIARY AND BRINGS THE VALUE OF STATE JUDICIAL PAY INTO LINE WITH INFLATION

Chapter 60 of the Laws of 2015 requires the Commission to consider “the state’s ability to fund increases in compensation and non-salary benefits” for judges, legislators and Executive Branch officials. Indeed, no responsible analysis of a judicial salary increase can be complete without a frank assessment of the State’s fiscal condition. In 2015, that condition — undeniably dire when the last Commission made its recommendations in 2011 — has improved greatly.

The current year cost to the State for paying the salaries of judges of the Unified Court System

---


is $212.63 million. Each one percent increase in those salaries would cost the State an additional $2.13 million, which is approximately one-tenth of one percent of the Judiciary’s FY 2015-16 All Funds spending plan or, perhaps more tellingly, just slightly more than one one-thousandth of one percent of the State’s $142 billion FY 2015-16 All Funds spending plan.

A judicial pay adjustment of 16.7%, as urged herein to establish parity with the federal judiciary, would cost the State approximately $35.56 million annually. Adoption of the Judiciary’s proposal to reform certain pay disparities (see section V) would add approximately $3 million annually. While this is not an insignificant cost, there is sufficient evidence suggesting that the State is in a fully responsible position to fund what is a fair, appropriate and necessary increase. By all measures, as shown in the State Economic Timeline (Appendix H), the State economy has stabilized since the 2008 financial breakdown and entered a period of slow and steady growth.

- As early as July 2013, the State Comptroller reported: “There’s no doubt New York is in a better position now than it was a short time ago. New York State has made strides toward achieving equilibrium between recurring revenues and ongoing expenditures . . .”
- By January 2014, Governor Cuomo announced an anticipated $2 billion surplus for the State (up from a $10 billion deficit just three years earlier).
- During the first seven months of 2014, major rating agencies upgraded the State’s credit rating – Moody’s, to Aa1, the State’s highest rating in 50 years; Fitch, to AA+ with a stable outlook; and Standard & Poor’s, to AA+ with a stable outlook.
- In 2011, the State faced projected budget deficits of $2.4, $2.8 and $4.6 billion respectively for fiscal years 2012-13, 2013-14 and 2014-15. Four years later, New York’s economic condition has been reversed to such an extent that budget surpluses of $0.3, $1.7 and $1.6 billion are expected for fiscal years 2016-17 through 2018-19 respectively.
- In November 2014, the Division of the Budget announced a current year surplus of $4.8 billion, to be deposited in an “undesignated reserve.”
- As Governor Cuomo stated upon being inaugurated for his second term of office on January 1, 2015:

  “We restored the economy; we created 500,000 private sector jobs. This State today has 7.6 million jobs, more than have ever existed in the history of the State of New York . . . We turned a $10 billion deficit into a $5 billion surplus.”

The foregoing evidence indicates that the State’s ability to fund a judicial pay adjustment in 2015 must be viewed in an altogether different light from 2011. Were this Commission to recommend the judicial pay adjustment urged herein, the cost of that adjustment would increase the State budget by no more than twenty-five one-thousandths of one percent.

Put simply, there is no aspect of the State’s fiscal condition in 2015 that should prevent this Commission from recommending an equitable judicial salary adjustment that finally brings State judicial pay to an appropriate inflation-adjusted level — a level commensurate with that of the federal judiciary.
V. PROMOTING PAY PARITY BETWEEN AND WITHIN COURTS

This Commission should address another longstanding problem affecting judicial compensation in New York: the many inter and intra-court pay disparities long experienced by judges of the State’s trial courts of limited jurisdiction. Past commissions and commentators have criticized these disparities and called for their elimination. We strongly agree.

New York’s judicial pay disparity problem is a historical legacy of the State’s 1977 assumption of responsibility for funding county- and city-level courts pursuant to the Uniform Court Budget Act (“UCBA”), which mandated that the State pay judges at the salary levels that had been fixed by their local governments (See Appendix I, for a detailed discussion of the origins and breadth of the problem). Inasmuch as some localities historically compensated their judges more generously than others, the resulting Statewide judicial salary structure was at its outset neither logical nor equitable. As is readily apparent from the chart of current full-time judicial salary levels on the next page, the salaries of judges of the same rank and responsibility can vary greatly around the State. For example, there are seven different salary levels for County Court Judges in New York; four salary levels for Family Court Judges; six salary levels for Surrogates; and six salary levels for City Court Judges. Indeed, the salaries of some county-level judges differ even within the same County, and there are judges in some courts who earn more than judges of other courts having greater jurisdiction. For example:

- The 50 District Court Judges of Nassau and Suffolk Counties earn $156,200 annually while exercising jurisdiction over misdemeanors and small civil cases. By contrast, 59 County Court Judges across the State earn $152,500 (plus two others earn $154,300) despite being vested with jurisdiction over all felonies, small civil cases and, in many instances, Family Court and Surrogate’s Court matters as well.

- Albany County Court Judges are paid higher salaries than their Family and Surrogate’s Court colleagues in the same county. In Rensselaer, Saratoga and Schenectady Counties, all the County Court Judges earn significantly less than their Albany counterparts. In Dutchess County, a short distance south, the Surrogate is paid considerably more than the County and Family Court Judges. To the north, county-level judges in Clinton County are paid more than all other county-level judges throughout the entire Fourth Judicial District, including judges of far more populous counties like Saratoga and Schenectady.

Over the decades, the disparities in judicial compensation levels have generated a great deal of litigation against the court system, albeit with mixed success due to the high burden required to make out a constitutional violation. The Court of Appeals has held that as long as the State has a rational basis for making pay distinctions, e.g., differences in population, caseloads or cost of living, such disparities will pass constitutional muster under an equal protection analysis. Of course, whether judicial pay disparity passes constitutional muster does not answer the question of whether it is good policy for the Judiciary and the State.

31 One notable success was Deutsch v. Crosson. Though the pay disparity issue was not challenged on appeal, the Appellate Division’s decision indicates that the trial court’s decision (which was not reported) found that the disparity in pay between Family Court Judges in New York City ($86,000) and Nassau County ($95,000) violated State and Federal constitutional equal protection imperatives. 171 A.D.2d 837 (2d Dept. 1991).

<table>
<thead>
<tr>
<th>COURT</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Court of Appeals</td>
<td>Chief Judge</td>
<td>$198,600</td>
</tr>
<tr>
<td></td>
<td>Associate Judge</td>
<td>$192,500</td>
</tr>
<tr>
<td>Appellate Division</td>
<td>Presiding Justice</td>
<td>$187,900</td>
</tr>
<tr>
<td></td>
<td>Associate Justice</td>
<td>$183,300</td>
</tr>
<tr>
<td>Appellate Term</td>
<td>Presiding Justice</td>
<td>$181,700</td>
</tr>
<tr>
<td></td>
<td>Associate Justice</td>
<td>$177,900</td>
</tr>
<tr>
<td>Administrative Judges</td>
<td>Deputy Chief Administrative Judge</td>
<td>$183,300</td>
</tr>
<tr>
<td></td>
<td>Administrative Judge</td>
<td>$180,200</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>Justice</td>
<td>$174,000</td>
</tr>
<tr>
<td>Court of Claims</td>
<td>Presiding Judge</td>
<td>$183,300</td>
</tr>
<tr>
<td></td>
<td>Judge</td>
<td>$174,000</td>
</tr>
<tr>
<td>County Court</td>
<td>$174,000</td>
<td>$167,300</td>
</tr>
<tr>
<td></td>
<td>$161,700</td>
<td>$159,900</td>
</tr>
<tr>
<td></td>
<td>$156,200</td>
<td>$154,300</td>
</tr>
<tr>
<td></td>
<td>$152,500</td>
<td></td>
</tr>
<tr>
<td>Family Court</td>
<td>$174,000</td>
<td>$161,700</td>
</tr>
<tr>
<td></td>
<td>$159,900</td>
<td>$152,500</td>
</tr>
<tr>
<td>Surrogate's Court</td>
<td>$174,000</td>
<td>$172,900</td>
</tr>
<tr>
<td></td>
<td>$165,400</td>
<td>$159,900</td>
</tr>
<tr>
<td></td>
<td>$154,300</td>
<td>$152,500</td>
</tr>
<tr>
<td>Civil Court of NYC</td>
<td>Judge of the Civil Court</td>
<td>$159,900</td>
</tr>
<tr>
<td></td>
<td>Housing Judge of the Civil Court</td>
<td>$146,900</td>
</tr>
<tr>
<td>Criminal Court of NYC</td>
<td>Judge of the Criminal Court</td>
<td>$159,900</td>
</tr>
<tr>
<td>District Court</td>
<td>Pres., Board of Judges (Nassau)</td>
<td>$161,600</td>
</tr>
<tr>
<td></td>
<td>Judge (Nassau)</td>
<td>$156,200</td>
</tr>
<tr>
<td></td>
<td>Pres., Board of Judges (Suffolk)</td>
<td>$161,600</td>
</tr>
<tr>
<td></td>
<td>Judge (Suffolk)</td>
<td>$156,200</td>
</tr>
<tr>
<td>City Courts outside NYC</td>
<td>$152,200</td>
<td>$150,600</td>
</tr>
<tr>
<td></td>
<td>$148,700</td>
<td>$146,600</td>
</tr>
<tr>
<td></td>
<td>$145,000</td>
<td>$138,500</td>
</tr>
</tbody>
</table>
In 1979, as part of the first legislatively-authorized judicial pay raise following enactment of the UCBA, the Legislature directed the Chief Administrative Judge to study “whether unreasonable disparity exists in the compensation of judges of the same rank in different parts of the state.” The resulting report found “glaring inconsistencies” among the salaries of county-level and city court judges and recommended that each such class of judges enjoy full pay parity among themselves, but the Legislature did not act on these recommendations. In 2005, the Judiciary called for reform of inappropriate pay disparities through establishment of a tiered structure of mandatory salary minimums.

At the present time, the pay disparity problem affects at least 355 judges, or about 28% of the Judiciary. The 2011 Commission, faced with the difficult challenge of adjusting long-frozen judicial salaries in the midst of a State fiscal crisis, took no position on this issue. Its recommendations were limited to across-the-board percentage increases in judicial pay that had the effect of modestly aggravating existing disparities. For 2016, with the State in much sounder financial shape, this Commission is in a position to finally address this longstanding issue.

The Judiciary urges the Commission to redress the pay disparity problem by instituting a new, tiered structure of mandatory judicial salary minimums as follows:

- County, Family and Surrogate’s Court Judges: no such judicial position shall be paid less than 95% of a Supreme Court Justice’s salary. Any such judicial position now being paid a percentage of a Supreme Court Justice’s salary that is greater than 95% thereof shall continue to be paid that same percentage. County-level judges presently are compensated at salary levels ranging from 88% to 100% of a Supreme Court Justice’s salary.

- New York City Civil Court and Criminal Court Judges, and District Court Judges: Each such judicial position shall be paid 93% of a Supreme Court Justice’s salary. New York City Civil and Criminal Court Judges presently are compensated at 92% of a Supreme Court Justice’s salary, and District Court Judges are compensated at 90% of such salary.

- Full-time City Court Judges and New York City Housing Court Judges: Each such judicial position shall be paid 90% of a Supreme Court Justice’s salary. City Court judges presently are compensated at salary levels ranging from 80% to 88% of a Supreme Court Justice’s salary. Housing Court Judges presently are compensated at 84% of a Supreme Court Justice’s salary.

The salary relationships reflected in this proposal have been supported by the Judiciary since 2005. While this approach would not achieve full equalization of county-level salaries (many county-level judges already earn the same salary as a Supreme Court Justice), it would eliminate the most inappropriate judicial pay anomalies and provide a much more equitable, consistent and rational salary structure for New York State judges.

33 L. 1979, c. 55, § 4. See Report of the Chief Administrator of the Courts to the Governor, the Legislature and the Chief Judge of the Court of Appeals, December 1, 1979, pp. 5-7. In 1980 and 1987, Temporary State Commissions were appointed and issued recommendations intended to correct significant pay disparities among judges. See Report of the Temporary Commission on Judicial Compensation, 1982, pp. 7-8, 12-13, 22; State of New York Temporary Commission on Executive, Legislative and Judicial Compensation, June 29, 1988, p. 5. These reports also generated no action.

34 See New York State Unified Court System: Legislative Proposal to Adjust Judicial Compensation, March 21, 2005, p. 7 (concluding that pay disparities among judges should be eliminated altogether).

35 Part-time City Court Judges should remain in the same relationships to their full-time colleagues that they now enjoy, i.e., either 50% or 25% of a full-time City Court Judge’s pay.
VI. PROVIDING FOR COST OF LIVING ADJUSTMENTS FOR 2017, 2018 AND 2019

In addition to recommending a salary increase for New York State judges premised on pay parity between State Supreme Court Justices and Federal District Court Judges, this Commission also should recommend that New York State judges receive annual pay adjustments each April 1st equal to the cost-of-living adjustments provided by Executive Order to the federal judiciary effective each preceding January 1st.

For decades, judicial compensation in New York has followed a familiar cyclical pattern: after years of frozen pay, judges typically received large catch-up adjustments that restored the value of salaries in part but failed to compensate judges for the significant economic losses incurred on account of inflation during the frequently long periods between these adjustments. This Commission has the power to break this pattern and establish a system in which judicial salaries, once set, are regularly adjusted to maintain their value.

Such an approach would yield numerous benefits, including giving judges a long-absent measure of salary predictability, and permitting rational budget planning by court administrators. Most importantly, we believe that a commitment by the Commission to provide for future cost-of-living adjustments is the simplest means of promoting equity in the compensation of judges. Sitting judges and those who aspire to the bench should be able to reasonably anticipate future compensation levels and plan appropriately for the financial needs of their families. It is unfair to expect judges (and other public officials) and their families to endure long periods of salary stagnation. Failure to provide for the periodic adjustment of compensation harms the Judiciary institutionally because it discourages recruitment and retention of many able individuals who otherwise would make fine judges.
VII. CONCLUSION

The Judiciary respectfully requests that the Commission recommend re-establishment of pay parity between New York’s Supreme Court Justices and Federal District Court Judges. We urge that this recommendation take effect on April 1, 2016. As shown earlier, the State’s current fiscal condition is strong and does not present a justification for adoption of lesser salary levels or for delayed implementation of the full increase urged herein. Further, the Commission’s commitment to promoting ongoing pay parity with the federal judiciary through annual cost-of-living adjustments would prevent irreparable harm to the significant number of judges who may be compelled by age or other circumstances to retire from the bench during what otherwise could be potentially long gaps between pay adjustments.

In addition to the foregoing, the Judiciary urges the Commission to recommend that:

1. The salaries of judges of the appellate courts (i.e., the Court of Appeals, the Appellate Divisions and the Appellate Terms) be adjusted to reflect their present proportion to the salary of a Supreme Court Justice.

2. In accordance with longstanding practice, the salaries of Judges of the Court of Claims be maintained in parity with those of Supreme Court Justices.

3. The salaries of judges of the trial courts of limited jurisdiction and of all Administrative Judges be adjusted to reflect their present proportion to that of a Supreme Court Justice, except that:
   (i) no County Court Judge, Family Court Judge or Surrogate’s Court Judge shall earn less than 95% of a Supreme Court Justice’s salary;
   (ii) no Judge of the New York City Civil Court and Criminal Court, and of the District Courts, shall earn less than 93% of a Supreme Court Justice’s salary;
   (iii) no full-time City Court Judge of a court outside New York City shall earn less than 90% of a Supreme Court Justice’s salary; and
   (iv) Housing Judges of the New York City Civil Court shall earn 90% of a Supreme Court Justice’s salary.

As stated at the outset of this Submission, this Commission has an historic mandate. The work of the 2011 Commission on Judicial Compensation ended a decades-long period in which the process for fixing judicial compensation often lacked fairness, regularity and objectivity. For the first time in New York’s history, rational and transparent principles governed the determination of judicial salary adjustments — resulting in parity between the compensation of Justices of the New York Supreme Court and Federal District Court Judges. This Commission has the opportunity to strengthen and complete the work of its predecessor by recommending as a benchmark for the State Judiciary the inflation-adjusted salary of a Federal District Court Judge. We urge the Commission to take this important step for the sake of preserving a strong and independent State Judiciary.