

**TESTIMONY SUBMITTED TO
THE SPECIAL COMMISSION ON JUDICIAL COMPENSATION
JULY 20, 2011**

I, Zachary W. Carter, in my capacity as Chairman of the Mayor's Advisory Committee on the Judiciary for the City of New York (the "Mayor's Committee"), respectfully submit this testimony in aid of this Special Commission's consideration of an appropriate increase in judicial compensation for judges appointed and elected to serve the courts of the State of New York..

The Mayor's Committee recruits, evaluates and nominates candidates for judicial appointments and reappointments by the Mayor of the City of New York to the Criminal Court, Family Court and Civil Court of the City of New York.¹ These Courts are among the busiest in the State: collectively they include over twenty percent of the judges in the State judicial system, and represent over forty percent of the new cases filed annually in the trial

¹ Judges of the New York City Criminal Court and Family Court are appointed by the Mayor to 10-year terms. New York Const. Art. VI, § 13(a), 15(a). Judges of the New York City Civil Court are elected to 10-year terms; however, vacancies occurring otherwise than by expiration of a term are filled by Mayoral appointment. New York Const. Art. VI, § 15(a); Civil Court Act § 102-a(3). Pursuant to Section 4(a) of Executive Order 8 of the Mayor of the City of New York, dated March 4, 2008, the Mayor may not appoint a Judge unless nominated by the Committee, and may not reappoint an incumbent Judge unless recommended for reappointment by the Committee. Under Mayor Bloomberg's Administration, the Committee has nominated or recommended for appointment approximately 100 Judges to the Criminal Court; 35 Judges to the Family Court, and 34 Judges to the Civil Court.

Courts of the Unified Court System.² The judges of these courts render decisions of extraordinary consequence both to the interested parties and to the general public. Judges of the Criminal Court decide issues of pretrial release, evidentiary sufficiency, sentencing and the protection of victims and witnesses, while judges of the Family Court determine matters affecting child custody, the disposition of neglect and abuse allegations and the adjudication of juvenile offenses, all of which require the highest degree of legal acumen, experience and practiced judgment.³

An obvious source of judicial candidates “highly qualified” for appointment to the Criminal and Family Courts are attorneys who have enjoyed distinguished careers with the agency, government and institutional law offices that practice before those courts. Quite often the careers of these attorneys have been marked by promotions to supervisory, administrative and executive positions within those organizations. However, the experience of the Committee suggests that the dramatic gap between judicial salaries and the compensation paid to senior agency and government attorneys often presents an untenable choice for highly qualified practitioners, notwithstanding their demonstrably strong commitment to public service, because of competing obligations to their dependent families. This compensation disparity is the indisputable product of the

² Figures based on New York State Unified Court System Filings in the Trial Courts from 1998 through 2008, and New York State Judicial System: Authorized Number of Judges, December 31, 2006 (excluding Town and Village Justice Courts), in *New York State Unified Court System 29th Annual Report of the Chief Administrator* (2006).

³ With rare exceptions, judges appointed to the Civil Court by the Mayor are assigned to either the Criminal or Family Court.

Legislature’s “linkage” of judicial compensation adjustments to Legislative pay raises and the Legislature’s consequent failure to enact cost-of-living adjustments in judicial salaries over the past decade. During that period, the salaries of judges of the Unified Court System – including judges of the New York City Civil, Family and Criminal Courts – have decreased by approximately thirty percent relative to the cost of living. Based solely on the national rate of inflation, it is estimated that the real value of judicial salaries has declined by approximately thirty percent. Moreover, the disparity between current judicial salaries and the salaries paid to supervisors, managers and executives at public law offices engaged in practice before the Criminal and Family Courts has become dramatic. The pursuit of a judicial career – often an occasion for some reasonable level of financial sacrifice – has become for some a practical impossibility. Current judicial salaries do not permit many talented, experienced attorneys to maintain a standard living – a decent home, educational opportunities for their children and the prospect of a comfortable retirement – that the general public would expect and not begrudge.⁴

Since 1999, when State judges last received a cost of living salary adjustment, Judges’ salaries in the State have strayed far from those traditional guidelines. In 1999, New York was first among States nationally

⁴ The inflation adjusted salaries of judges of the New York City Civil Court, Criminal Court and Family Court may have decreased to an even greater degree than thirty percent, because these Judges must live in the City of New York. *See* New York Const. Art. IV, § 13(a) and 15(a). As the New York City Comptroller noted in 2006, “[s]ince October, 2001, consumer prices in the NYC metro area have increased about 30 percent faster than the national average. Except for medication and private transportation, prices in our region have increased more rapidly across the board, with the CPI for food consumed at home rising 40 percent faster than the national average. [T]he biggest factor behind New York’s relative cost-of-living increase has been housing, the cost of which has grown by 22 percent since late 2001 . . .” *See* Economic Notes, v. XIC, n. 2 (Office of the New York City Comptroller, June 2006).

in nominal judicial compensation, and approximately 12th in real judicial compensation.⁵ Moreover, at that time New York judges' pay was commensurate with the compensation levels of Federal District Court Judges and attorneys in senior attorney leadership positions in the public sector. Today, however, not only have State judicial salaries declined by approximately thirty percent relative to the cost of living, but they have fallen well behind the salaries of (1) judges in other States, (2) Federal District Court judges, and (3) attorney positions in the State which the compensation of State judges previously equaled or exceeded. Specifically:

- Over the past 10 years, the judges of other states generally have had their salaries adjusted with inflation. *See* NCSC Report, at R-399-400. As a result, today, the salary of New York's Judges has fallen to 12th among States in nominal terms, and 48th in real terms. *See id.* at R-399. "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." *See id.* at R-413.

⁵ Nominal salary data for 1999 is from *Survey of Judicial Salaries*, National Center for State Courts (NCSC) (Fall 1999). Real salary data for 1999 was computed from that nominal data on the basis of a nominal-to-real salary conversion formula set forth in the NCSC's October, 2002 *Survey of Judicial Salaries*, the earliest NCSC publication that could be located containing that formula.

- New York State judges today earn almost \$30,000 less than District Court Judges in New York. *See* NCSC Report, at R-400.
- A wide array of State-funded attorney positions that, in 1999, paid far less than State judicial positions, today pay far more than State Judicial positions.⁶ In fact, New York judges today earn less than many of the non-judicial employees who work for them. *See* NCSC Report, at R-400.
- New York Judges earn significantly less today than many attorneys serving in the non-profit sector in the State, such as the general counsel of the City University of New York (*see* NCSC Report, at R-392) and the deans of New York's two public law schools (*see id.* at R-401).

⁶ Such positions include Consulting Clerk, Court of Appeals; Deputy Counsel, Department of Correctional Services; Deputy Commissioner and Counsel, Department of Tax and Finance; Counsel, New York State Police; Counsel, Office of Temporary and Disability Assistance; Assistant Attorney General, Office of the Attorney General; Special Assistant Attorney General, Medicaid Fraud Control Unit, Office of the Attorney General; Deputy Attorney General, Medicaid Fraud Control Unit, Office of the Attorney General; Counsel, Governor's Office of Regulatory Reform; Counsel, Office of Child and Family Services; Capital Defender, Capitol Defender Office; Special Counsel, Department of Civil Service; Deputy Commissioner and Counsel, Office of General Services; Assistant Counsel, Office of the State Comptroller; Assistant Deputy Counsel, Office of the State Comptroller; Associate Counsel, Office of the State Comptroller; Counsel, State Department of Health; Assistant Counsel, State Department of Health; and Counsel, Department of Agriculture and Markets. *See* Reply Aff. of Thomas E. Bezanson, Ex. 1-2, at R-579-591.

- Despite the recent downturn in law firm salaries, New York judges earn less than first year associates at many law firms, who typically have not yet been admitted to the Bar. *See* NCSC Report, at R-402.

The Mayor's Committee's data confirms these State-wide trends. The salary for judges at the New York City Criminal Court and Civil Court is \$125,600. The salary for judges at the New York City Family Court is \$136,700. These salary levels have remained unchanged since 1999. In recruiting judges for these Courts from the public sector, the Committee traditionally solicits applications from senior attorneys at such offices as the District Attorneys Offices for Manhattan, Queens and Kings Counties; the Legal Aid Society, and the New York Corporation Counsel. Historically, the salaries of State judges have been commensurate with the salaries of the most senior attorneys at these offices, thus facilitating recruitment of Judges from the senior ranks of those offices. Today, however, the salaries of judges of the New York City Civil Court, Criminal Court or Family Court before whom these attorneys appear are from \$64,400 to \$81,400 less than the salaries of the highest level supervisory positions at those offices; are tens of thousands of dollars less than the salaries of mid-level supervising attorneys at those offices; and are on par with or barely exceed the salaries

of junior supervisory attorneys at those offices.⁷ As a result, it is no surprise that the Mayor's Committee has encountered unprecedented difficulties in recruiting attorneys for judicial positions from the senior ranks of these offices. Attached as Appendix A to my testimony is a schedule of salaries of senior attorneys employed by the various institutional law offices, including the Legal Aid Society, the Corporation Counsel's Office and the various District Attorneys' Offices within New York City, which graphically present the challenge of recruiting senior attorneys from their ranks.

The citizens of the City of New York deserve judges drawn from the broadest possible pool of talent, certainly one that includes the most experienced and accomplished lawyers employed by the institutional law offices that practice before the City's Criminal and Family Courts.

Thank you for the opportunity to be heard in this important matter.

⁷ The salaries for supervisory attorneys at the New York Corporation Counsel range from \$118,951 to \$205,180; at the District Attorneys Offices in New York City range from approximately \$100,000 to \$190,000; and at the Legal Aid Society range from \$173,000 to \$207,000. More detailed salary data for these offices is set forth in Appendix A.

APPENDIX A*

SALARIES FOR OFFICE OF CORPORATE COUNSEL

<u>Position</u>	<u>Salary</u>	<u>Comparison to Salary Of Civil Court Judge (\$125,600)</u>
Corporate Counsel	\$205,180	+ \$79,580
Executive	\$190,953	+ \$65,353
Division Chief	\$158,776	+ \$33,176
Deputy Chief	\$138,539	+ \$12,939
Borough Chief	\$129,295	+ \$3,695
Deputy Borough Chief	\$118,951	- \$6,649

* Salary information was provided by each respective office in November, 2009.

SALARIES FOR OFFICE OF
NEW YORK COUNTY DISTRICT ATTORNEY

<u>Position</u>	<u>Salary</u>	<u>Comparison to Salary Of Criminal Court Judge (\$125,600)</u>
District Attorney	\$190,000	+ \$64,400
Senior staff positions including Special Narcotics Prosecutor; Chief Assistant District Attorney; Chief of Trial Division; Counsel to District Attorney; Chief of Investigations Division, and Executive Assistant District Attorney	Highest salary among such positions: \$185,000 Lowest salary among such positions: \$175,000	Highest salary among such positions: + \$59,400 Lowest salary among such positions: + \$49,400
Bureau Chiefs	High: \$179,500 Low: \$125,000	High: + \$53,900 Low: - \$600
Unit Chiefs	High: \$173,000 Low: \$106,500	High: \$47,400 Low: - \$19,100
Deputy Bureau Chiefs	High: \$157,250 Low: \$89,000	High: \$31,650 Low: - \$36,600
Deputy Unit Chiefs	High: \$114,500 Low: \$91,500	High: - \$11,100 Low: - \$34,100

SALARIES FOR OFFICE OF QUEENS COUNTY DISTRICT
ATTORNEY

<u>Position</u>	<u>Salary</u>	<u>Comparison to Salary Of Criminal Court Judge (\$125,600)</u>
District Attorney	\$190,000	+ \$64,400
Senior staff positions including Chief Assistant District Attorney; Executive Assistant District Attorney; Deputy Executive Assistant District Attorney, and Bureau Chief	Highest salary among such positions: \$189,280 Lowest salary among such positions: \$157,914	Highest salary among such positions: + \$63,680 Lowest salary among such positions: + \$32,314
Deputy Chiefs	High: \$141,641 Low: \$132,496	High: + \$16,041 Low: + \$6,896
Unit Chiefs and Supervisory Assistant District Attorneys	High: \$132,153 Low: \$105,144	High: + \$6,553 Low: - \$20,456
Senior Assistant District Attorneys	High: \$131,955 Low: \$97,864	High: + \$6,355 Low: - \$27,736

SALARIES FOR OFFICE OF KINGS COUNTY DISTRICT ATTORNEY

<u>Position</u>	<u>Salary</u>	<u>Comparison to Salary Of Criminal Court Judge (\$125,600)</u>
District Attorney	\$190,000	+ \$64,400
Top management positions including Chief Assistant; First Assistant; Counsel to the District Attorney; Chief of the Rackets Division, and Confidential Assistant	High: \$184,800 Low: \$180,600	High: + \$59,200 Low: + \$55,000
Deputy District Attorney	\$158,900 (average salary for this position)	+ \$33,300
Chief	\$150,250 (average salary for this position)	+ \$24,650
Executive Assistant District Attorney	\$143,900 (average salary for this position)	+ \$18,300
Unit Chief	\$109,500 (average salary for this position)	- \$16,100
First Deputy Bureau Chief	\$108,360 (average salary for this position)	- \$17,240

SALARIES FOR OFFICE OF KINGS COUNTY
DISTRICT ATTORNEY, CONTINUED

<u>Position</u>	<u>Salary</u>	<u>Comparison to Salary Of Criminal Court Judge (\$125,600)</u>
Counsel	\$107,150 (average salary for this position)	- \$18,450
Deputy Bureau Chief	\$106,770 (average salary for this position)	- \$18,830

SALARIES FOR LEGAL AID SOCIETY OF NEW YORK

<u>Position</u>	<u>Salary</u>	<u>Comparison to Salary Of Criminal Court Judge (\$125,600)</u>
Salaries of senior managerial staff	High: \$207,000	High: \$81,400
	Low: \$173,000	Low: \$47,400