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July 19, 2011

Special Commission on Judicial Compensation
PO Box 73401
Albany, NY 12224

Dear Members of the Commission:

It was my honor and privilege to serve as a New York State Supreme Court Justice from January 1, 2001 to February 4, 2008. I left the bench on that date because I found the level of compensation to be inadequate and inappropriate, and because I was tired of being a pawn in political maneuvering of the Albany political culture. I am enclosing a copy of my letter of resignation to Governor Spitzer.

I had practiced law, doing trial work, from 1976 through 2000. At the time I took the bench, I was a Fellow of the American College of Trial Lawyers, was a Board Certified Civil Trial Attorney, and held a Martindale-Hubbell (AV) rating. I also had served as Majority Leader of the Oneida County Board of Legislators.

As a practicing lawyer, I held the New York State Supreme Court in high esteem – that is a major reason why I sought election to become a Justice.

During my seven years on the bench and now having recommenced practicing law, I continue to hold the New York State Supreme Court bench in high esteem. However, the failure to provide New York State Judges with cost of living increases has had a corrosive effect on the morale and independence of our judiciary. The reasons, simply stated, are:

- 1) The Albany leadership has reduced the Office of Court Administration and its Judges to supplicants, thereby eroding the separation of powers, and undercutting perception, if not the reality of judicial independence.

2) The Albany leadership has wrongly linked the compensation of the Governor and the Legislature of the Governor and the Legislature to the Judges. The linkage violates separation of powers and is a factually dishonest comparison. Governors leave office and prosper. The job of Governor is not a career in which longevity is constitutionally sanctioned – it carries a four-year term unlike the State Supreme Court Justices who are given a fourteen year term to enhance their longevity in office and independence. The Legislature is part-time and entitled to work beyond its duties. Judges are prohibited from outside employment.

3) An unfortunate number of policymakers suggest that the job of Judge is easy and that Judges do not work hard. The job of Judge is not easy and Judges do work hard. The business of deciding disputes between parties is physically and emotionally taxing. It requires wisdom, fairness, and restraint. Moreover, the New York State Supreme Court caseloads are staggering. It is a confining existence. A Judge loses his/her First Amendment Rights and his/her freedom of association. Broad constraints are placed on a Judge's investments and outside interests. Unlike the legislative and executive branch, the Judiciary has a conduct commission to adjudicate its actions.

4) It is stressful to not be able to pay your bills or to achieve fiscal stability to reduce your family's standard of living. Cost of living increases are designed to eliminate that stress. As a matter of policy, the Executive and Legislative branches have provoked that stress on the Judiciary for twelve years.

I would like to briefly deal with two other important issues relevant to your deliberations:

1) No one has measured the cost to the public associated with judicial compensation. The voter is entitled to have a bench that is well educated, experienced and diverse. Diversity should include not just race, gender, etc., but also diversity in background. I know anecdotally that a number of competent, well trained, experienced, private practitioners have opted not to seek the bench because of pay. If you doubt this, survey members of the American College of Trial Lawyers, the members of ABOTA, the New York AV-rated lawyers, and the Board Certified Trial Lawyers. Ask them two simple questions: 1) Have they considered seeking the bench? I assert most will answer, yes. And, 2) ask why they have not, and I assert most will cite judicial compensation as a major factor, if not the major factor in choosing to not seek the bench. My good faith representation to this panel is based on my many discussions with lawyers.

2) It is not easy to leave the bench and recommence practicing law. Even if one associates with a law firm, billing and fee cycles are such that it takes two to four

years to fully reach economic stride. Therefore, most members of the bench are virtual captives to the political maneuvering of the New York State government.

For the two reasons set forth above, you need to establish a rate of compensation that will encourage the private bar to seek the judiciary and free the existing judiciary from its economic captivity. The artificial cap should not be the Governor's salary. An honest computation of cost of living to date and going forward through 2015, when the next review will occur, is the fair and proper methodology. If you do this, I believe you will encourage more highly credentialed private practitioners to serve on the New York State bench.

Both the English and the Canadian governments have dealt with the issue of judicial compensation in an even-handed and far less political manner than the U.S. Federal Government and the New York State government. You should examine the level of compensation of English and Canadian Judges. Indeed I do not believe in recent history any democratic government has been more political in dealing with judicial compensation than the New York State government. Judicial impartiality and respect for our Judicial system is essential to the maintenance and preservation of democracy. Judicial compensation is a crucial underpinning.

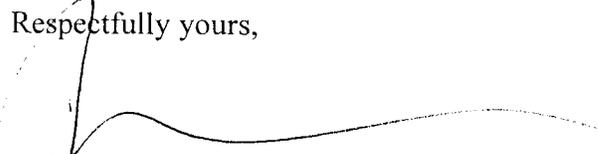
The words of the English Lord Justice Sir Igor Judge are applicable to your deliberations:

The principle of judicial independence benefits the judge sitting in judgment. The judge does what he or she believes to be right, according to law, undistracted and uninhibited. But the overwhelming beneficiary of the principle is the community. If the judge is subjected to any pressure, his judgment is flawed, and justice is tarnished. When judges speak out in defence of the principle, they are not seeking to uphold some minor piece of flummery or privilege, which goes with their office. They are speaking out in defence of our community's entitlement to have its disputes, particularly those with the government of the day, and the institutions of the community, heard and decided by a judge who is independent of them all... Among our tasks we have to ensure that the rule of law applies to everyone equally, not only when the consequences of the decision will be greeted with acclaim, but also, and not one jot less so, indeed, even more so, when the decision will be greeted with intense public hostility.

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Preserve judicial independence. Pay our judges properly.

Respectfully yours,



Robert F. Julian

Enclosure

cc: Honorable Phillip R. Rumsey
Justice of the Supreme Court
46 Greenbush St., Suite 301
Cortland, NY 13045--2725

December 13, 2007

Honorable Eliot L. Spitzer
The Governor
Executive Chamber
State Capitol
Albany, NY 12224

Dear Governor Spitzer:

Please be advised that I will resign the office of New York State Supreme Court Justice by the end of January 2008. I am giving early notice so that a replacement can be screened and appointed. I believe it is important that the vacancy be filled promptly and that the judge be a resident of Oneida County and chambered in the Oneida County Courthouse.

It has been an honor to serve on a court which has a long and proud tradition. I am grateful to the electorate of the Fifth Judicial District for the honor bestowed upon me and it has been a privilege to serve as a colleague of New York State's outstanding judiciary. New York State Supreme Court has been at the cutting edge of American jurisprudence virtually since the inception of our nation. The Oneida County Supreme Court has been an important contributor, providing appointees to the New York State Court of Appeals, the Federal Second Circuit and to the various Appellate Divisions.

Notwithstanding the honor, the tradition and the interesting work associated with the court, I must explain my decision to resign: I was elected in 2000 at age 49 and am sad to find the present Supreme Court bench to be in an unfavorable transition. A major reason for that transition is the continued failure of the New York State government to compensate the judiciary fairly and pursuant to a non-political methodology. Linking judges' compensation, both on the State and Federal level, to the pay of legislators or members of the executive branch is a violation of the fundamental notion of separation of powers. Linking judges' compensation to issues such as campaign finance reform is a misuse of the third branch of government. The judiciary is neither a tool of nor in partnership with the legislative and executive branches; rather it is a separate constitutional entity charged with the important function of judicial review of the other branches. The judiciary should not be held hostage by other branches of government that are

subject to judicial constitutional scrutiny. The continuous breach of this balance of power on both the state and federal level is a flagrant constitutional violation which not only demoralizes and weakens the judiciary, it creates the appearance that the judiciary is beholden to the other branches of government. Our present circumstance is rendered even more difficult by permitting those state legislators, who are attorneys, and their law firms, to appear in court before the very judges being held hostage by those lawmakers. This arrangement has the appearance of unfairness and impropriety, and the flagrant linking by state legislators of judicial salaries to their salaries, even while they appear in front of those judges, makes this absurd situation ethically repugnant.

New York State judiciary ranks 48th in compensation nationally.¹ It is well known that many major law firms are hiring associate attorneys just out of law school at a rate of compensation that equals or exceeds the remuneration of the New York State judiciary. It is my impression based on anecdotal information gleaned from literally dozens of discussions that the diminished pay is having a chilling effect on well qualified lawyers seeking elevation to the bench. On a personal level I am unwilling to further deplete my savings and reduce my lifestyle to continue in this office. I believe a number of other judges have retired prematurely because of this sorry situation. It is even more repugnant in my view to hold judges hostage because they have forsaken their law practice to engage in public service only to be pummeled by the ravages of inflation. In the nine years in which the judiciary has remained at a frozen level of compensation, the actual diminution of the value of the dollar has been nearly 40%, a reduction in purchasing power that the part time legislature and no recent governor is personally required to endure. The concomitant failure of Congress to properly compensate the Federal judiciary has diminished the present value of national judicial compensation on both a State and Federal level, resulting in a decline in the real value of judicial salaries.

The second factor in the State Supreme Court's unfavorable transition that contributes to my resignation is the implication by well-meaning policy makers that New York State's election judiciary is somehow inferior. That inference must be drawn from the so-called "merit selection proposals" that have been promulgated, using isolated instances of judicial transgression as a justification to propose granting the Governor, the Chief Judge, and the state legislature unprecedented power to appoint the judiciary. New York's elected judiciary is

¹Forty-eighth in the nation according to objective evaluators.

well qualified, competent, and certainly not deserving of the implied disparagement because the facts refute the innuendos. Objective national studies have found that elected judges receive ratings from lawyers comparable to judges selected under the so-called "Missouri Plan" method of appointment which is very comparable to pending proposals to appoint judges in New York State.² New York's trial courts handle a tremendous volume of work. Our percentage rate of affirmance and reversal on appeal is within a few percentage points of that of the New York State federal district court affirmance and reversal rate by the Second Circuit Court of Appeals. Moreover, there has been no showing that our elected full time judiciary is more frequently disciplined than our counterparts in other states.³ Our ethical status appears to be quite comparable to other states' judiciaries, whether the comparator judges are elected or appointed. Of course we cannot compare disciplinary statistics with the Federal system because there is no federal apparatus which is the equivalent to our Commission on Judicial Conduct.

The failure of the Executive and Legislative branches, as well as the Office of Court Administration, to persuasively make the point that, notwithstanding the method of selection, New York's judiciary is competent and ethical further undermines our standing in the community, making obtaining proper judicial compensation much more difficult, as well as corrosively impacting the appeal of the bench to qualified lawyers. I do not believe that any of the pending appointment proposals, if adopted, would truly cause judges to be appointed by merit. The appointment process will be more political and less open than the election process because the public will have no say in the appointments and judges will be selected from a small coterie of friends of the Albany political elite. Indeed judicial selection to the federal bench has become highly politicized and hardly embracing of candidates who have had the courage to write about or engage in controversial legal questions. I am personally unwilling to continue to remain silent and defenseless as the present electoral system is unfairly assailed by proponents of a less satisfactory system and intend to vigorously oppose the elimination of judicial elections as a private citizen.

²Daniel W. Shuman and Anthony Champagne, Removing the People From the Legal Process: The Rhetoric and Research on Judicial Selection and Juries, 3 *Psychology Public Policy & Law* 242, 1977; Henry R. Glick, The Promise and the Performance of the Missouri Plan: Judicial Selection in the Fifty States, 32 *U. Miami L. Rev.* 509 (1977-1978).

³Bentley Kassal, Update: Did the Appellate Odds Change in 2006? *Statistics In State and Federal Courts*, 79 *New York Bar Association Journal* 44, Dec. 2007.

I want to make a final point. Several previous governors, many legislators, and private citizens, either privately or publicly have stated to complaining judges, "if you don't like the compensation, quit". I have recently discovered that this is much easier said than done, particularly for a judge who has left private practice to assume the bench. As I well know, such a judge will have discontinued private practice, severed ties with clients and withdrawn into the inevitable protective cocoon that is essential for a judge to maintain neutrality and objectivity. Re-entry to the practice of law is very difficult both logistically and practically. I have not been on the bench very long, seven years, but I can tell you that in my experience the longer a judge serves, the less he/she is able to escape due to such practical factors.

In summary, the convergence of the level of compensation, the lack of institutional respect for incumbent judges, and the well recognized problem that once you are a judge there is no easy way out has a chilling effect on attracting competent, well rounded judges with real courtroom experience on both the state and federal level. In my opinion these factors presently place our proud and historic State Supreme court in the unfavorable transition that I have referenced above. For the overwhelming number of our judges, the bench should not be an economic enhancement, it should be a place where the best and brightest of the legal profession can perform public service, receive reasonable remuneration, and be accorded earned respect as they decide cases and provide input into the administration of our justice system. Given the present circumstances I believe it is less likely than ever before that the bench will, in future, attract our best or brightest, and that we will unfortunately forfeit needed experience and expertise because of inadequate compensation and lack of institutional respect.

I am saddened that I must leave a job that I truly enjoy. Because I truly love the courtroom, I take succor in the fact that I will be able to remain a participant on that hallowed ground as a lawyer.

I will forward my formal resignation by mid-January. If you or your staff have any questions, please feel to contact me.

Very truly yours,

Robert F. Julian
Supreme Court Justice

RFJ/tam

cc: Honorable Judith Kaye
Honorable Ann Pfau
Honorable Jan Plumadore
Honorable Henry Skudder
Honorable James Tormey