



NEW YORK CITY FAMILY COURT JUDGES' ASSOCIATION

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Special Commission on Judicial Compensation
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Dear Chairman Thompson and Commissioners:

I am the President of the New York City Family Court Judges' Association. In accordance with the Commission's instructions, I submit this letter to serve as a written version of the oral testimony I intend to offer at the public hearing to be held on July 20.

I have been a Family Court Judge in Brooklyn since my appointment in 1997, except for a period from 2004 to 2005 when I was on leave, teaching law pursuant to a Fulbright Grant at the Faculty of Law and Administration of the University of Warsaw, Poland. Prior to my ascension to the bench, I served for ten years in a variety of senior positions at the office of the New York City Corporation Counsel. Before then, following my 1978 graduation, magna cum laude, from Brooklyn Law School, I clerked for Chief Judge Jacob Mishler of the United States District Court for the Eastern District of New York, and was an associate for six years at the firm of Stroock and Stroock and Lavan.

The Commission has received voluminous submissions advancing persuasively the institutional, structural and philosophical reasons why a significant salary increase should be forthcoming, as well as reams of data analyzing rates of inflation, cost-of-living indices and comparative salaries. I wish to raise a few points that I hope will serve to place the issue into a human – rather than institutional – context and to explain what it has been like for a judge not to get a raise for more than twelve years. In addition, I will encourage the Commission to make full use of its statutory authority, and not only set a salary schedule, but also to make recommendations with respect to non-salary benefits, specifically pension benefits, as well as to recommend a retroactive salary adjustment.

As a preliminary matter, however, let me note that all of us are aware that the Commission's work is being undertaken in an extraordinary fiscal climate and, as a result, certain members of the public and press have decried the possibility of a substantial salary increase when other public employees are being laid off or making significant salary concessions, including wage freezes. Those outcries in turn raise political concerns that could easily and subtly infect the Commission's deliberations. It is therefore worthwhile to recall that the Commission was established by the Legislature to provide a remedy to what the Court of Appeals in the Maron and Larabee litigations determined was illegally unconstitutional conduct. In no small way, therefore, the Commission has effectively been delegated the authority to act as a court and to fashion relief for the injuries caused by that illegality. We therefore ask the Commission to rule as it would ask any judge to rule in a highly publicized, politically charged case: solely on the merits and, in the language of Canon 3 of the Code of Judicial Conduct, that it "not be swayed by partisan interests, public clamor, or fear of criticism."

Turning to the merits, although the blizzard of submissions emphasize that there has not been a salary increase for twelve years, I fear that through repetition the actual significance of that fact is lost. January, 1999 was a very long time ago. The impeachment trial of President Clinton began that month. It was before Y2K. It was before 9/11. A young person, such as my 23 year old daughter, who graduated college last year, was 10 and in fifth grade. For someone 60 years old, such as myself, it is a span covering 20% of one's life.

Everyday expenses were much lower then than they are now. An advertisement in the New York Times from January 1999, hawked a six-pack of Coca-Cola cans at \$1.99 (today, according to the Fresh Direct web site, they're \$2.69), an 18 ounce box of Corn Flakes at \$2.99 (now \$4.69), a package of Nathan's hot dogs at \$2.99 (now \$5.19), and a 5 pound bag of potatoes at \$.99 (now \$2.69). Articles bemoaned the high gas prices of \$1.25 per gallon. A hue and cry was raised in February 2001 when movie ticket prices went up at some Manhattan theaters to \$10. They are now routinely \$13 or more.

1999 is so long ago that in 2005, the New York Times printed an editorial in which it noted that "a salary adjustment is way overdue," and urged Governor Pataki and the legislature to act. More than six additional years have now passed. At least seven will pass before a raise is actually implemented.

The financial and consequent emotional burdens of trying to pay routine, middle-class, 21st century bills with a decade-old 20th century salary have been substantial. I and many of my colleagues have repeatedly turned to credit cards, loans against pension and deferred compensation plans, and refinancing of mortgages and home equity loans merely to keep one's head above water. Many of us have severely depleted our savings – a circumstance unfortunately exacerbated by the huge decline in those savings' value as a result of the 2008 financial melt-down. In a nutshell, primarily because of the salary freeze, many of us have been victim to a "perfect storm" of financial misfortune.

The salary freeze has not only impacted on us since 1999, but threatens to do so well into the future. I and many of my colleagues who have been continuously serving since 1999 have passed those years in what should have been the prime of our professional lives. As do other professionals, we took a job with the expectation that there would be regular salary increases, and planned accordingly – expecting, as do most professionals, that we would build a foundation for the future, for our families, for our retirement. Instead, exactly the opposite occurred. Our savings have not grown; they have shrunk. At this point, no prospective raise that the Commission could authorize would have the effect of compensating us for the approximately \$330,000 in earnings lost to inflation over twelve years.

Moreover, because of peculiarities of the State pension system, for many judges even a significant salary increase would not fully remedy the long-term consequences of the freeze. Specifically, under the system, one's pension is based upon a person's "Final Average Salary," which in theory should be the average of the employee's three highest-earning years. However, the system curtails that amount by restricting consideration of any year-to-year increase to 10% over the average of the previous two years. Without getting into the arithmetic, this means that whatever salary the

Commission awards will not become the "Final Average Salary" for at least four to five years, thus severely reducing the benefits a judge will receive if he or she retires prior to that time – as many of us approaching the ages of 62 to 65 have, for many years, hoped and planned to do.

Finally, it is appropriate to emphasize another intangible, but equally significant, consequence of the salary freeze. The Family Court Judges of New York City are among the hardest-working in the nation, with caseloads that have long been recognized as some of the country's most burdensome. Every day we deal with society's most stressful and difficult issues, hearing cases of horrific child abuse and domestic violence, deciding whether children should be removed from their parents' care, ruling on whether a juvenile criminal should be incarcerated, determining which of two loving parents should obtain custody of their child. We are all well-qualified, appointed by the Mayor of New York City, through an apolitical, highly competitive, merit selection process. We became judges not to find a sinecure, but to serve the law and the public in a meaningful way. The freeze and its consequences have had a terrible impact upon morale by, unfortunately, causing us to repeatedly grapple with doubts about the value that society places upon our work. That impact upon our morale undermines the entire Family Court process in obvious ways that are too numerous to itemize here. Suffice it to say, the Commission's determinations have the potential of providing an immediate salutary impact upon the Court's morale and its work as a whole.

We recognize that the Commission is without authority to direct the award of retroactive pay, or to modify the pension system. However, in calculating the appropriate prospective salary it certainly has authority to consider the factors I have discussed. Moreover, it has the authority to recommend action that would remedy the consequences of the prior, illegal failure to provide a salary increase for so long. We urge the Commission to do so.

Respectfully submitted,



Daniel Turbow