



**JUDICIAL COMPENSATION
IN NEW YORK:
A NATIONAL PERSPECTIVE**

**A REPORT TO THE CHIEF JUDGE
OF THE STATE OF NEW YORK**

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*“Helping Courts Anticipate Change
and Better Serve the Public”*



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AUTHORS

David B. Rottman, Ph.D.

William E. Raftery

Amy E. Smith

May, 2007



FOR OVER THIRTY YEARS, THE NATIONAL CENTER FOR STATE COURTS (NCSC) HAS EXISTED to improve the administration of justice through leadership and service to the state courts.

ESTABLISHED BY CHIEF JUSTICE WARREN E. BURGER AND THE CHIEF JUSTICES OF THE UNITED STATES IN 1971, NCSC is the focal point of research, information, education, and direct technical assistance for the courts, and the source of many innovations that have led to significant improvements in judicial systems across the United States and around the world.

AMONG ITS INITIATIVES, NCSC works with the Conference of Chief Justices and the Conference of State Court Administrators in their efforts to implement their resolution in support of problem-solving courts.

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EXECUTIVE SUMMARY

THE NATIONAL CENTER FOR STATE COURTS (NCSC) has monitored and analyzed state judicial salary trends since 1974. As a result of NCSC's national expertise in this area, New York State Chief Judge Judith S. Kaye asked that NCSC conduct a study of New York State judicial compensation. Our findings and recommendations are contained in this report.

Based on our experience, NCSC has determined that any sound process for setting judicial salaries should meet four key criteria: equity, regularity, objectivity, and separation from politics. New York's judicial compensation process fails on all four scores. Consequently, judicial pay levels are inadequate and unlikely to continue to attract and retain highly qualified members of the legal profession to serve on the State's bench.

1. NEW YORK JUDGES ARE UNDERPAID COMPARED TO JUDGES ELSEWHERE

- Their pay ranks 48th in the nation when adjusted for New York's high cost of living.
- Of the 50 states, New York's judges have gone the longest without any salary adjustment.
- New York's judicial pay has been significantly eroded by inflation (26%) since 1999, while judges in every other state have received pay raises averaging 3.2% annually, for a cumulative increase of more than 24%.
- Federal District Court Judges, with whom State Supreme Court Justices enjoyed pay parity in 1999, now earn almost \$30,000 more annually.

2. NEW YORK JUDGES' PAY LAGS FAR BEHIND COMPARABLE PUBLIC SECTOR COMPENSATION

- Thousands of public sector employees in New York are paid higher salaries — sometimes substantially higher — than the \$136,700 paid to the State's general jurisdiction trial judges. Hundreds of non-judicial employees in the courts now earn more than the judges for whom they work.
- District Attorneys in New York City earn \$190,000, or at least \$53,300 more than all the trial judges before whom they and their assistants appear.
- Many positions in state and local government are paid more than New York's judges:

Chancellor, City University of New York	\$395,000
Chancellor, State University of New York	\$340,000

Executive Director, Metropolitan Transit Authority	\$340,000
Chancellor, NYC Dept. of Education	\$250,000
General Counsel, City University of New York	\$220,000
Deputy Chancellor, NYC Dept. of Education	\$212,960
Agency Commissioners, New York City	up to \$189,700
Corporation Counsel, New York City	\$189,700
Director of Communications, NY State Senate	\$180,000
Deputy Directors, State Division of the Budget	\$169,733
Attorneys, State Comptroller's Office	up to \$160,548

- More than 1,350 professors in the State and City University systems earn more than New York's judges.
- The Deans of New York's public law schools earn more than any judge:

University of Buffalo Law School	\$232,899
CUNY Law School	\$215,000
- More than 1,250 public school administrators across the State, from elementary school principals to superintendants of schools, earn more than New York's judges:

Levittown Superintendent of Schools	\$292,642
Rochester Superintendent of Schools	\$230,000
Elmira Superintendent of Schools	\$161,200
Manhasset Elementary School Principal	\$152,828

3. NEW YORK JUDGES' PAY LAGS BEHIND PRIVATE-SECTOR ATTORNEY PAY

- According to a 2004 New York State Bar Association study:
 - Partners at law firms of all sizes earned significantly more than New York's judges.
 - The pay of senior partners at firms with fewer than 10 lawyers averaged \$220,000.
 - The pay of senior partners at firms with 10 or more lawyers averaged \$350,000.
 - New law school graduates hired by New York's largest law firms in 2007 earn \$160,000 annually, excluding bonuses.

4. CONCLUSIONS AND RECOMMENDATIONS

- Reliance on legislative and appropriation processes to set judicial salaries greatly increases the likelihood that judicial pay issues will be held captive to unrelated differences between the political branches of government, or to dissatisfaction with specific court decisions.
- Judicial salary issues should be insulated from the political process. Judicial pay levels should be set regularly and justified based on accepted, easy to measure, objective benchmarks that render the process more transparent and less political.
- Permanent bipartisan/nonpartisan compensation commissions, such as the one proposed by the New York State Judiciary, are the best vehicles for achieving credible review of judicial salaries.
- Judicial salaries in New York should be adjusted to fair and competitive levels, and Chief Judge Kaye's legislative proposal to establish a permanent commission-based system for the regular adjustment of judicial salaries should be enacted.

I. THE STANDARD

NCSC IS AN INDEPENDENT NOT-FOR-PROFIT ORGANIZATION dedicated to improving the administration of justice through leadership and service to state courts. NCSC provides research, information and consulting services to state court leaders on key national policy issues. NCSC has monitored and analyzed state judicial salary trends since 1974.¹ On April 9, 2007, Chief Judge Judith S. Kaye asked NCSC to undertake a study of judicial compensation trends in New York State and offer recommendations before the close of the State's legislative session in late June 2007.²

In general, NCSC recommends that states establish and maintain processes for determining judicial compensation that meet the objectives of equity, regularity, objectivity, and separation from politics. These four objectives emerged from the most comprehensive study conducted of state judicial compensation practices, undertaken by NCSC with funding from a private foundation.³ They represent the practices, distilled from long national experience, best calculated to promote judicial independence and maintain the proper balance of powers among the three branches of government.

Equity: Careers in public service demand sacrifice, and those who join the bench must be ready to forego the more lucrative compensation available in the private sector. Nonetheless, 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.

Regularity: The real value of judicial compensation should be maintained through adjustments that respond to inflation so that the salary a judge accepts upon joining the bench is not eroded to the detriment of his or her family. Equity is rarely possible in the absence of regular reviews that respond to cost-of-living increases.

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.

Separation From Politics: Decisions on judicial compensation should not be a basis for expressing Legislative or Executive Branch dissatisfaction with specific court decisions. Nor should judicial pay be adversely affected because of disagreement between the Legislative and Executive Branches over policy issues unrelated to the compensation of public officers. Failure to raise judicial compensation or provide cost-of-living adjustments is an inappropriate method for holding judiciaries accountable.

1 NCSC's resources on judicial compensation are on-line at http://www.ncsonline.org/d_kis/salary_survey/home.asp.

2 NCSC analyzed salary data for general jurisdiction trial court judges around the country, salary trends for comparable legal and nonlegal professional positions in both the public and private sectors, and various cost-of-living indicators such as the Consumer Price Index. NCSC also reviewed New York's judicial compensation history since the 1970s.

3 The study was funded by the Cades Foundation to examine the mechanisms being used nationally to set judicial salary levels. The specific purpose was to propose a model for Hawaii, but the underlying research was national in scope, drew general conclusions, and recommended "best approaches." Bob Tobin & Kent Pankey, *Setting Judicial Salaries in Hawaii: Model Based on Comparative National Study for the Cades Foundation*. Denver: Court Consulting Services, National Center for State Courts (January 2003)

II.

JUDICIAL SALARIES: THE NEW YORK EXPERIENCE

A. THE NEW YORK STATE UNIFIED COURT SYSTEM

NEW YORK'S UNIFIED COURT SYSTEM CONSISTS OF 9 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, they must have been admitted to practice law in New York for at least ten years. Service in the New York State Judiciary is, with very few exceptions, a full-time occupation.

Current judicial salary levels for New York's trial judges, established in 1999, are as follows:

- Supreme Court\$136,700
- Court of Claims\$136,700
- County, Family & Surrogate's Court\$119,800 to \$136,700
- NYC Civil & Criminal Court\$125,600
- New York City Housing Court\$115,400
- District Court\$122,700
- City Court (full-time)\$108,800 to 119,500

Appendix A provides a court-by-court summary of judicial salary levels, and Appendix B provides a comprehensive history of judicial compensation in New York over the past three decades.

B. A SNAPSHOT OF NEW YORK'S DOCKETS

In 2006, over 4.5 million cases were filed in the New York State courts – nearly triple the number of filings for the entire Federal Judiciary combined. Since the last judicial pay increase in 1999, statewide filings in the New York State courts have increased by approximately 15%, from 3,978,701 to 4,551,232, including an increase of 243,000 filings last year. Total civil filings in New York are up 35% from 1.31 million in 1999 to 1.77 million in 2006.⁴

⁴ Data obtained from the New York State Office of Court Administration's Office of Court Research.

STATEWIDE FILINGS

1999	3,978,701
2000	4,123,788
2001	4,015,186
2002	4,244,164
2003	4,293,816
2004	4,129,220
2005	4,308,293
2006	4,551,232

Over the same time period, the total number of New York judges increased by slightly more than one percent, from 1,199 to 1,218. Nonetheless, the New York Judiciary has stayed current or made progress in reducing the number of cases exceeding applicable Standards and Goals⁵ timeframes in the criminal, matrimonial and family law areas.⁶

Additional factors have recently increased the workloads of New York's Family and Criminal Court judges. As a result of new permanency legislation which took effect in December 2005, nearly all proceedings involving children in foster care, abuse and neglect, and juvenile delinquency are subject to new procedural requirements, including expedited filings of proceedings to terminate parental rights, more frequent judicial reviews and more extensive monitoring and documentation of children's progress toward permanence.⁷ In criminal cases, New York's judges are conducting thousands of additional mandated proceedings annually, such as re-sentencing hearings pursuant to recently enacted drug law reform legislation, new DWI offender screening and assessment proceedings mandated by comprehensive 2006 DWI reform legislation, and *de novo* "risk level" hearings for sex offenders.

Finally, New York has been recognized as a "national leader in adopting the problem-solving model of jurisprudence," requiring increased judicial supervision.⁸ Problem-solving justice innovations — drug treatment courts, community courts, mental health courts, domestic violence courts — generally focus on the underlying chronic behaviors of criminal defendants driving certain caseloads, including high

⁵ "Standards and Goals," as utilized by New York's court system, are administratively-established timeframes that serve as guidelines for judges and judicial administrators with regard to the timely processing and disposition of criminal, civil and family court actions.

⁶ Statewide felony filings have remained steady since 1999, but the number of cases exceeding the applicable Standards and Goals has decreased from 10,313 to 8,860. In 1999, 44% of pending matrimonial cases were more than one year old, but that number was reduced to 25% by 2006 despite an overall 11% increase in contested matrimonial filings since 1999. Nearly 700,000 cases are filed in the State's Family Court annually. The State's 128 Family Court judges have kept pace, with dispositions exceeding filings in 2004, 2005 and 2006.

⁷ The New York City Family Court held close to 29,000 permanency hearings in 2006, while Family Courts outside New York City held almost 18,000 permanency hearings.

⁸ Daniel J. Becker & Maura D. Corrigan, "Moving Problem-Solving Courts into the Mainstream: A Report Card from the CCJ-COSCA Problem-Solving Courts Committee," *Court Review* 4, 6 (Spring 2002).

recidivism levels. Judges in problem-solving courts work with prosecutors, defenders, social service providers and local stakeholders to ensure that defendants are closely monitored and held accountable for their actions and at the same time are connected to necessary services to overcome the problems underlying the conduct that returns them to court repeatedly. Early research suggests that offenders in court-ordered drug treatment succeed at higher rates than those who enter treatment voluntarily.⁹ Data also shows that adult drug court programs lead to statistically significant reductions in recidivism.¹⁰

C. A BRIEF HISTORY OF JUDICIAL COMPENSATION IN NEW YORK

The history of judicial salaries since 1977, when the State assumed responsibility for funding New York's courts,¹¹ reveals a pattern of long periods of salary stagnation, interrupted by occasional "catch-up" increases.¹² What is perhaps most noteworthy about this history is the lack of a systematic approach for any of the salary increases – either as to the timing or as to the amount. Whether proposed by an Executive Branch blue-ribbon panel or by the Judiciary itself,¹³ each of the pay raises appears to have been driven by the political imperatives of the moment and was limited to providing an *ad hoc*, short-term adjustment. With one exception over the past 30 years, the increases have been linked to pay increases for the Legislature and high-level Executive Branch officials.¹⁴ Furthermore, a review of New York's judicial and legislative pay increases indicates that they apparently were the product of a political process lacking in transparency. The increases of 1980, 1984 and 1999, for example, were all enacted shortly after elections, during lame-duck sessions, with minimal public debate or disclosure.

Starting in 2003, and in each subsequent year, the New York State Judiciary has asked the Legislature to increase judicial salary levels. The Legislature, former Governor Pataki and current Governor Spitzer have all expressed public support for a judicial salary increase.¹⁵ Availability of the necessary funds is undisputed. Nonetheless, the New York State Senate and the New York State Assembly have each refused to enact a pay raise for judges unless it is linked to a pay raise for its own mem-

⁹ See e.g. NPC Research, Inc., "A Detailed Cost Analysis in a Mature Drug Court Setting: A Cost-Benefit Evaluation of the Multnomah County Drug Court" (2003); Michael Rempel, et al., "The New York State Adult Drug Court Evaluation: Policies, Participants, and Impacts, Center for Court Innovation" (October 2003).

¹⁰ C. West Huddleston, III, Karen Freeman-Wilson, Douglas B. Marlowe & Aaron Roussell, "Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States," (May 2005).

¹¹ L. 1976, c. 966.

¹² See Appendix C for a description of each of the judicial salary adjustments since 1977.

¹³ Three of the six salary adjustments were implementations of commission recommendations. The 1979 pay raise (L. 1979, c. 55) largely followed recommendations made by the Ad Hoc Panel on Executive, Legislative and Judicial Compensation formed by then Governor Carey. The 1993 raise (L. 1993, c. 60) likewise followed recommendations of an Executive Branch commission established by Governor Cuomo. The 1998 pay raise (L. 1998, c. 630) was inspired by recommendations of a commission formed by the Judiciary itself. The other three pay raises (L. 1980, c. 881; L. 1984, c. 986; L. 1987, c. 263) were not the product of institutional overview, but responses to the pressures of double-digit inflation experienced nationally throughout the 1980s.

¹⁴ The exception was in 1993, when only judicial salaries were increased (L. 1993; c. 60).

¹⁵ See Caher, "Spitzer Puts Judge Raises in His Budget," New York Law Journal, February 1, 2007.

bers, who serve part-time.¹⁶ The Governor, while including a judicial salary increase in the Executive budget for 2007- 08, has declined to consider a raise for legislators at the present time in the absence of certain reforms.¹⁷

Beginning in 2006, New York's Judiciary, as the nonpolitical branch of government, submitted a proposal designed to reform how the State sets salaries for all three branches of government. Under this proposal, a series of quadrennial commissions would prescribe cost-of-living adjustments and salary levels for judges, legislators and executive-branch officials. This proposal garnered the support of New York's governmental leaders, but it has fallen victim to continued discord between the other branches of government.¹⁸ The proposal can be found in Appendix D.

¹⁶ Editorial, "Justice on the Cheap," *New York Times*, April 8, 2007 ("Here is Albany's trick: increasing pay for state-judges is popular and urgently needed. Increasing pay for legislators is unpopular and questionable, since they work part time. So [legislators] are essentially holding the Judiciary's pay hostage."); Sherman, "Albany Benches Judicial Pay Raises – Again," *Daily News*, April 4, 2007; Gallagher, "Can Judges Play Hardball?" *Journal News*, April 16, 2007 ("The sticking point has been that lawmakers have traditionally tied their pay to that of judges, to increase public pressure for them to get their hikes too. But they have been loath to raise their own pay since 1998, in part because of fear of voter backlash.").

¹⁷ Bolton, Karlin and Odato, "Reform Demands Unravel Pay Deal," *Albany Times Union*, May 1, 2007; Hakim, "Spitzer Seeks Raise for Judges, Not Legislators," *New York Times*, April 27, 2007.

¹⁸ Caher, "Spitzer Puts Judge Raises in His Budget," *New York Law Journal*, February 1, 2007.



JUDICIAL COMPENSATION COMPARATIVELY

A. NEW YORK JUDICIAL SALARIES RANK NEAR THE BOTTOM NATIONALLY

HISTORICALLY, NEW YORK HAD BEEN A LEADER AMONG THE STATES with regard to judicial compensation, roughly maintaining parity with Federal District Court judges. In 1975, one year after NCSC issued its first Survey of Judicial Salaries, New York State ranked first, with a salary of \$48,998 for a justice of the Supreme Court — a status commensurate with the State's status as a global economic and commercial center and its very high cost of living.¹⁹ Since that time, New York's position has steadily eroded.

Today, New York ranks 12th among the states based on the nominal salary paid to a judge of the trial court of general jurisdiction.²⁰ However, when New York's high cost of living is taken into account, the ranking drops to the bottom nationally. In fact, judicial pay in New York now ranks 48th nationwide when adjusted for statewide cost of living.²¹ The only two states in the nation that rank lower than New York on an adjusted cost-of-living basis are Hawaii and Oregon.²²

Even those states with long gaps between compensation reviews — Georgia since 1999 and Tennessee since 1991 — have provided their judges with annual cost-of-living adjustments in the interim. Moreover, last year Georgia and Tennessee both passed pay increases to boost base salaries. The vast majority of states routinely adjust judicial compensation. For the 24-month period ending June 30, 2006, New York was one of only 11 states that made no adjustment at all to judicial salaries.

In the 50 states, New York's judges have gone the longest without any pay adjustment. A judge serving since 1995 has received only one pay increase, in 1999. A judge serving since 1988, 19 years ago, has received only two salary adjustments, in 1993 and 1999. Judges in other states have seen their pay rise with inflation. For the period 1986-1996, state judicial salaries increased nationally by 49%, compared to 38% for

¹⁹ In 1975, the salary of New York State Supreme Court justices was more than \$4,000 greater than that of Federal District Court judges (\$44,600).

²⁰ The jurisdictions that pay their general jurisdiction trial court judges more than New York are California, Delaware, District of Columbia, Illinois, Alaska, Florida, Virginia, New Jersey, Michigan, Pennsylvania and Connecticut.

²¹ New York's ranking in this study differs from New York's adjusted ranking (37th) in the most recent NCSC Survey of Judicial Salaries. Although both rankings are based on local cost-of-living data from the Council on Community and Economic Research, the statewide ranking in the present study is based on a weighted average (by population) of the cost-of-living data from the municipalities from which the Council obtains data, whereas the ranking in the NCSC Survey is based on an unweighted average. The use of a weighted average to determine statewide cost of living is particularly appropriate for New York due to the very large disparities in population and in cost of living that exist among the reporting municipalities. This methodology more accurately reflects the reality that the large majority of the State's judges live and work in metropolitan areas with cost-of-living indices that are higher than the overall statewide figure. In contrast, many states are more homogenous (*e.g.* New Jersey), and there is little, if any, difference in rankings between the weighted and unweighted methodologies.

²² Hawaii ranks last among the states as a result of an average salary (\$125,856) and a statewide cost of living that is the highest in the nation. Oregon ranks next to last as a result of a modest salary (\$95,800) and an above average cost of living. New York ranks third from last as a result of a salary that is slightly above average and a statewide cost of living that is extremely high. Because of that high cost of living, the salary of a justice of the New York Supreme Court has less purchasing power than the \$94,093 paid to trial court judges of general jurisdiction in Montana.

New York Supreme Court Justices; between 1996 and 2006, judicial salaries nationally increased by 34%, compared to 21% in New York. Over the full 20 years, judicial salaries nationally increased by 100%, compared to 67% in New York.²³ Salaries of Federal District Court judges grew by 70% between 1986 and 1996 and 24% subsequently, for an overall increase of 110%.²⁴

Since 1999, the cost of living has increased more than 26%. Judges of every other state received pay adjustments averaging 3.2% annually, for a cumulative increase of more than 24%. Also, the salaries of federal judges, judges in other states, and New York's non-judicial employees have increased on a regular basis to keep pace with the cost of living. Now, New York State Supreme Court Justices earn almost \$30,000 less than Federal District Court Judges, with whom they historically enjoyed some degree of pay parity.

Furthermore, non-judicial employees of the judicial branch and executive branch employees in New York have received regular pay adjustments aggregating at least 24% since 1999.²⁵ There are now hundreds of non-judicial employees in the courts who earn more than the judges for whom they work.

B. JUDICIAL SALARIES COMPARED TO PUBLIC SECTOR PROFESSIONALS IN NEW YORK

Over the past eight years, the salaries of New York judges have fallen behind the salaries of hundreds of state-employed professionals, including many with less training and seniority. The following are examples:

- District Attorneys in New York City earn \$190,000 – \$34,000 more than the State's Chief Judge, and at least \$53,300 more than all of the trial judges before whom they and their assistants appear.
- More than 1,350 professors in the State and City University systems earn more than a Justice of the New York State Supreme Court. Over 1,000 of these professors are paid more than \$150,000.²⁶

²³ The impact of New York's haphazard system of adjusting judicial compensation is evident in the rate at which salaries increased over the last 20 years. Since 1986, New York's Supreme Court justices received the fourth lowest salary increases among the 50 states. The only states where judges fared worse were Missouri (where in late 2006 they received a pay increase), Louisiana, and Alaska (which in 1986 had the highest judicial salaries in the nation).

²⁴ These statistics do not convey the full extent of judicial pay erosion in the United States. Last month, United States Supreme Court Justice Stephen Breyer noted that "Between 1967 and 2007, real pay for federal district court judges will have declined nearly 27%. During the same period the real pay of the average American worker is projected to have increased by more than 23%." Testimony of Hon. Stephen Breyer Before the House Committee on the Judiciary, Subcommittee on the Courts, the Internet and Intellectual Property, Oversight Hearing on "Federal Judicial Compensation," (April 19, 2007), available at http://www.uscourts.gov/testimony/JusticeBreyerPay_041907.pdf.

²⁵ This figure does not include increments and performance advancements that many rank and file employees receive pursuant to collective bargaining.

²⁶ Many state-employed professionals, such as professors, doctors and legislators, are permitted to supplement their public income by engaging in outside employment and consulting. New York State judges are not permitted to earn outside income, except in very limited circumstances, most notably lecturing or teaching a regular course of study at a not-for-profit college or university. Rules of the Chief Administrator Governing Judicial Conduct, 22 NYCRR 100.4.

- The Deans of New York’s two public law schools earn substantially more than any New York State judge:
 - Dean of the University of Buffalo Law School \$232,899
 - Dean of the CUNY Law School \$215,000
- More than 775 medical doctors employed by the State earn more than a Justice of the New York State Supreme Court.
- More than 1,250 public school administrators in New York, including elementary school principals, earn more than a Supreme Court Justice. Many earn significantly more.

The following are salaries of a sampling of public sector legal and nonlegal positions:

Chancellor, City University of New York	\$395,000
Chancellor, State University of New York	\$340,000
Executive Director, Metropolitan Transit Authority	\$340,000
Levittown Superintendent of Schools	\$292,642
Chancellor, NYC Dept. of Education	\$250,000
Rochester Superintendent of Schools	\$230,000
General Counsel, City University of New York	\$220,000
Deputy Chancellor, NYC Dept. of Education	\$212,960
Agency Commissioners, New York City	up to \$189,700
Corporation Counsel, New York City	\$189,700
Director of Communications, NY State Senate	\$180,000
Deputy Directors, State Division of the Budget	\$169,733
Elmira Superintendent of Schools	\$161,200
Attorneys, State Comptroller’s Office	up to \$160,540
Manhasset Elementary School Principal	\$152,828

The point of this analysis is not to suggest that any one particular pay scale is appropriate for New York judges. There are many distinctions between judges and other high-level public-sector professionals that bear on the different compensation levels. What these salaries do provide is a frame of reference to evaluate the “going rate” in the State for highly trained and experienced public sector professionals entrusted with significant responsibilities.²⁷

²⁷ Individuals on judicial screening committees for New York City Mayoral appointments report that candidates now coming from traditional public sector offices to the bench – offices of the District Attorneys and Attorney General – are less senior and experienced than those who typically applied for judgeships in the past. This reflects the fact that pay scales for administrative and supervisory positions within those offices have become more competitive than judicial salaries.

C. JUDICIAL COMPENSATION LAGS FAR BEHIND PRIVATE SECTOR ATTORNEY COMPENSATION

Private sector legal compensation is of limited value in determining appropriate benchmarks for judicial salary levels. Those who enter public service certainly do not expect that their pay will approach the compensation of partners in the State's largest law firms. However, an inordinate gap between the pay of judges and the average pay of private sector attorneys at comparable stages of their careers will not allow the Judiciary to compete for legal talent and recruit and retain judges of superior ability and experience from the full spectrum of New York's highly diverse population.

A 2004 New York State Bar Association study documents the growing gap in pay between New York's judges and law firm partners. According to the study, on a statewide average, partners at law firms of all sizes earned significantly more than New York State judges.²⁸ At small firms with two to nine attorneys, the mean compensation for partners was \$173,000. A more appropriate comparison to judges, in terms of ability and experience, may be the compensation of the more senior partners in those firms (those earning at the 75th percentile level), whose pay averaged \$220,000 a year. At firms with ten or more attorneys, the mean compensation statewide was \$293,000 – more than double the pay of a Supreme Court Justice elected to a 14-year term. If the comparison is to the more senior partners — the experience level from which judges are drawn — the average compensation is \$350,000. More recent salary data are unavailable, but the gap between judicial and law partner compensation can only have widened since 2004.²⁹ Finally, new law school graduates hired by the largest New York City law firms now earn \$160,000 annually, excluding bonuses, before they are admitted to the Bar.³⁰

²⁸ The 2004 Desktop Reference on the Economics of Law Practice in New York State, New York State Bar Association. Among the areas of the State included in the Bar Association study are Buffalo, Rochester, Syracuse, Albany, Westchester, New York City and Long Island.

²⁹ Salary data from the not-for-profit sector provides additional evidence that New York's judges are underpaid. According to a 2006 CEO Compensation Study conducted by Charity Navigator, which compiles information on more than 5,000 charities nationwide, the average compensation for the CEO of a not-for-profit charitable organization in the northeast is \$173,267. The following are compensation figures for CEOs, Presidents and Executive Directors of selected not-for-profit organizations.

• New York Public Library, President	\$600,280
• American Cancer Society, CEO	\$534,619
• Boy Scouts of America, CEO	\$486,083
• Brooklyn Museum, Director	\$467,280
• YMCA of Greater NY, CEO	\$404,641
• United Way of NY, CEO	\$388,692
• Human Rights Watch NY, Executive Director	\$288,750
• NAACP Legal Defense & Educational Fund, Pres.	\$248,406
• Lambda Legal, Executive Director	\$214,000
• Helen Keller Services for the Blind (NY), President	\$207,846

³⁰ By contrast, the average New York State judge was admitted to the Bar 29 years ago and has been a judge for more than 10 years. Data obtained from the New York State Office of Court Administration.

D. HARDSHIP FOR JUDGES

Prior to 2005, it was rare for judges to borrow against their state pensions. Only 28 judges had outstanding pension loans at the end of 2004. That number doubled within a year, and has more than quadrupled in two years. As of March 2007, there are 117 judges — about 10% of the entire Judiciary — who have outstanding pension loans.³¹

E. NEW YORK'S JUDGES IN THEIR OWN WORDS

Evidence of mounting hardship and disillusionment can be found in the words of New York's judges responding to a NCSC survey:

“I am approximately 3+ years away from having 20 years in the pension system. I know that I can easily double my salary by returning to the private sector and we now are contemplating that. After my 20 years are ‘in,’ we must revisit the issue of returning to the private sector solely because of our financial condition.”

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“Recently my spouse and I have had to take careful stock of our finances. We are heavily in debt in order to pay the cost of our daughter’s college education and simply to meet our expenses. Although I have taken on two part-time jobs teaching at local universities, my judicial duties preclude the possibility of accepting any additional courses and I am not permitted to engage in any other sort of outside employment.... I am now forced to give serious and immediate consideration to resigning from the bench in order to return to the private sector. It pains me greatly to consider this alternative, but it has become more painful to see the effect of my government service on my own family.”

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“I’ve thought about retiring and going back to the practice of law, and quite honestly, if the raises aren’t forthcoming I will have no alternative. I cannot fathom telling my daughters that their father can’t pay for their wedding because ‘I’m just a Supreme Court Justice.’”

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“I have taught at a Law School for eleven years and have had many publications including several decisions accepted by the state reporter. For how many years will my brightest students continue to secure employment with a starting salary higher than mine?”

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³¹ Data obtained from the New York State Office of Court Administration’s Office of Judiciary Benefits.

“We can tell you a number of things about the effect the salary freeze has had on us as a family. We’ve both recently taken out pension loans for the purpose of paying down debt. Since expenses have risen so high and our salary has not, credit debt alone has become crushing. We are still paying off several college loans for our older children, and our youngest will be going to college in a few years — how do we do it when our other debt is mounting due to the cost of living? We do not attend many Bar Association functions we are invited to due to the expense. We have five children, four of whom are grown-up, but three of whom still require financial support from us one way or another. The raise, therefore, is absolutely imperative for us. We may have to sell our house soon if we don’t get a raise.”

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“The most galling thing about all of this is that I could end these [financial] problems by simply resigning my judgeship and re-entering the private sector. Barring some change in our compensation, I intend to do this next year.... I doubt very much whether many attorneys with the same or superior qualifications to mine will be available to take my place.”

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“I bring home less today than I did eight years ago due to the increased amount taken out for FICA and insurance premiums. In the past three years, we, [my family] have had many positive events, college and law school graduations, and now two upcoming weddings. Although all of these are good things, they come with expenses that parents have to incur. How does a judge plan a wedding on Long Island knowing that his salary has been eroded by inflation to the tune of 25%? He borrows. Thousands of dollars. He hopes that the promised raise from 2004, 2005, 2006 and this year, together with the retro pay, will somehow become a reality so that he can start to pay off these bills.”

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“The biggest impact for me has been my inability to continue contributing to deferred compensation. The normal increases in property taxes, utilities, maintenance fees etc. made it impossible to do so.”

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“I was elected a Surrogate Court judge. I am one of the handful of county-level judges earning just \$119,800 per year. My income barely supports my stay-home wife and our three young children. I have re-mortgaged my real estate and borrowed on a personal line of credit just to pay operating expenses. The rising cost of living, taxes and gasoline costs have steadily eroded my family’s standard of living.”

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“Over the years we have watched our savings being either gradually eroded or significantly reduced by large sum expenditures without any hope of being able to replenish the money or even reduce the pace of the outflow. It is like watching air leaking from a balloon knowing that there is no way to stop it or put the air back.”

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“Eighteen years ago I made a considered decision to leave my senior position in the DA’s office for what I thought was a more prestigious and higher paid career as a judge. I knew I was passing up better earnings in a law firm, but boy did I ever miscalculate. It just never occurred to me I would go six years, and now eight years, at a time, without any COLAs at all. I find what has happened to judges in this State personally demoralizing, but more importantly, it is demeaning and disrespectful toward the institution. In theory, we’re an independent, co-equal branch of government. In practice, we’re not. Enough is enough. I still love my job, but I’ve put the regrets behind me and I’m searching for new opportunities with law firms.”

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“I have been a judge since 1998 and will tell you that my husband and I calculated that if there is no change, in approximately 13 months we will have exhausted all of our savings to pay for our monthly expenses.”

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“This financial crisis is real, and any raise won’t give me extra money to vacation and buy toys, but will just help me to start to pay back the thousands of dollars that I borrowed just to stay on Long Island as a judge. Even though I chose public service as a way to utilize my law training, and even though I believe I’ve done a good job as a judge, I now realize I did a major disservice to my family and put an extraordinary burden on my wife to pick up the slack.”

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“Is this what judges are reduced to — showing that we are impoverished in order to justify a raise? I would think the first question is, ‘Is it fair, is it right, that our compensation should be frozen at these levels?’ I love what I do, and am a good, hardworking judge. How can it be that, with funds available and agreement that raises are deserved, we are captive to forces wholly beyond our control?”

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“Imagine that there’s this great-sounding position. When you inquire about it, you’re told that you’ll have to spend thousands of dollars of your own money to get it, plus campaign day and night for several months. And the salary? All your State’s government leaders and editorial board writers admit it’s pretty low, especially for someone with top credentials, and even lower if you happen to live in the expensive NYC metropolitan area. Plus, there’s a couple of other things to consider: you may not get a raise for 6, 7 or even 8 years at a time; in fact, there have been only two raises in the last two decades. Oh, and there are no COLAS, no bonuses, no outside employment. I guess you’d have to be a [fill in the blank] to take that job. Well, I took that position not long ago. Now, I get to fill in the blank every day.”

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IV.

JUDICIAL SALARIES: A NATIONAL PERSPECTIVE

THE 50 STATES HAVE EXPERIMENTED with a wide variety of processes to set and review judicial salaries. This section of the report summarizes the national experience.

A. HISTORICAL BACKGROUND

Most states as well as the federal government have found it difficult to settle on a broadly accepted method for adjusting judicial salaries in a regular, equitable, objective, and nonpolitical manner. As the American Bar Association (ABA) recently found, and New York's experience confirms, the most difficult problem is the politicization of the process: "Tension between the legislative and judicial branches over the issue of appropriate levels of compensation for judges is a recurrent theme in state governments across the country."³² These problems became acute in the 1960s and 1970s, prompting the ABA to establish in 1985 a Committee on State Judicial Salaries, which issued a Handbook on State Judicial Salaries delineating specific criteria which should justify judicial compensation levels. The ABA House of Delegates subsequently approved Standards for Judicial Compensation in 1990.³³ The most relevant standards for purposes of this report are:

- The level of compensation must be high enough to attract competent and highly qualified lawyers to seek judicial office.
- The level of compensation should be reviewed and adjusted on a regular, periodic basis to assure that it remains high enough to retain able and experienced judges on the bench.³⁴

States have adopted three main approaches: reliance on the traditional legislative appropriation process; permanent compensation commissions either for judges exclusively or for all three branches of government; and automatic "escalators" that raise judicial salaries in tandem with one or more indices to maintain the real (inflation adjusted) value of judicial compensation. The latter two approaches are more recent and reflect efforts to avoid the pitfalls inherent in the legislative appropriation process.

A growing number of states have come to rely on compensation commissions to reduce the influence of politics on judicial salary decisions. Such commissions typically adopt and apply objective criteria, such as the judicial pay in other states and the federal government, the pay received by public sector lawyers, private sector lawyers, law school deans and professors, local government officials and employees, and various cost-of-living indices. An important impetus for turning the task of setting judi-

³² ABA Standing Committee on Judicial Independence, Report and Recommendation, Approved on April 12, 2003.

³³ Judicial Administration Division's Lawyers Conference Committee on Judicial Compensation.

³⁴ American Bar Association, Judicial Division, Standards for Judicial Compensation. Chicago: American Bar Association, 1990.

cial compensation over to commissions was the establishment in 1967 of the Federal Commission on Executive, Legislative, and Judicial Salaries.³⁵ This Commission consisted of nine members drawn from private life and appointed by the President, President of the Senate, Speaker of the House, and Chief Justice. The Commission is supposed to meet quadrennially and make salary recommendations to the President, who then makes provision for them in his budget, with the Commission's recommendations becoming law unless rescinded by Congress.³⁶ The Federal Commission has fallen into disuse since the 1980s,³⁷ but the model proved adaptable to the situations in many states.

Twenty-one states currently use compensation commissions to set judicial salaries.³⁸ Judicial pay is the exclusive concern of seven of those commissions: Alabama, Iowa, Louisiana, Maine, Maryland, New Mexico, and Oklahoma.³⁹ Another 14 states have formal compensation commissions that set compensation for all three branches. The recommendations of these commissions differ as to their impact: in 14 states, they are purely advisory, but in six states they become law soon after they are issued, unless modified or rejected by the legislature.⁴⁰ In Washington State, the Commission's recommendations take effect without reference to the Governor or the legislature; only a voters' referendum can void the increases.⁴¹ Missouri offers a variation on legislative review, requiring a two-thirds majority to override the Commission's recommendations.⁴²

In 2003, the ABA adopted a Resolution strongly endorsing independent judicial compensation commissions, including the following key elements:

- They should be established by constitutional or statutory provision and their recommendations should have the force of law “unless rejected by a two-thirds majority legislative vote within a fixed period of time.”

³⁵ Public Law 90-206. Of the states that adopted judicial compensation commissions, only Illinois and Washington established such commissions before Congress created the federal compensation commission in 1967.

³⁶ The statute's use of the word “shall” as to inclusion of the Commission's recommendations in the budget makes clear that it was intended to have more than an advisory role.

³⁷ Marilyn McCoy Roberts, *Judicial Compensation Commissions*. Williamsburg, VA: National Center for State Courts, 1979.

³⁸ Some states, including New York, have also relied upon temporary or one-time commissions. For example, the most recent judicial pay increase in New York resulted, in part, from a temporary “blue-ribbon,” bipartisan commission established by the Chief Judge in 1997. The commission's recommendations were eventually enacted during the 1998 lame-duck legislative session and went into effect in 1999, although the recommendation for a permanent salary commission was not acted upon.

³⁹ The New Mexico and Oklahoma Commissions are the most recent, both established in 2005. In November 2006, Hawaii's voters approved a ballot measure establishing a salary commission for all elected and many appointed officials, including judges. This replaced the previous commission, which was limited to judicial salaries. The new salary commission had its genesis in the recommendation of a January 2003 NCSC Report. Bob Tobin and Kent Pankey, *Setting Judicial Salaries in Hawaii: Model Based on Comparative National Study for the Cades Foundation*. Denver: Court Consulting Services, National Center for State Courts, January 2003.

⁴⁰ NCSC Survey of Judicial Salaries (Salaries as of October 1, 2004) Vol. 29, No. 2, 11-14.

⁴¹ The Washington State Commission is currently the only one in which recommendations are implemented without action by the legislature, subject only to a referendum process. National Center for State Courts, *Survey of Judicial Salaries*.

⁴² Missouri voters in November 2006 approved a change in the constitutional amendment that in 1994 had established the Missouri Citizens' Commission on Compensation for Elected Officials. As approved by the voters (84% to 16%), the Commission's recommendations go into effect unless rejected in the general assembly by concurrent resolution adopted by a two-thirds majority vote before February 1 of the year following the recommended increases. A provision making recommendations subject to appropriations also was repealed.

- They should either be solely concerned with judicial compensation or, if other branches are covered, judicial salaries should be considered separately.
- The members should be appointed by leaders of all three branches and include nonlawyers.
- They should collect and analyze relevant data, and hold public hearings.
- They should meet at least annually and issue reports at least biennially.

B. INSULATING STATE JUDICIAL COMPENSATION

Experience across the states suggests that better results are achieved when judicial pay issues are severed from unrelated public policy issues and/or insulated from legislative and executive compensation. This is supported by a strong separation of powers argument. According to the ABA, “The continued linkage, formal or informal, of judicial salaries to those of other public officials threatens the independence of the judicial branch and introduces inappropriate political considerations into the process of determining judicial compensation.”⁴³ Reliance on legislative and appropriation processes as the sole or primary method for setting judicial salaries means that judicial pay issues can easily become hostage to differences between the political branches of government on other issues, or to dissatisfaction with specific court decisions.⁴⁴

C. LESSONS LEARNED

The experience of the 50 state court systems over recent decades yields some important lessons on the best approaches to setting judicial compensation. First, states must be attentive to the need for both periodic reviews of base judicial salaries, and regular cost-of-living adjustments in between those reviews, to avoid the need for large and politically difficult “catch-up” increases. Second, judicial pay levels should be based on accepted, measurable and objective benchmarks. Third, state judicial salaries generally fare poorly when they are set through the appropriation process. Fourth, while no single approach is guaranteed to yield perfect results, permanent bipartisan or nonpartisan compensation commissions that include members of the general public seem to be the most promising vehicles for reviewing judicial salaries. Fifth, the recommendations of a compensation commission should carry a presumption that they will be adapted barring economic conditions that have slowed the growth of salaries in non-judicial positions.⁴⁵

⁴³ The quote is from the form presented by the ABA Standing Committee on Judicial Independence in submitting the report on judicial compensation that guided the contents of the 2003 Resolution.

⁴⁴ The Colorado Judiciary recently tackled this problem by proposing that the state legislature change the traditional legislative process governing the setting of judicial pay. In response to the request for a fairer process, the General Assembly passed legislation authorizing the Appropriations Committee rather than the full Assembly to determine judicial salary increases. One positive result was greater involvement by Joint Budget Committee legislative analysts, who have identified rational criteria for use in establishing compensation levels.

⁴⁵ Recommendations of compensation commissions that are advisory in nature have been routinely ignored in some states, although there is some evidence that advisory commissions fare better when they are assigned the task of reviewing compensation in all three branches. The recent example of Missouri’s revisions to its compensation commission, overwhelmingly approved by the voters, offers a compromise approach in which that state’s legislature retains a final veto but there is a strong presumption that the commission’s recommendations will go into effect.

D. NEW YORK'S LEGISLATIVE PROPOSAL FOR A PERMANENT COMMISSION-BASED SYSTEM

NCSC concludes that Chief Judge Kaye's legislative proposal for a commission-based system to adjust judicial salaries on a regular basis holds the best prospect for achieving the desired ends of equity, regularity, objectivity and nonpolitical treatment. Its adoption would help ensure that salary decisions are made in a nonpartisan context insulated from unrelated political considerations, salary scales are set in full public view, and sitting judges — as well as judicial aspirants — are assured that their future compensation will be protected against inflation. The merits of this proposal are confirmed by the public endorsement of the Governor and the leaders of the Legislature, and by the wide editorial support it has received.⁴⁶

NCSC concludes that New York would benefit from reform that insulates judicial compensation issues from the State's politicized legislative process. In this regard, NCSC endorses Chief Judge Kaye's proposal for a commission-based system to set the salaries of New York's public officials.⁴⁷ A full summary of this proposal can be found at Appendix D.

⁴⁶ Caher, "Spitzer Puts Judge Raises in His Budget," *New York Law Journal*, February 1, 2007 ("Mr. Spitzer yesterday said he supports a proposal by Chief Judge Kaye in which the salaries of judges, lawmakers and executive staff would be evaluated by a non-partisan panel to ensure they kept pace with inflation and the cost of living."). As of this writing, Governor Spitzer has withdrawn his support for the Legislature's inclusion in a compensation commission, pending progress on unrelated policy initiatives. See Editorial, "State Judges Deserve Better," *Newsday*, May 2, 2007.

⁴⁷ NCSC notes recent developments in Texas, which itself has had a troubled judicial compensation history. The Texas Legislature has under consideration legislation that would create a judicial compensation commission (Texas HB 3199, [2007]). The legislation specifies nine factors for the commission to consider in its deliberations, including the value of comparable service performed in the public sector, the compensation of attorneys in private practice, the cost of living, and "most importantly, the level of overall compensation adequate to attract the most highly qualified individuals in the state, from a diversity of life and professional experiences, to serve in the Judiciary without unreasonable economic hardship and with judicial independence unaffected by financial concerns."

V. CONSEQUENCES OF STAGNANT JUDICIAL SALARIES

A. RECRUITING AND RETAINING THE BEST JUDGES

Although the \$136,700 salary paid to a Supreme Court Justice may be more than the average New Yorker earns, average wages across society are not the proper measure of judicial compensation. By constitutional design, judges are highly trained, deeply experienced professionals. Recruiting and retaining such individuals requires fair compensation. This premise was addressed comprehensively in the data and observations advanced by United States Supreme Court Associate Justice Stephen Breyer at a recent Congressional Oversight Hearing on Federal Judicial Compensation.⁴⁸

Those who enter judicial service do so largely because it is an honor and a public calling, and they naturally expect and assume a measure of financial sacrifice. However, judicial pay should be at the level where a judgeship ranks equally with other public service alternatives. Having evaluated the compensation of others similarly situated in the legal community, such as law school deans, law professors and experienced civil service lawyers, we conclude that the pay disparities between those professionals and New York's judges are so large that a career on the Bench is no longer an attractive option for highly qualified lawyers without independent financial means.

B. A STRONG JUDICIARY IS ESSENTIAL TO A HEALTHY STATE ECONOMY

New York State has a strong interest in attracting and retaining businesses, which 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 Judiciary are significant factors when businesses decide where they will locate and do business. Economists point to real economic benefits from an appropriately compensated state Judiciary. An economic analysis in Texas reached the following conclusion:

Investing in the state court system by increasing the compensation for judges at the trial and appellate levels is a move in the right direction. It will lengthen jurists' tenure and increase efficiency, thereby affording Texas an excellent opportunity to enhance its economic environment and further increase its competitive advantages on a national and global scale.⁴⁹

⁴⁸ Testimony of Hon. Stephen Breyer Before the House Committee on the Judiciary, Subcommittee on the Courts, the Internet and Intellectual Property, Oversight Hearing on "Federal Judicial Compensation" (April 19, 2007), available at <http://www.uscourts.gov/testimony/JusticeBreyerPay041907.pdf>.

⁴⁹ M. Ray Perryman, "Benefiting Justices – and Texas," Dallas Business Journal, December 2, 2005. The Perryman Group specializes in studies of the Judiciary's impact on economic activity, all commissioned by pro-business organizations. These include The Potential Impact of Proposed Judicial Reforms on Economic Activity in Mississippi (prepared in February 2002 for Mississippians for Economic Progress) and The Impact of Judicial Reforms on Economic Activity in Texas (prepared for Citizens for a Sound Economy in August 2000).

There are important economic implications from a Judiciary that is underpaid and demoralized through eight and a half years of unchanged compensation levels. Many of the State's corporate executives and business associations, like the Partnership for New York City and the New York State Business Council, will be meeting with Chief Judge Kaye on June 12, 2007 in an effort to galvanize support for the Judiciary's pay reform efforts.

C. JUDICIAL INDEPENDENCE

Inadequate judicial salaries suggest potential harm to judicial independence and to the public's perception of our justice system. The average citizen should have confidence that judges will decide cases with complete independence — free of any hint that decisions are influenced by judicial interest in accommodating governors and legislators who hold judges' financial wherewithal in their hands. But this confidence is hard to preserve:

- Where judges are forced, in a very public manner, to plead with elected officials for cost-of-living adjustments.
- Where, despite wide agreement that judges need and deserve an increase, judicial salary issues are entangled in disputes over entirely unrelated issues.
- Where legislators frequently are very vocal in publicly criticizing judges for their decisions.⁵⁰

The situation in New York clearly has the potential to adversely affect the public's confidence in the independence of the Judiciary.

D. COMPARATIVE WORTH

We note additionally that compensation should bear some reasonable relationship to the value of a particular occupation. As one commentator has put it, "judges are worth much more, by any measure of social utility, than most law partners, but they are paid far less."⁵¹ Judges' decisions not only determine the outcomes of particular disputes affecting the lives of individuals but also influence life in our communities, our economic well-being and the nature of society for years to come. Given the high social value of dispensing justice, providing New Yorkers with the best possible justice system is at the very heart of the Federal and State Constitutions — ensuring justice for all.

⁵⁰ As was recently reported in the popular press, a member of the Legislature accused the State's highest court of deciding a case (unrelated to judicial compensation), in a manner calculated not to "alienate legislative leaders" and jeopardize a potential salary increase. Lovett, "Pol Slaps Top Court on Ethics," *New York Post*, May 11, 2007, at 12.

⁵¹ Steven Lubet, *Judging Pay*, *The American Lawyer*, March 3, 2003.

VI.

CONCLUSIONS AND RECOMMENDATIONS

NEW YORK REPRESENTS ONE OF THE MOST EXTREME EXAMPLES of judicial pay erosion that NCSC has observed over the past 33 years of studying state judicial compensation trends. The State's legislative process for setting judicial compensation has failed to produce any salary adjustments since 1999 due to unrelated policy differences between the political branches of government. NCSC recommends that New York's judicial salary levels be adjusted to address the significant erosion in New York's judicial pay over the last eight years. Furthermore, NCSC recommends enactment of Chief Judge Kaye's legislative proposal to establish a permanent commission-based system for the regular adjustment of judicial salaries. Such a measure is needed to ensure that judges receive regular cost-of-living adjustments and to insulate judicial salary issues from the State's politicized legislative process.

APPENDIX A

JUDICIAL SALARY LEVELS IN NEW YORK

- The **Court of Appeals** is the appellate court of final resort. It consists of a Chief Judge, now earning \$156,000 annually, and six Associate judges, each earning \$151,200. All seven judges are appointed by the Governor, with the Senate's advice and consent.
- The **Appellate Division of Supreme Court** is the State's main intermediate appellate court. It is structured on a regional basis, and each of its four departments has a Presiding Justice earning \$147,600 and five or more Associate Justices who earn \$144,000. Each Presiding Justice and Associate Justice is designated by the Governor from among the Justices of the Supreme Court.
- A second intermediate appellate court, the **Appellate Term**, hears appeals from lower courts within the First and Second Judicial Departments. Each Justice of the Appellate Term earns \$139,700, and the Presiding Justices earn \$142,700 annually.
- The **Supreme Court** is the statewide trial court of general original jurisdiction. Justices are elected in each of 12 Judicial Districts. Only Supreme Court Justices are eligible for appointment to the Appellate Divisions and Appellate Terms. Justices earn \$136,700.
- The **Court of Claims** is a statewide court that handles claims against the State. Its members also earn \$136,700 annually.
- Outside New York City, there are 72 judges of the **County Court**, 80 judges of the **Family Court**, 24 **Surrogate's Court** judges and 57 judges, known as **multi-bench county-level judges**, who serve on two or more of those courts. These judges preside over major criminal prosecutions, matters involving children and families, and probate and other estate proceedings, respectively. All are elected and their salaries range from \$119,800 to \$136,700.
- Nassau and Suffolk Counties have **District Courts** of limited civil and criminal jurisdiction. There are 50 elected judges earning \$122,700 annually, including two presiding officers who earn \$126,900.
- In New York City, there are 120 judges elected to the **Civil Court** and seven elected Surrogates. In addition, 107 **Criminal Court** judges and 47 **Family Court** judges are appointed by the Mayor. The Surrogates and Family Court judges earn \$136,700 annually; Civil and Criminal Court judges earn \$125,600.
- Finally, the 61 cities outside New York City are served by **City Courts**. Many of these courts have full-time judges, earning between \$108,800 and \$119,500 annually. In many cities, judges serve part-time, earning between \$27,200 and \$81,600.

APPENDIX B

LEGISLATIVE HISTORY OF JUDICIAL SALARY ADJUSTMENTS

THE UNIFIED COURT BUDGET ACT

The Unified Court Budget Act (“UCBA”) provided that judges who formerly were locally-paid would become State-paid, effective April 1, 1977, at the rates of compensation to which they were entitled on August 4, 1976, while they were yet locally-employed.¹ L. 1976, c. 966 [originally codified as Judiciary Law §220(6)]. Because, prior to 1977, some counties (and cities) had paid their judges higher rates of compensation than had others, the result was that, in the wake of the UCBA and State assumption of the Judiciary’s funding, there was a significant degree of disparity in the salaries paid by the State to judges of the same court level. This disparity has been the source of much litigation since 1980.

As to judges of the Court of Appeals, Justices of the Supreme Court (including those of the Appellate Division), and judges of the Court of Claims, all of whom had been State-paid before enactment of the UCBA,² the UCBA had no impact upon their compensation. At the time, that compensation was uniform statewide within each court (except for comparatively small salary increments paid to the presiding judges for their administrative responsibilities).

THE 1979 JUDICIAL PAY RAISE

The first pay raise for judges following adoption of the UCBA was enacted in April of 1979. *See* L. 1979, c. 55. It was coupled with pay raises for legislators and high-ranking officials of the Executive Branch.³ For the judges, the pay raise consisted of a series of percentage increases, along with establishment of minimum salaries for county-level and full-time city-level judges. The percentage increases were approximately 7%, effective retroactively to October 1, 1978; 7%, effective October 1, 1979; and approximately 3.39 %, effective October 1, 1980. These percentages had been part of recommendations made earlier by an Ad Hoc Panel on Executive, Legislative and Judicial Compensation established by then-Governor Hugh Carey. *See* McKinney’s Laws of New York, 1979, p. 1764 (Gov.’s App. Mess. for L. 1979, c. 55). Why these particu-

¹ Actually, the UCBA was not the first instance of State involvement in the payment of compensation to county-level and city-level judges. Beginning in 1962, the State had conducted a program of financial assistance to local governments in the payment of compensation to their judges. *See* [former] Judiciary Law §34 (renumbered as section 34-a and repealed in 1979). Under this program, counties and cities originally received fixed subsidies depending upon their size and, in some instances, the number of their judges. Later, the subsidies were keyed to local maintenance of minimum salaries for county-level and city-level judges. L. 1975, c. 150, §8.

² Except that the Judiciary Law had long required counties to share in the burden of compensating Justices of the Supreme Court. *See* [former] Judiciary Law §§142-146 (establishing a baseline salary to be paid by the State to Justices of the Supreme Court and providing for supplemental compensation to be paid by localities to such Justices).

³ References to “high-ranking officials of the Executive Branch” include those commissioners, chairs, directors and executive directors of Executive agencies, commissions and boards whose salaries are prescribed in section 169 of the Executive Law.

lar percentages, and why three installments over two years remains unclear. The Ad Hoc Panel's report cannot now be found.

The 1979 pay raise did not directly tackle the issue of judicial pay disparity.⁴ In what quickly would become a pattern for future legislatures, the enactment paid lip service to the issue by coupling the straight percentage increases to a direction that the disparity issue be studied, and that a report with recommendations be produced for the Governor, the Legislature and the Chief Judge. In 1979, the Chief Administrative Judge was made responsible for the study and a report. *See* L. 1979, c. 55, §4:

“The chief administrator of the courts shall investigate whether unreasonable disparity exists in the compensation of judges of the same rank in different parts of the state. On or before December first, nineteen hundred seventy-nine, the chief administrator shall prepare and transmit to the legislature, [etc.,] ... a report of his findings, together with appropriate legislative recommendations to eliminate unreasonable disparity, if any, by April first, nineteen hundred eighty-two.”

THE EVANS REPORT

Chief Administrative Judge Herbert Evans' report concluded that there were glaring inconsistencies in the salary levels of judges of county-level and city-level courts; that those salary levels had never been subject to State standards; that the compensation disparities were the result of the former system of court funding by local government; and that continuation of these disparities after the UCBA was “neither necessary, desirable nor equitable.” These conclusions were accompanied by a recommendation that the Constitution be amended to effectuate a court merger, which, it was suggested, would solve most of the judicial pay disparity problem. Absent trial court merger, Judge Evans wrote, the salaries of County, Surrogate's and Family Court judges, along with those of the New York City Civil and Criminal Court judges, should for the time being be equated with those of Justices of the Supreme Court; proportionate salary schedules should be fixed for the judges of other State-paid trial courts; prior to April 1, 1982, the Legislature should determine what differential in salary should exist between county-level judges and Justices of the Supreme Court; and “the Legislature should provide by law for automatic adjustments in judicial salaries related to changes in the cost of living.” *See* Evans' Report, p. 7.

⁴ The establishment of minimum salaries for county-level and city-level judges did, however, have the effect of reducing, to a small extent, the disparity between salaries of judges of the same court level. First, taking county-level judges as an example, all such judges earning salaries below \$36,000 as of the State takeover were deemed to be earning that salary as of September 30, 1979 and their salaries, effective October 1, 1979, were calculated by applying the 7% increase to \$36,000. Second, those judges then received an extra pay increase amounting to approximately 10.38% on April 1, 1979. Also receiving extra pay increases, albeit in proportionately smaller amounts, were judges whose salaries after the October 1, 1979 pay increase were less than \$42,520 (the amount judges who received the 10.38% were to receive as of April 1, 1979). The result of these adjustments was that the magnitude of the disparity between top and bottom salaries for judges of the same courts was somewhat diminished. No effort was made, however, to establish relationships between salaries that reflected caseload levels, population or demographics.

THE 1980 JUDICIAL PAY RAISE

The recommendations of the Evans' Report, which was published on December 1, 1979, were not followed — although the Legislature, in fairly short order, gave the judges another pay raise. This pay raise, too, was coupled with pay raises for legislators and high-ranking officials of the Executive Branch of government. *See* L. 1980, c. 881. It was enacted during a special session of the Legislature held in the fall of 1980⁵ and, for the judges, consisted of a straight five percent increase in salaries, effective January 1, 1981, to be followed by a straight seven percent increase, effective January 1, 1982. *Id.*, §14. Also part of the legislation was introduction of a \$2,000 pay increment for administrative judges and provision for compensating judges assigned to travel status at the rates of pay earned by judges in the court of assignment where the latter were more highly paid. *Id.*, §§15 and 16.

The 1980 legislation, like its 1979 predecessor, paid deference to concerns that the judicial salary schedule was unfair and filled with disparities by directing another study — this one to be conducted by a Temporary State Commission on Judicial Compensation. This Commission was to have seven members, who were to be appointed by the Governor and the legislative leadership.⁶ It was specifically charged:

“to examine, evaluate and make recommendations with respect to (a) the issue of parity of compensation between judges and justices in the unified court system, and (b) determining adequate levels of compensation for such judges and justices.

“Such commission shall review with particular care whether fairness dictates that judges or justices in the unified court system performing similar duties be compensated uniformly. In addition, the commission shall examine the adequacy of pay received by the Judiciary taking into account the overall economic climate, the levels of salaries received by other professionals in government and private enterprise and the ability of the state to fund increases in compensation.” L. 1980, c. 881, §17.

The Commission was required to publish its report and recommendations by September 1, 1982.

THE DENTZER REPORT

So named after its chair, William T. Dentzer, Jr.,⁷ the 1982 report of the Temporary State Commission on Judicial Compensation made several recommendations for adjustment in judicial pay, effective January 1, 1983. These recommendations were premised upon two basic conclusions. First, that, in determining appropriate levels of

⁵ This special session was not limited to salary matters, but dealt with a range of subjects of State interest.

⁶ The Judiciary was given no representation.

⁷ The other members of the Temporary State Commission included: H. Douglas Barclay (Chair of the State Senate Judiciary Committee), Charles Desmond (former Chief Judge of the Court of Appeals), D. Clinton Dominick (former Chair of the Temporary State Commission on the State Court System), Bertram R. Gelfand, Anthony R. Palermo (former President of the State Bar Association), and Deborah K. Smith.

judicial compensation, New York should embrace a “competitive adequacy” standard. That is:

“the judgment as to what level of pay is adequate should be based on whether a reasonable supply of well-qualified attorneys will make themselves available to become or remain judges in the courts concerned. The lowest pay which produces an adequate supply of well-qualified candidates for the various courts is the only pay level which is fair to State taxpayers; any higher pay would require unnecessarily high taxes.” Dentzer Report, p. 5.

Second, that there are significant differences in the cost of living in various areas of the State; and that it makes much more sense to adjust the salaries of judges who reside where it is more expensive to live to reflect that fact, rather than to establish a single salary for each office, which, while perhaps adequate in part of the State, might be inadequate or excessive in the rest of the State.⁸

The principal recommendation was for establishment of a two-tiered salary schedule for each judicial office, the first tier to represent the base salary for the office and the second to be the base salary increased by 16%. All judges of courts outside of New York City, and Westchester, Nassau and Suffolk Counties would receive the base salary, which, for Justices of the Supreme Court, would reflect a 19.7% increase over their January 1, 1982 salaries. The rest of the judges (*i.e.*, those in the New York City metropolitan area and on Long Island) would receive the base plus a locational increment of 16% (or an increase of nearly 39% in their January 1, 1982 salaries).⁹

The Commission also recommended an increase in the salaries of the State’s appellate judges, ranging from a 20% increase for the associate judges of the Court of Appeals to a 17.7% increase for Associate Justices of the Appellate Divisions (boosted to a 35% increase for those justices eligible for the locational adjustment). Just why these particular percentages were selected is not entirely clear.

The Commission did not attempt to remedy the problems of pay disparity beyond introducing the locational pay differential. In proposing salaries for the judges of each level of court, it did no more than set out a minimum salary and a minimum salary plus 16%.

The Commission was lukewarm on the subject of establishing a procedure for periodic judicial pay review and adjustment. It eschewed statutory linkage to some form of inflation index, believing that the high inflation of the times was likely to end and not soon be repeated, and that introduction of such a procedure would only stimulate costly efforts to index other public sector salaries.

⁸ In reaching its conclusions, the Temporary State Commission was aided by surveys conducted by consulting firms to assess the average compensation of litigators and the cost of living in various areas of the State.

⁹ The percentage increases for judges of the lower trial courts were somewhat different, although all those working in New York City, the Island and Westchester County would enjoy the 16% locational adjustment. For judges of the County, Surrogate’s and Family Courts earning the minimum salary for their respective positions, the amount of the increase would be about 24%. For judges of the New York City Civil and Criminal Courts, it would be only about 13.5%. For judges of the District Courts, about 18%; and for full-time judges of the upstate City Courts, about 13.8%.

Finally, the Commission suggested that should the State not be disposed to follow its recommendations for salary reform, consideration should be given to improving judicial benefit programs as an indirect way of improving the compensation package.¹⁰

THE 1984-85 JUDICIAL PAY RAISE

The Dentzer Report and its recommendations were not implemented. Consequently, there were no changes in the judicial salary structure in 1983 or 1984. Nor did the Legislature find occasion to revise its own salary structure or that of the Commissioners and other high-level employees of the Executive Branch. In December of 1984, however, the Legislature did enact a measure providing pay increases for judges and legislators, effective January 1, 1985, and for commissioners and other Executive Branch officials (the so-called section 169 officers), effective retroactive to July 1, 1984.¹¹ L. 1984, c. 986.

For most trial judges and for Associate Justices of the Appellate Division, chapter 986 provided between 24% and 27% increases in salary. For Associate Judges of the Court of Appeals, the increase was somewhat less — only about 14% — likely because of an artificial cap set by the Governor's salary. Once again, the rationale for the percentages applied has been lost to memory.

No effort was undertaken to correct judicial salary disparities among judges of the major trial courts. There were neither appropriate salary adjustments nor further legislative directions to study the issue.¹²

THE 1987 JUDICIAL PAY RAISE

In the summer of 1987, responding to considerable pressure brought by rank and file legislators, particularly those from New York City, the Legislature acted to increase its own salaries, those of high Executive Branch officials, and those of the Judiciary. L. 1987, c. 263. The New York City legislative delegation was especially agitated at the time because of sizeable pay increases then being adopted for members of the New York City Council, City Commissioners and the City's five District Attorneys.¹³ Accordingly, the pay raises enacted by the Legislature were quite significant.

¹⁰ One suggested improvement was that the State's retirement statutes be modified to provide enhanced retirement benefits for judges who retire from the bench after serving only one term. This, it was thought, would encourage able lawyers to consider capping their careers with a single term on the bench.

¹¹ Interestingly, while many New Yorkers have come to think of the practice of legislating pay raises for high-level government officials during the months of November and December following legislative elections (as a way of minimizing political flack, as well as to enable the soonest possible enjoyment of legislative pay raises) as a time-honored one, the fact is that this December 1984 enactment, along with the fall 1980 judicial pay raise enactment and the December 1998 enactment (*infra*), are the only such instances in the past 30 years.

¹² A modest effort was undertaken, however, at the level of the upstate City Courts. The judges of those courts had long argued that they should enjoy salary parity with judges of the District Courts. Chapter 986 gave part-time City Court judges that parity. Full-time judges, while not reaping exactly the same benefit, did see the distance between their salaries and those of District Court judges reduced somewhat; and, at the same time, they were told that full parity for them would be put into effect the next time salaries were adjusted (alas, a promise not to be kept).

¹³ Frequently, New York City's changes in the salaries of its legislators and high level officials have served as the catalyst for State legislative action to change the salaries of comparable State-level officials.

For the Judiciary, chapter 263 provided pay raises of 24% for Associate Judges of the Court of Appeals, of 15.9% for Justices of the Supreme Court, of up to 20.6% for County-level judges, of 21% for Civil and Criminal Court judges, and of 18.3% for full-time City Court judges upstate.

Not content with providing pay raises alone, the Legislature also directed that another Temporary State Commission be established to inquire into salary matters — this time not merely those of the Judiciary, as had been the mandate of the Dentzer Commission in 1982, but those of the Executive and Legislature as well. L. 1987, c. 263, §17. In relevant part, the Commission’s¹⁴ mandate was to:

“examine the adequacy of pay received by the governor, lieutenant governor, attorney general, comptroller, those state officers referred to in section one hundred sixty-nine of the executive law, members of the legislature and judges and justices of the state-paid courts of the unified court system taking into account the overall economic climate, the levels of salaries received by other professionals in government and private enterprise and the ability of the state to fund increases in compensation. The commission also shall formulate a systematic and appropriate mechanism by which the state shall regularly review and adjust levels of pay received by the governor, lieutenant governor, attorney general, comptroller, those state officers referred to in section one hundred sixty-nine of the executive law, members of the legislature and judges and justices of the state-paid courts of the unified court system.”

The Commission was directed to make its first report by the beginning of February, 1988; and authorized to make further reports thereafter, as well.

THE FIRST JONES REPORT

Referred to as the Jones Report, after Judge Hugh R. Jones, the Chair of the Temporary State Commission on Executive, Legislative and Judicial Compensation mandated by chapter 263 of the Laws of 1987, the Commission’s Report was published in June, 1988.¹⁵ In the Report, it was found that:

- Inflation over the past 20 years had significantly eroded the purchasing power of high-level Executive Branch officials and of State judges. Legislators, too, had seen the value of their salaries diminish, although somewhat less so. *See* Jones (I) Report, p. 4.
- Significant salary disparities existed among judges. *Id.*
- Fringe benefits enjoyed by State officials (including judges) were competitive with those provided by other state governments and the private sector. *Id.*

¹⁴ The full name of the Commission was to be the Temporary State Commission on Executive, Legislative and Judicial Compensation. Its membership was to consist of representatives of the Governor, the legislative leadership and the Chief Judge of the Court of Appeals.

¹⁵ The other members of the Jones (I) Commission included: Barbara B. Blum (former Commissioner of the State Department of Social Services), Juanita M. Crabb (Mayor of Binghamton), Paul Elisha (Executive Director of N.Y.S. Common Cause), Dr. Wilbert A. Tatum (Editor, Amsterdam News), Cornelius McDougald, Fern Schair Sussman, Van C. Campbell, William M. Ellinghaus (member, N.Y.S. Emergency Financial Control Board), Victor Gotbaum, Ruth G. Weintraub (Dean Emerita, Hunter College), Robert B. McKay (former Dean, N.Y.U. Law School), and Louis L. Levine.

- New York State officials were compensated at higher levels than their counterparts in other states, but not as well as public officials in the Federal government and in New York City — except that some State judges (*i.e.*, judges of the State Court of Appeals and Justices of the State Supreme Court) were then (*viz.*, in 1988) more highly compensated than Federal judges.¹⁶ *Id.*
- New York State officials were compensated at levels significantly lower than those of executives and other professionals in the private sector. In fact, it was found that State judges could multiply their salary two, three or four times by leaving the bench to take advantage of opportunities in private practice or in the corporate sector. *Id.*

On the basis of these findings, the Jones Commission made a series of recommendations for salary reform in the three branches of State government. For the Judiciary, it specifically recommended: (1) a seven-year program of salary adjustment so that salary levels would reflect 1967 values;¹⁷ and (2) a three-year program of adjustment of salaries so that all trial judges would enjoy full pay parity with State Supreme Court Justices.¹⁸ *See* Jones (I) Report, p. 5. The Jones Commission also recommended that judicial compensation be among the subjects of inquiry of a *permanent* State commission on compensation. This commission, the members of which would be appointed by the Governor, the legislative leadership and the Chief Judge of the Court of Appeals, would be charged to review and periodically adjust the salary levels of high-level State government officials.¹⁹ It also would be responsible for development of a special salary system for the Judiciary that: (1) “rewards longevity on the court so that it can retain the services of its more experienced judges and justices”; and (2) includes “salary differentials for judges that [are] sensitive to the extraordinary costs of living in certain geographical areas of the state.” *Id.*, p. 6. Commission recommendations for adjustment would take effect within 90 days unless rejected by the Governor and the Legislature. *Id.*

THE SECOND JONES REPORT

For four years following publication of the first Jones Report, no steps were taken to give effect to its recommendations relating to the Judiciary. Nor were further pay rais-

¹⁶ A relatively short-lived situation. Within two years, the salaries of Federal judges would eclipse those of New York State judges.

¹⁷ In justifying this recommendation, the Jones Commission wrote:

“One legitimate way to measure the adequacy of state salaries is to examine them historically. Here, considering the impact of inflation, we can determine whether state employees are earning the same in real dollars as they had previously. Here, we can assess the ability of state employees to maintain a certain standard of living for themselves and their families. Such a measure of adequacy is . . . only fair and appropriate . . .” *See* Report of the State of New York Temporary Commission on Executive, Legislative and Judicial Compensation, 6/29/88, p. 12.

1967 was viewed as a kind of base year, *viz.*, the last year before which inflation began seriously to erode the real value of the dollar, and therefore an appropriate point from which to measure decline in the value of the judicial wage.

¹⁸ City Court judges outside of New York City were excluded from this recommendation; but the Commission did recommend that those who were full-time should be given pay parity among themselves over three years. *See* Jones (I) Report, p. 5.

¹⁹ In conducting this review, the commission would consider “changes in the cost of living, the general economic condition of the state, the general content and context of state collective bargaining agreements, modifications in the responsibilities of particular agencies or officials, changes in state priorities and the degree of difficulty that the state has experienced in recruiting for particular governmental positions.” *See* Jones (I) Report, p. 6.

es enacted for the Judiciary. Late in 1992, therefore, then Governor Cuomo directed establishment of yet another temporary state commission, this one to focus exclusively on the Judiciary and to study and recommend with respect to:

- existing levels of compensation for judges and justices of the Unified Court System and their adequacy, “taking into account the general economic condition of the State and other benefits currently available to the Judiciary.”
- whether “judges and justices performing the same or similar duties should be compensated uniformly.”
- establishment of “a permanent process to ensure that judicial pay levels remain adequate to retain and attract a supply of good candidates for all courts in the State at the minimum total cost to the public.”
- methods to “generate revenues to finance judicial pay increases in the future, including productivity and cost-savings measures and revenue generation.”

See Executive Order #161, 11/18/92.

The members of this commission, which also has come to be known as the Jones Commission — albeit the Jones “II” Commission, after its Chair, James R. Jones, Chair of the American Stock Exchange — were all to be designated by the Governor.²⁰

The Jones (II) Commission made its final report on January 15, 1993. This report called for adjustment of the salaries of all State-paid trial and appellate judges in amounts varying from 8.7% for Associate judges of the Court of Appeals, to 18.9% for Justices of the Supreme Court, to up to 20.7% for county-level judges, to 15.4% for full-time City Court judges outside New York City and Housing judges of the Civil Court. The adjustments were to take place in four stages over a period of eighteen months, beginning April, 1993. *See* Jones (II) Report, pp. 9 - 10. Further, the report suggested additional study of the pay parity issue by a statutory Temporary Commission on Judicial Compensation;²¹ establishment of an executive director “to direct studies on other issues of importance to the Judiciary which may require legislative or policy changes;”²² creation of an independent audit commission “to perform management audits of OCA and the Courts and to provide the public with audit reports;”²³ and adoption of a host of revenue and productivity proposals, ranging from

²⁰ In addition to Chair James R. Jones, the Commission’s members included: Richard J. Bartlett (former Chief Administrative Judge), Tom Lewis (former Director of the Governor’s Office of Management and Productivity), Nancy Mackey Loudon (former President, N.Y.S. Women’s Bar Association), and James F. Niehoff (former Associate Justice, Appellate Division, Second Department).

²¹ In making this recommendation, the Jones Commission wrote that establishment of such an ongoing commission “would ensure reasonable and regular salary adjustments; would eliminate the uncertainty and confusion that results from large catch-up adjustments; and would ensure the integrity and independence of the Judiciary.” As conceived by the Jones Commission, the statutory commission would consist of members designated by the Governor, the legislative leadership and the Chief Judge. It would make “judicial compensation and related recommendations” to the Legislature and the Governor by November 15th of each year, the idea being that they might thereby be available for consideration in the context of the State Budget.

²² Cited as examples were the matters of geographic pay differentials, court merger and parity, pay disparity, and judicial pensions and other benefits requiring actuarial analysis. Jones (II) Report, p. 13.

²³ The report described this recommendation as a means of providing “the most cost-effective approach to attaining the goals of independent management, performance and revenue audits of the courts.” Jones (II) Report, pp. 13 - 14. It would insure that the Temporary Commission on Judicial Compensation would be provided “with the body of reliable data necessary for the full understanding of the structure, operations and finances of the Unified Court System as requested by the Governor, Legislature, Comptroller, the bar and the citizenry.” *Id.*

an increase in the biennial attorney registration fee and creation of new litigation-related fees to elimination of mandatory sequestration of deliberating juries in criminal cases, expansion in the use of electronic recording, restoration of the Misdemeanor Trial Law, greater use of Judicial Hearing Officers and other substantive initiatives.²⁴

It is important to recognize the context in which the Jones (II) Report was commissioned and delivered. In the previous four and one-half years, the State had experienced a significant economic downturn. More importantly, relations between the Judiciary and the Executive Branch of government had not been especially healthy — reaching a nadir in 1991, when former Chief Judge Wachtler directed that suit be brought against the Governor and the Executive Branch challenging the Executive Budget’s treatment of the courts. This context may help to explain the very expansive nature of the Jones (II) recommendations, and their reach into realms not usually explored when judicial salary adjustments have been on the table.

Not at all clear is the rationale for the particular salary adjustments settled upon by the Commission. The Commission did little to justify those adjustments other than to acknowledge that “since 1987, inflation has seriously eroded the value of judges salaries; that the current levels of judicial compensation are therefore inadequate; and, that prompt remedial action should be taken.” *See* Jones (II) Report, p. 9. Ironically, the salaries recommended by the Commission did not reflect inflation’s effect since the Judiciary’s last pay raise.²⁵ Moreover, the Commission did not evaluate the principal recommendation of the Jones (I) Report, *viz.*, that judicial salaries be adjusted to reflect inflationary effects since 1967. It did, however, expressly reject the notion that somehow State and Federal judicial salaries were linked. *Id.*, p. 8.

Interestingly, although the Governor’s charge to the Commission invited its consideration of “[m]ethods to generate revenues to finance judicial pay increases . . .”, the Commission Report expressly indicated the members’ belief “that the Judiciary is a separate, independent branch of government and . . . that the salaries of judges should not be contingent upon adoption of specific proposals for fee or other revenue increases.” *See* Jones (II) Report, p. 3. At the same time, however, the Commission proposed a host of revenue-raising proposals.²⁶

THE 1993-1994 JUDICIAL PAY RAISES

In the spring of 1993, the Legislature enacted a new pay schedule for State-paid judges and justices. *See* L. 1993, c. 60. With only slight changes in the salaries of New York City Civil and Criminal Court judges, and District Court judges on Long Island, the

²⁴ *See* Jones (II) Report, at pp. 15 - 17, for a complete listing of the revenue and productivity proposals.

²⁵ For example, were the salary of a Justice of the Supreme Court to have been adjusted to reflect inflation since October 1, 1987 (as measured by growth in the Consumer Price Index), the Commission would have proposed a figure of approximately \$117,500, rather than \$113,000.

²⁶ The Commission justified their inclusion in the following way: “[Our] mandate is not interpreted as implying that the Judiciary must generate revenues to finance judicial salary increases; but rather that for the benefit of the State as a whole and like the two other branches of government, the Judiciary must seek to explore revenue increases and productivity improvements to finance or reduce the cost of government.” *See* Jones (II), p. 3.

new pay schedule was precisely as had been recommended by the Jones (II) Commission.

Although most judges welcomed the 1993 pay raise, it was thought by some to be very unfair. In particular, judges of the upstate City Courts and Housing Court judges of the New York City Civil Court quickly complained of their treatment under chapter 60. They pointed to the fact that while judges of the other trial courts affected by the pay raises were seeing their salaries increased by nearly 19% or more, City Court judges and judges of the Civil Court's Housing Part were seeing increases of only about 15%.

No explanation for this disparity in treatment had been offered in the Jones (II) Report. Upon the Judiciary's inquiry with the Commission staff, undertaken at the behest of the City Court judges Association, the Chief Administrative Judge was advised that the reason for the disparity lay in the Commission's belief that City Court judges and Housing judges were, essentially, very low-level judges with whose adjudicative responsibilities required little in the way of legal acumen.²⁷

Even before enactment of the chapter 60 pay raise, the Judiciary began to urge the Legislature that, if the recommendations of the Jones (II) Commission were to provide the blueprint for a judicial salary increase, there should be a departure from those recommendations at least insofar as they applied to City Court judges and Housing Part judges.²⁸ All efforts were unsuccessful, however. In 1994, therefore, after enactment of chapter 60, the Judiciary again pled its case. This time it was successful, with the result that the Legislature enacted legislation boosting the pay raises received by City Court judges and Housing Part judges to be commensurate with those received by the other judges under chapter 60. L. 1994, c. 518.

THE 1999 JUDICIAL PAY RAISE

In 1997, four years after the last legislative action providing a judicial pay increase, Chief Judge Kaye established a special commission for the purpose of studying judicial salaries, assessing their adequacy given the prevailing economic climate and salary levels in the public and private sectors, and making recommendations concerning appropriate adjustments in the compensation of New York State judges. The commission, in its report issued in 1998, found that the value of judicial salaries had steadily declined over the years, not just lagging behind inflation but also falling behind in comparison to salaries earned by other judges, by State employees in the rest of government, and by their own staffs. Accordingly, the commission proposed adjustments in the salaries paid all State-paid judges and justices of the Unified Court System built around attaining approximate pay parity with salaries paid to Federal District Court

²⁷ It was very apparent that the Commission's staff had very little understanding of the functions of these judges and, more importantly, that they had not seen it as necessary to educate themselves on such a vital matter before determining salary adjustments.

²⁸ The Judiciary took this position because it believed that jurisdictional allocation, caseload and policy militated against singling out judges of these courts for appreciably smaller increases than their other colleagues on the trial bench. *See* Memorandum of the Office of Court Administration, McKinney's 1994 Session Laws of New York, p. 3300.

judges. The commission also proposed establishment of a statutory mechanism for ongoing periodic review and adjustment of judicial salaries to prevent judges from losing ground to inflation. The principal feature of this mechanism would be a temporary state commission charged with reporting at least biennially on the need for changes in judicial pay levels. Its recommendations for such changes would carry the force of law unless subsequently abrogated by the Governor or by the Legislature.

Not long after the commission delivered its report and recommendations, the Legislature enacted a pay raise for judges, largely following those recommendations. *See* L. 1998, c. 630.²⁹ Effective January 1, 1999, Supreme Court Justices were given pay parity with Federal District Court judges, at the salary then earned by the latter, *i.e.*, \$136,700. All other State-paid judges were given proportionate pay adjustments. No effort was made to cure pay disparities between judges of the different trial courts or between judges of the same court. Likewise, the statute made no provision for future review or adjustment of judicial salaries to keep them on pace with inflation.

This 1999 pay increase is the last to have been received by New York's State-paid judges and justices.

²⁹ Chapter 630 provided pay raises for legislators and high-ranking officials of the Executive Branch as well. Also of note, chapter 630 was enacted in late December of 1998, just after members of the Legislature and the Governor had been re-elected.

APPENDIX C

JUDICIAL SALARY ADJUSTMENTS: 1977–2007

BELOW IS A COMPLETE HISTORY OF JUDICIAL SALARY INCREASES SINCE 1977.

- **1979** (L. 1979, c. 55) Enacted in April 1979 following the recommendations of a gubernatorial Panel on Executive, Legislative and Judicial Compensation. A series of percentage increases was provided: (7% retroactive to October 1, 1978; 7% effective October 1, 1979; and approximately 3.39% effective October 1, 1980), along with establishment of minimum salaries for county-level and full-time city-level judges.
- **1980** (L. 1980, c. 881) Enacted during a special legislative session in the fall of 1980. Two percentage increases were provided: (5% effective January 1, 1981; and 7% effective January 1, 1982).
- **1984** (L. 1984, c. 986) Enacted in December 1984, and provided a 14% increase for Associate judges of the Court of Appeals and 24-27% increases for all other judges effective January 1, 1985.
- **1987** (L. 1987, c. 263) Enacted in the summer of 1987. Provided a 24% increase for Associate judges of the Court of Appeals, a 15.9% increase for Justices of the Supreme Court and 18-21% increases for all other judges effective October 1, 1987.
- **1993** (L. 1993, c. 60) Enacted in April 1993 following the recommendations of a special gubernatorial commission. The increase consisted of an 8.7% raise for Associate judges of the Court of Appeals, a 15.4% increase for City Courts judges and 19-21% increases for all other judges effective in four stages over an 18-month period beginning April 1, 1993.
- **1999** (L. 1998, c. 630) Enacted in December 1998 following the recommendation of a commission appointed by the Chief Judge, and provided a 21% increase for all judges.

APPENDIX D

OCA 2006-73



JONATHAN LIPPMAN
Chief Administrative Judge

State of New York
Unified Court System
Empire State Plaza, 4 ESP, Suite 2001,
Albany, N.Y. 12223-1450, (518) 474-7469

MICHAEL COLODNER
Counsel

IN SUPPORT OF

S.

A.

AN ACT to amend the Judiciary law and the New York city civil court act, in relation to compensation of certain state employees

This measure, introduced at the request of the Chief Judge of the State of New York and the Chief Administrative Judge of the Courts, is of the highest importance for the Judiciary, and its enactment is critical to the continued effective governance of all three branches of government in New York State.

I. GENERAL SUMMARY OF THE MEASURE

New York needs a better method for assuring that judges, legislators and senior Executive Branch officers are appropriately compensated. This method must balance compelling interests in providing levels of pay that fairly reflect modern economic realities *i.e.*, salaries must be adequate to attract able people to government service -with the public's demand for rationality, accountability and transparency in the process of fixing those levels. To these ends, we offer the following proposal:

- pay adjustments for State-paid judges effective 4/1/05 and 4/1/06. These adjustments will: (1) provide pay parity for justices of the Supreme Court (JSCs) with judges of the federal District Courts on those dates (*i.e.*, fixing pay for JSCs at \$162,100 and \$165,200, respectively); (2) fix the pay of county-level judges at a minimum of 95% of JSC pay; and (3) fix the pay of other trial judges at slightly lower proportions of JSC pay. These adjustments also will provide appellate judges with pay levels that maintain their present salary relationships with JSCs.
- a statutory annual cost-of-living adjustment (COLA) for judges, legislators, the Attorney-General, the State Comptroller and commissioners of Executive Branch agencies,¹ beginning 4/1/07.
- establishment of a 13-member temporary State commission on executive, legisla-

¹ This statutory proposal makes no provision for adjustment of the salaries of the Governor and Lieutenant Governor. Under the State Constitution, their compensation is to be fixed by joint resolution of the Legislature and not by statute. *See* NY Const., Art. IV, §§3, 6.

tive and judicial compensation every four years. The first of these commissions, the members of which are to be appointed by the Governor, legislative leaders and Chief Judge, with a majority drawn from the general public, shall determine an initial salary catch-up for legislators, the Attorney-General, the State Comptroller and commissioners of Executive Branch agencies to take effect 1/1/07, subject to prior statutory disapproval. This same commission and its successors also may prescribe annual COLAs for judges, legislators, the Attorney-General, the State Comptroller and commissioners of Executive Branch agencies during the four-year period following its deliberations. Lastly, this commission and its successors shall periodically examine the prevailing adequacy of pay levels for all of these officials and determine whether there is need for general revision of those levels. Any such determination must be approved in statute (or in concurrent resolution, to the extent it affects the Governor and Lieutenant Governor) for it to take effect.

II. PURPOSE OF THE MEASURE

While rarely an easy or welcome task, periodic increase of the salaries of public officials at the highest levels is absolutely necessary to ensure the effective operation of government. The State has limited resources and many competing priorities, and the public is very often suspicious of or uncomfortable with increases in the compensation of public employees -even during the best of times.

But no effective system of government can forever attract and retain qualified and diligent public officers if their compensation falls far behind with no reliable method to fairly adjust compensation levels as economic conditions warrant. It is the purpose of this measure to supply such a method for New York.

An effective and reasonable compensation method should be *objective* so New Yorkers can assess salary levels relative to accurate quantitative measurements of the State's fiscal condition and relevant market for senior-level managers; *transparent* so New Yorkers can be assured that these objective measurements will take place as part of a fair and accountable process insulated from debate on unrelated political or policy matters; and *predictable* so that public officials can reasonably anticipate future compensation levels and be able to plan appropriately for the financial needs of their families. The method also must be *fair*. While the system must gauge salary levels to the State's ability to pay, it also must protect salaries against significant erosion. As with employees in other economic sectors including most public employees in New York - protecting the compensation of New York's highest-ranking public officers against inflation and other such factors is essential to prevent genuine hardship over time, hardship that increasingly discourages recruitment and retention of able individuals for service in these offices.

Regrettably, the method now in place for compensating New York's senior government officials is the very opposite of *objective*, *transparent*, *predictable* and *fair*. In marked contrast to the salaries of most other public employees of the State and those

of most elected and appointed Federal officials, which generally are adjusted on an annual basis, the salaries of senior State officials are not set by objective, nonpartisan procedures but rather by an unpredictable political process. Salary adjustments generally are made only after inordinately long delays and genuine hardship for affected officials and their families, often without the openness and accountability the public rightly expects, and rarely accompanied by any truly objective assessment of where salary levels should be set.

To make matters worse, we have now entered a period in which greater public dissatisfaction with the process has bred a growing unwillingness to address the salary issue at all. The result:

- **AN UNREASONABLY LONG AND SEVERE DROUGHT IN COMPENSATION ADJUSTMENT.** The current drought for all three branches of government has entered its eighth year, with no real promise of an end in sight. Since the most recent salary adjustment (*see* L. 1998, c. 630), the cost of living in New York has jumped by more than 20%, resulting in significant wage erosion for members of the Judiciary and Legislature and senior members of the Executive Branch.
- **THE LONGEST JUDICIAL SALARY ADJUSTMENT DROUGHT IN AMERICA.** For New York's judges, the drought in wage reform is the longest experienced by any state court judges in the nation. All 49 other states have, during the last seven years, raised judicial pay to stem the inflationary erosion that has greatly diminished the value of New York judges' pay.
- **DECLINING JUDICIAL PAY COMPARED TO OTHER STATES.** The nonpartisan National Center for State Courts recently concluded that, owing to this exceedingly long drought in judicial wage reform in New York, during which time the other 49 states have all acted to raise the compensation of their judges, the salaries of New York's judges, when inflation is considered, now rank in the bottom half nationally.
- **DECLINING JUDICIAL PAY COMPARED TO WORKLOAD.** Though New York's judicial salaries have fallen in real value each year, new case filings continue to rise and today exceed 4 million, one of the largest caseloads in the nation.
- **TWENTY YEARS OF HARDSHIP.** The current drought in salary reform in all three branches is causing mounting financial hardship for high government officials and their families, and increasingly discouraging careers in public service. To illustrate: New York judges have received only two raises in 19 years (*see* L. 1998, c. 630; L. 1993, c. 60), while legislators have received only a single raise since 1987 (*see* L. 1998, c. 630). Over the same time, senior Executive Branch officials have not fared much better. It is thus not uncommon for New York's highest officials to serve most of their careers without receiving a single pay raise — a condition that no other class of employee, public or private, is asked to accept. In revealing contrast, New York State government employee salaries over the last two decades have on average increased annually by 3.075% (representing the collectively-bargained pay increase

for each year and not including increments, bonuses or other pay enhancements), a cumulative increase of 73.18%; and since the last pay increase for judges, legislators, and senior Executive Branch officials at the beginning of 1999, State government employee salaries have on average increased annually by 2.61%, a cumulative increase of 19.7%.

- **A LACK OF TRANSPARENCY.** New York’s record of addressing these issues lacks adequate transparency. In the last 26 years, legislators have received only one increase other than during a “lame-duck” session of the Legislature (see L. 1987, c. 263).
- **IMPAIRING STATE MANAGEMENT.** Owing to long-term pay stagnation for officers of all three branches, it is now not uncommon for staff to earn higher salaries than the officers to whom they report.²² while other career staff who rightly deserve raises cannot receive them without exacerbating this salary inversion. The resulting salary compression in all three branches has caused widespread demoralization and undermined the State’s ability to recruit and retain able public servants at the highest levels.
- **IMPAIRING JUDICIAL RECRUITMENT.** It is now not uncommon in New York City for judges with 10 or 20 years of experience to earn less than a newly-graduated lawyer awaiting admission to the bar, and to be the lowest-paid attorney in the courtroom. The financial sacrifices asked of judges, who are severely limited in their sources of outside income, are becoming increasingly difficult to bear and unreasonable to expect.

This woeful record plainly illustrates that New York has reached a crisis point. Only complete reform, motivated by transparency, objectivity, predictability and fairness, can help to change things and usher in an era where salaries at the highest levels of public service are openly, fairly, regularly and responsibly adjusted — and issues of pay can no longer discourage public service or impede effective management of State government.

III. PROVISIONS OF THE MEASURE

Congress and an increasing number of states have shown New York the way out of these difficulties. Recognizing the need to minimize political influence on salary decisions and assure that they are made in the context of a transparent and objective

²² In the Executive Branch — excluding physicians, scientific researchers and professors in the State’s employ — well over 100 employees earn more than their department’s commissioner or top official whose salary is fixed by section 169 of the Executive Law. For instance, dozens of employees of the Department of Correctional Services earn more than the DOCS Commissioner’s \$136,000 statutory salary, and at least 20 Department of Insurance employees earn more than the Superintendent’s \$127,000 statutory salary. These examples of salary compression are merely illustrative: other agencies in which a significant number of employees earn more than the agency head include the Banking Department (18), Civil Service Commission (10), Division of State Police (6), Public Service Commission (11), Department of Transportation (10) and Department of Taxation and Finance (9). At the same time, an increasing number of nonjudicial employees of the courts earn more than experienced judges of the State’s several trial benches.

process, other governments have created systems to provide periodic COLAs that prevent long-term stagnation and its deleterious effects on effective public administration. These methods provide modest adjustments needed to keep pace with economic reality while respecting inherent limits on the public fisc. For instance, salaries for Federal judges and members of Congress increase modestly each year with inflation, subject to legislative power to block a particular increase as economic conditions require.”³ As a result, judges of the U.S. District Court, to whose salaries the Legislature has historically linked New York Supreme Court justices’ salaries, have received modest COLAs in most of the seven years of New York’s current wage adjustment drought. The result is that Federal judicial salaries have kept pace with inflation over the last seven years while state judicial pay has not. Likewise, numerous states now have nonpartisan salary commissions that regularly and transparently account for economic conditions, including inflation and the state’s ability to pay, and thus provide a trusted and reliable method to gauge salaries to economic reality.

These twin policies — transparency and regularity — are well-tested and increasingly used nationwide to bolster confidence in government. New York must adopt these policies as its model for setting salaries for the Judiciary, Legislature and Executive Branch, and end once and for all the cyclical wage struggle in which the State now is mired and which, if left unchecked, threatens to undermine both community faith in our institutions of government and the quality of public service.

Such is the purpose of this measure. It would repeal the current salary system and in its place enact a nonpartisan, objective process both to fix new base salaries and provide adjustments as future economic circumstances require.

A. FIXING INITIAL BASE SALARIES

1. *Salaries of judges.* Reflecting the historical salary linkage between U.S. District Court and New York’s Supreme Court, this measure would restore initial pay parity between those two courts, retroactive to 4/1/05. Thus, Supreme Court salaries would increase to \$162,100 effective 4/1/05 and \$165,200 effective 4/1/06.⁴ This measure also would calibrate pay within the Judicial Branch to establish percentage relationships between salaries of Supreme Court justices and those paid other judges and justices of the Unified Court System. The current percentage relationships between JSCs and New York’s appellate and administrative judges would remain unchanged, while the percentage gaps between JSCs and lower court judges

³ Annual raises for members of Congress and Federal judges are gauged to the Employment Cost Index (ECI), capped at 5% (see PL 107-77 [2001], amending PL 92-92, § 140 [1981]; PL 101-194 [1989] [Ethics Reform Act of 1989]). For both the Legislative and Judicial Branches, the most recent Federal increase was 1.9%, effective 1/1/06 (see PL 109-115, § 405 [2005]).

⁴ District Court salaries went to \$165,200, effective 1/1/06. For fiscal reasons, we postpone this change for State Supreme Court salaries to 4/1/06.

would be narrowed to enhance salary equality among judges exercising substantively equivalent powers.”⁵

2. *Salaries of legislators and senior Executive Branch officials.* To determine appropriate initial salaries for the Legislature and Executive Branch members, including the Attorney-General and Comptroller, this proposal would establish a special commission, with 13 members appointed by the Governor, the legislative leadership and the Chief Judge of the State. A majority of commission members would not be public employees, a significant number would not be lawyers and all would be expected to have some experience in one or more of the areas of human resource management, executive compensation and public finance. By 12/1/06, the commission would recommend new salary levels, which would have the force of law unless abrogated by statute before 1/1/07.⁶

B. PROVIDING PERIODIC ADJUSTMENTS

Commencing 4/1/07 and for each fourth year thereafter, this proposal would provide for a Quadrennial Commission to determine, for each of the four succeeding years, whether judges, legislators and senior Executive Branch officials should receive an annual COLA. The first such Quadrennial Commission would be comprised of the same members that set the initial base pay for the Legislature and Executive Branch in 2006; future Commissions likewise would be comprised of 13 members selected by the Governor, the legislative leadership and the Chief Judge, with a majority being representative of the private sector. All members would be expected to have experience in human resource management, executive compensation and public finance. Within 150 days of its establishment, each Quadrennial Commission would make its recommendations as to COLAs (if any), and such recommendations would have the force of law as of the following April 1 unless sooner modified or abrogated by statute. Each such Commission also could decide that larger structural changes in basic pay levels are in order and propose suitable changes in base pay for all or some of such public officers; but these changes would not have the force of law and would depend upon statutory codification before they could become effective. Upon making its report, each Quadrennial Commission would be dissolved.

⁵ Trial judges would receive the greater of the current percentage relationship or the following percentage relationship between their compensation and the salary of a JSC:

Court of Claims	100%
County Court	.95%
Family Court	.95%
Surrogate's Court	.95%
NYC Criminal and Civil Courts	.93%
District Courts	.93%
City Courts outside NYC (full-time)	.90%
NYC Housing Court	.88.35%

Chief Judges of City Courts and Presidents of Boards of Judges of District Courts would continue to receive the current added percentage of their salaries reflecting their administrative duties. Part-time judges of City Courts would continue to receive a portion of the full-time City Court salary reflecting the allotment authorized by the Legislature.

⁶ As the Constitution requires that the salaries for Governor and Lieutenant Governor be fixed by joint resolution (see NY Const, art IV, §§ 3 [Governor], 6 [Lieutenant Governor]), the Commission's findings as to proper salary levels and all subsequent increases for these officials must be affirmatively adopted by the Legislature by joint resolution of the two Houses.

IV. ANALYSIS

This measure contemplates that the 2006 commission that sets initial salary levels for the Legislature and Executive Branch, and the Quadrennial Commissions that set COLAs would base their findings on objective economic analysis to discern both the proper levels of compensation and the State's ability to fund any increases. Relevant data may include changes in the cost of living in New York, growth of the State Budget, forecasted changes in General Fund revenues, past and projected increases in compensation of other State employees, relevant rates of compensation in New York's private and non-profit sectors, and salary trends in other states and the Federal government. With the benefit of these objective economic indicators, each commission can make a fair projection for salary adjustments, if any, for the next four years.

This measure also includes several safeguards to account for unforeseen economic forces that might make payment of increased compensation more difficult. First, the timing of each Quadrennial Commission determination and the April 1 effectiveness of each COLA increase, if any, are calculated to provide ample opportunity to accommodate such determinations in the State Fiscal Plan for the next year. Second, the Legislature may, by statute, abrogate any year's increase if circumstances warrant. Third, while salary considerations in other states and in the Federal government may be relevant to determining proper compensation levels for New York officials, such determinations are for each Commission to make. This measure thus preserves each commission's discretion to identify and weigh the factors it deems most relevant, assuring its prerogative to decide what is best for New York based on New York criteria, economic and otherwise.

Most importantly, this measure would assure a mechanism -transparent, objective and regular -as divorced as possible from the legislative process that, for more than 20 years, has failed to provide a fair and rational compensation system for New York's public officers. The regularity and transparency of this new process would help foster public trust, just as comparable initiatives have around the nation, and would continue to ensure sound and effective management of all three branches of New York government.

V. SUMMARY OF LEGISLATION

Section 1 sets forth legislative findings relating to the history of the current compensation system and its deleterious effects on government.

Section 2 repeals article 7-B of the Judiciary Law, sets the new initial base pay for justices of the Supreme Court at the U.S. District Court salary levels (*i.e.*, \$162,100 as of 4/1/05, and \$165,200 as of 4/1/06), and sets percentage relationships between JSC pay and the salaries for all other State-paid judges and justices, as described above.

Section 3 amends section 110(f) of the New York City Civil Court Act to set the base pay of New York City Housing judges at 95% of the salary of a judge of the New York City Civil Court (*i.e.*, 88.35% of JSC salary).

Section 4 establishes the special commission to determine proper initial base pay for members of the Legislature and specified members of the Executive Branch, as described above, directs the special commission to issue its report by 12/1/06 and provides that such recommendations as pertain to the Legislature, Comptroller, Attorney General and officers subject to section 169 of the Executive Law shall have force of law as of 1/1/07 (or, for officers of the Executive Branch, such earlier date as the commission may direct) unless sooner abrogated by statute.

Section 5 establishes a Quadrennial Commission for each fourth year commencing in 2007; directs that the first Quadrennial Commission (established for 2007) shall consist of the members of the 2006 special commission established under section 4 hereunder; sets forth each Commission's duty to determine whether and how to calculate COLAs for the next four years (and, if appropriate, whether also to propose changes in base pay); directs each Commission to convene on April 1 and report within 150 days; provides that each such Commission thereafter shall be deemed dissolved; and provides that recommendations as to COLAs shall take effect the following April 1 unless sooner modified or abrogated by statute.

Section 6 provides that salaries of affected officers shall be increased each April 1 by the same percentage by which the salary of a justice of the Supreme Court was increased, or if the Quadrennial Commission has made alternative recommendations, by such amount as such Commission provided, or by no amount if the Commission so specified; and directs that the Legislature may, prior to each April 1, abrogate or modify any such increase by statute.

Section 7 makes technical clarifications relating to the payroll period in which each compensation adjustment hereunder shall take effect.

Section 8 provides that annual compensation adjusted hereunder shall be rounded up to the nearest multiple of \$100.

Section 9 provides that this act shall take effect 4/1/05.

Legislative History: None. New proposal.

OCA 2006-73

9/12/06

AN ACT to amend the Judiciary law and the New York city civil court act, in relation to compensation of certain state employees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings and intent. The legislature hereby declares that the strong public interest in recruiting and retaining qualified persons to serve as judges, legislators and heads of executive branch agencies in New York is best served by establishing a compensation system for such officials that is fair, objective, transparent and predictable. Such a system will attract able people to government service, minimize attrition from such service, foreclose disproportionate salary relationships between supervisors and those supervised, promote greater community faith in public servants, and insure a fair balance between the levels of compensation paid government officials and the community's ability to fund such compensation.

Over the past 20 years, the state has failed to provide such a compensation system, with the result that there has been dramatic erosion in the real value of compensation paid its highest-ranking public servants. In this time: judges of major trial and appellate courts have received only two salary adjustments; members of the legislature have received only a single adjustment; and senior members of the executive branch have likewise received comparably few salary adjustments. In this same time, the cost of living has risen markedly.

While it is proper to ask public servants to make certain sacrifices, among them the sacrifice of possibly greater levels of compensation in private sector employment, the legislature finds that the state's pattern of infrequent and unpredictable adjustment of legislative, executive and judicial salaries has produced a situation that is deeply unfair to affected public officials and their families. Even more importantly, the legislature recognizes that, if no remedy is forthcoming, the continued viability of our institutions of government will soon be seriously threatened.

The legislature finds that the federal government and an increasing number of state governments across the nation, recognizing a need to compensate their own public officers in a manner that is transparent and fair, have established mechanisms to provide predictable adjustments in compensation consistent with living costs, public expectations and government's ability to fund such adjustments. The legislature finds that these mechanisms have increased public confidence in government by removing compensation decisions from the relative unpredictability of the political process, assuring use of objective economic data to set public salaries and preventing erosion of real compensation that impairs public service. Based on these findings, the legislature declares its intent to adopt such a transparent, objective and predictable mechanism for determining the compensation of high-ranking public officials in New York state.

§2. Sections 221, 221-a, 221-b, 221-bb, 221-c, 221-d, 221-e, 221-f, 221-g, 221-h, 221-i and 223 of the Judiciary law are REPEALED and a new section 221 is added to read as follows:

§221. Annual salaries of state-paid judges and justices of the unified court system.
(a) Each state-paid judge and justice of the unfiied court system shall receive the annu-
al salary prescribed for his or her office on a schedule to be promulgated by the chief
administrator of the courts in accordance with law.

(b) State-paid judges and justices shall receive annual salaries as follows:

1. (i) A justice of the supreme court shall receive an annual salary of one hundred
sixty-two thousand, one hundred dollars, effective April first, two thousand five; and
an annual salary of one hundred sixty-five thousand, two hundred dollars, effective
April first, two thousand six.

(ii) Except as otherwise provided by law, effective on the first day of April in each
year commencing in the year two thousand seven, if the annual salary of a judge of the
United States district court was increased within the preceding twelve months, the
annual salary of a justice of the supreme court shall be increased by adding thereto a
percentage thereof equaling the percentage by which the salary of a judge of the
United States district court was increased in such twelve-month period.

2. The following judges and justices shall receive an annual salary equaling that of
a justice of the supreme court plus a percentage thereof as set forth herein:

(i) chief judge of the court of appeals, fourteen and twelve one hundredths percent;

(ii) associate judges of the court of appeals, ten and sixty-one one hundredths per-
cent;

(iii) presiding justices of the appellate division, seven and ninety-seven one hun-
dredths percent;

(iv) associate justices of the appellate division, the presiding judge of the court of
claims and judges who are designated deputy chief administrative judges, five and thir-
ty-four one hundredths percent;

(v) presiding justices of the appellate term, judges who are designated deputy or
assistant administrative judges within the city of New York and judges and justices
who are designated administrative judges for a judicial district or county outside the
city of New York, three and fifty-one one hundredths percent;

(vi) associate justices of the appellate term, two and nineteen one hundredths per-
cent; and

(vii) judges of the court of claims, no additional percentage.

3. The following judges shall receive an annual salary equaling a percentage of that
of a justice of the supreme court, as set forth herein:

(i) judges of the county court, judges of the family court and judges of the surrogate's court, ninety-five percent;

(ii) judges of the New York city civil court, judges of the New York city criminal court and judges of the district court, ninety-three percent; and

(iii) judges of a city court outside the city of New York who are not permitted to practice law, ninety percent.

Notwithstanding the other provisions of this paragraph, any judge specified in subparagraph (i) hereof, in an office that on March thirty-first, two thousand five was paid an annual salary that was more than ninety-five percent of the annual salary paid a justice of the supreme court on such date, shall receive an annual salary equaling an amount bearing the same proportion to the salary of a justice of the supreme court as the annual salary of his or her office bore to the salary of a justice of the supreme court on March thirty-first, two thousand five. In the event a new judgeship is established for a county court, family court or surrogate's court on a date after March thirty-first, two thousand five, the annual salary for such office shall equal the annual salary for each other judgeship already established for such court on such date.

4. (i) Each judge of a city court outside the city of New York who is permitted to practice law shall receive an annual salary equaling an amount bearing the same proportion to the salary of the lowest-paid judge of a city court who is not permitted to practice law as the salary of his or her office on March thirty-first, two thousand five bore to the salary of such lowest-paid judge on such day.

(ii) In the event a new judgeship is established for a city court outside the city of New York on a date after March thirty-first, two thousand five, and the person who holds such office is permitted to practice law, the annual salary for such office on the date of its establishment shall be as provided by the legislature. Thereafter the annual salary of such office shall be as provided in subparagraph (i) of this paragraph except that, for purposes of such subparagraph (i), the date on which such office was established shall be substituted for the date specified therein.

5. Notwithstanding any other provision of this section, the annual salaries of each of the following judges, as specified in paragraph three of this subdivision, shall be increased by the amounts herein set forth:

(i) each chief judge of a city court outside the city of New York who is not permitted to practice law, an amount equal to one and five one hundredths percent of his or her annual salary as provided by law; and

(ii) each president of the board of judges of a district court, an amount equal to three and forty-two one hundredths percent of his or her annual salary as provided by law.

§3. Subdivision (f) of section 110 of the New York city civil court act, as amended by chapter 324 of the laws of 2001, is amended to read as follows:

(f) The housing judges shall be appointed by the administrative judge from a list of persons selected annually as qualified by training, experience, judicial temperament and knowledge of federal, state and local housing laws and programs by the advisory council for the housing part. The annual salary of a housing judge shall [be one hundred fifteen thousand four hundred dollars] equal an amount representing ninety-five percent of the annual salary of a judge of the New York city civil court.

§4. (a) The legislature recognizes that it has been nearly a decade since the annual salaries of high-ranking executive branch officials and members of the legislature last were adjusted. This section is for the purpose of permitting representatives of government and the community with experience in matters involving executive compensation, human resource administration and financial management to determine such adjustments as may be appropriate to insure that the compensation paid these public officials is adequate to continue attracting able individuals to such service while respecting the state's limited resources.

(b) There shall be established a special commission on executive and legislative compensation to examine, evaluate and make recommendations with respect to the level of compensation for the governor, lieutenant governor, attorney-general, comptroller and those state officers referred to in section one hundred sixty-nine of the executive law, effective April first, two thousand five; and for members of the legislature, effective January first, two thousand seven.

(c) In discharging its responsibilities under subdivision (b), the commission shall take into account all appropriate factors including, but not limited to: the overall economic climate; inflation and changes in public sector spending since January first, nineteen hundred ninety-nine; the levels of compensation received by legislators and other high-ranking government officials of other states and of the federal government; the levels of compensation received by professionals in government, academia and private and nonprofit enterprise; and the state's ability to fund increases in compensation.

(d) The commission shall consist of thirteen members to be appointed as follows: four shall be appointed by the governor; two shall be appointed by the temporary president of the senate; one shall be appointed by the minority leader of the senate; two shall be appointed by the speaker of the assembly; one shall be appointed by the minority leader of the assembly; and three shall be appointed by the chief judge of the state. Of the members appointed by an official hereunder, where such official has more than one such appointment, at least one-half (at least a majority, in the case of the governor) shall not be employees of the state or any political subdivision thereof, and at least one-half shall not be members of the bar of the state. The governor shall designate the chair from among the members so appointed. Vacancies in the commission shall be filled in the same manner as an original appointment. To the extent practicable, members of the commission shall have experience in one or more of the follow-

ing: determination of executive compensation, human resource administration and financial management.

(e) The commission may meet within and without the state, may hold public hearings and shall have all the powers of a legislative committee pursuant to the legislative law.

(f) The members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder.

(g) No member of the commission shall be disqualified from holding any other public office or employment, nor shall he or she forfeit any such office or employment by reason of his or her appointment hereunder, notwithstanding the provisions of any general, special or local law, regulation, ordinance or city charter.

(h) To the maximum extent feasible, the commission shall be entitled to request and receive and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission, agency or public authority of the state or any political subdivision thereof as it may reasonably request to carry out properly its powers and duties hereunder.

(i) The commission may employ and at its pleasure remove such personnel as it may deem necessary for the performance of its functions and fix compensation within amounts made available therefor by budgetary appropriation.

(j) The commission shall make a report to the governor, the legislature and the chief judge of the state of its findings, conclusions and recommendations as to levels of compensation for the governor, lieutenant governor, attorney-general, comptroller, those state officers referred to in section one hundred sixty-nine of the executive law and members of the legislature not later than December first, two thousand six. Effective on the first day of January next thereafter, the levels of compensation recommended by the commission, except those applying to the governor and lieutenant governor, shall have the force of law and shall supersede inconsistent provisions of subdivision one of section forty, section sixty and paragraph (a) of subdivision two of section one hundred sixty-nine of the executive law and subdivision one of section five of the legislative law unless sooner modified or abrogated by statute; except that, if the commission recommends one or more retroactive salary adjustments, to a date or dates not prior to April first, two thousand five, such increase or increases shall be given effect as of the date or dates specified by the commission.

(k) Upon the making of its report as provided in subdivision (j) of this section, the commission established hereunder shall be deemed dissolved.

§5. (a) Effective on the first day of April of every fourth year, commencing April first, two thousand seven, there shall be established for such year a commission on executive, legislative and judicial compensation to examine, evaluate and make recom-

mendations with respect to adequate levels of compensation for the governor, lieutenant governor, attorney-general, comptroller, those state officers referred to in section one hundred sixty-nine of the executive law, members of the legislature and judges and justices of the state-paid courts of the unified court system. In accordance with the provisions of this section, the commission shall:

(i) examine the prevailing adequacy of pay levels received by the governor, lieutenant governor, attorney general, comptroller, those state officers referred to in section one hundred sixty-nine of the executive law, members of the legislature and judges and justices of the state-paid courts of the unified court system and determine whether any of such pay levels requires adjustment; and

(ii) determine whether the formula for annual salary adjustment set forth in subparagraph (ii) of paragraph one of subdivision (b) of section two hundred twenty-one of the Judiciary law requires adjustment.

In discharging its responsibilities under paragraphs (i) and (ii) hereof, 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; the levels of compensation received by judges and legislators of other states and of the federal government; the levels of compensation received by professionals in government, academia and private and nonprofit enterprise; and the state's ability to fund increases in compensation.

(b) (1) The commission shall consist of thirteen members to be appointed as follows: four shall be appointed by the governor; two shall be appointed by the temporary president of the senate; one shall be appointed by the minority leader of the senate; two shall be appointed by the speaker of the assembly; one shall be appointed by the minority leader of the assembly; and three shall be appointed by the chief judge of the state. Of the members appointed by an official hereunder, where such official has more than one such appointment, at least one-half (at least a majority, in the case of the governor) shall not be employees of the state or any political subdivision thereof, and at least one-half shall not be members of the bar of the state. The governor shall designate the chair from among the members so appointed. Vacancies in the commission shall be filled in the same manner as an original appointment. To the extent practicable, members of the commission shall have experience in one or more of the following: determination of executive compensation, human resource administration and financial management.

(2) Notwithstanding the provisions of paragraph one of this subdivision, the commission established in the year two thousand seven shall consist of the members of the commission established by section four of this act as of the date of the dissolution thereof. Any vacancy on the commission on such date of dissolution shall be filled by the appointing authority responsible for the original appointment under subdivision (d) of section four of this act.

(c) The commission may meet within and without the state, may hold public hearings and shall have all the powers of a legislative committee pursuant to the legislative law.

(d) The members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder.

(e) No member of the commission shall be disqualified from holding any other public office or employment, nor shall he or she forfeit any such office or employment by reason of his or her appointment hereunder, notwithstanding the provisions of any general, special or local law, regulation, ordinance or city charter.

(f) To the maximum extent feasible, the commission shall be entitled to request and receive and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission, agency or public authority of the state or any political subdivision thereof as it may reasonably request to carry out properly its powers and duties hereunder.

(g) The commission may employ and at its pleasure remove such personnel as it may deem necessary for the performance of its functions and fix compensation within amounts made available therefor by budgetary appropriation.

(h) The commission shall make a report to the governor, the legislature and the chief judge of the state of its findings, conclusions and recommendations, if any, not later than one hundred fifty days after its establishment. Each recommendation made to implement a determination pursuant to paragraph (ii) of subdivision (a) of this section shall have the force of law, and shall supersede inconsistent provisions of subparagraph (ii) of paragraph one of subdivision (b) of section 221 of the Judiciary law, unless modified or abrogated by statute prior to April first of the year as to which such determination applies.

(i) Upon the making of its report as provided in subdivision (h) of this section, each commission established hereunder shall be deemed dissolved.

§6. Effective on the first day of April in each year commencing in the year two thousand seven, the annual salaries of the attorney-general, comptroller, those state officers referred to in section one hundred sixty-nine of the executive law and members of the legislature shall each be increased by adding thereto a percentage thereof equaling the percentage, if any, by which the salary of a justice of the supreme court is increased on such date. Provided, however:

(a) a commission established by section five of this act may determine that, as to officers of the executive branch of government specified herein taken as a group or as to members of the legislature, or both, some lesser increase in annual salary, or no increase at all, is in order. In such event, the determination of the commission shall be given effect as to the affected officers or members of the legislature; and

(b) no increase in annual salary prescribed by this section shall take effect if modified or abrogated by statute prior to the date on which such increase is scheduled to take effect.

§7. Date of entitlement to salary increase. Notwithstanding the provisions of this act or of any other law, each increase in salary or compensation of any officer or employee provided by this act shall be added to the salary or compensation of such officer or employee at the beginning of that payroll period the first day of which is nearest to the effective date of such increase as provided in this act, or at the beginning of the earlier of two payroll periods the first days of which are nearest but equally near to the effective date of such increase as provided in this act; provided, however, the payment of such salary increase pursuant to this section on a date prior thereto instead of on such effective date, shall not operate to confer any additional salary rights or benefits on such officer or employee.

§8. The annual salaries as prescribed hereunder for the comptroller, the attorney-general, officers holding positions indicated in subdivision one of section 169 of the executive law, state-paid judges and justices of the unified court system and members of the legislature shall be adjusted by rounding them up to the nearest multiple of one hundred dollars.

§9. This act shall take effect April 1, 2005.



WILLIAMSBURG, VA

300 Newport Avenue
Williamsburg, VA 23185-4147

DENVER, CO

707 17th Street, Suite 2900
Denver, CO 80202-3429

ARLINGTON, VA

2425 Wilson Blvd., Suite 350
Arlington, VA 22201

WASHINGTON, DC

111 2nd Street, NE
Washington, DC 20002-7303

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