

**TESTIMONY BY STEWART D. AARON
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**AT THE PUBLIC HEARING OF THE
2011 COMMISSION ON JUDICIAL COMPENSATION**

JULY 20, 2011

I am Stewart D. Aaron, President of the New York County Lawyers' Association (NYCLA). Chairman Thompson and members of the Judicial Compensation Commission, I appreciate the opportunity to appear here today on behalf of the more than 9,000 members of NYCLA. We thank you for the important work the Commission is performing to address the judicial compensation crisis, a crisis that has been some 13 years in the making. NYCLA applauds this Commission's efforts to transcend what have been the turf battles of the past and to set a level of judicial compensation that is fair to our judges and our State.

NYCLA's position is a principled one and was arrived at after careful consideration. Issues concerning fair compensation in the context of the administration of justice, and concerning judges in New York State, are not new to NYCLA:

- In 1997, NYCLA's proposal to increase fees for Article 18(b) attorneys to improve the quality of defense afforded to indigent criminal defendants won the endorsement of bar associations across the state. A lawsuit filed by NYCLA in 2000 helped obtain increased compensation for these attorneys.
- For the past 35 years, NYCLA has favored the establishment of an appointive judicial selection system, with clearly defined standards focused on quality, integrity and independence.

- Most recently, earlier this year, NYCLA fought for changes that were made (and certain yet to be made) to the procedures of the Commission on Judicial Conduct, which govern the process by which complaints against judges are investigated and resolved.

NYCLA's Current and Prior Positions

NYCLA fully supports the July 11 submission made by the Office of Court Administration (OCA) to this Commission. In NYCLA's view, the OCA submission is a persuasive and comprehensive compendium of data that amply supports an immediate increase in judicial salaries to a level of at least \$190,000.

NYCLA made its own submission on July 12, by letter to Chairman Thompson. As the July 12 letter points out, NYCLA has long fought for principles of judicial independence and the rule of law. Inadequate judicial compensation undermines both of these bedrock principles. In April 2005, long before the crisis reached its current level of severity, the NYCLA Board of Directors, in a resolution calling for increased judicial compensation, described the judicial pay situation as "demoralizing, disrespectful and discouraging, as is the fact that other state employees have received raises while state judges and justices have not."

And in 2009, NYCLA wrote an amicus brief in the *Larabee* case in the Court of Appeals, the opinion that led to the creation of this Commission as the remedy to address the separation of powers concerns inherent in the prior process of setting judicial salaries. In our 2009 amicus brief, NYCLA wrote: "The failure of the legislature to provide adequate judicial pay has now reached crisis proportions, threatening the administration of justice in New York and undermining public confidence in the legal system."

The Crisis: Declining Judicial Pay

Mr. Chairman, the situation is even worse today than it was when NYCLA took its earlier positions. We are all too familiar with the disturbing litany of statistics on falling judicial pay, which I will only briefly summarize. We all know that the pay for our state judges, when adjusted for inflation, has fallen 41 percent in the last 13 years, even as their workload has increased. When adjusted for cost of living, the salaries for New York judges rank dead last among judges in the 50 states, a shocking development for a state that prides itself on its tradition of excellence in the judiciary. Judicial pay has eroded so significantly that today senior law secretaries earn more than the judges for whom they work. And twenty thousand employees in New York state and local governments earn more than Supreme Court justices.¹ Before 2005, it was rare for judges to borrow against their state pensions. However, between 2005 and 2007, the number of judges engaging in such borrowing increased four-fold to 10% of the judiciary.² One can be sure that such a percentage is even higher today.

In short, for the last 13 years, no other group of judges, and perhaps no other large group of workers in the American economy, has been treated as unfairly as New York state judges have been. The salary level that NYCLA recommends would do no more than give judges purchasing power in the bottom fifth of all states – better than the fiftieth position that they now occupy, but still hardly a profligate level of compensation. Indeed, a salary at the \$190,000 to \$196,000 level that NYCLA recommends would place

¹ Presentation to the New York State Judicial Compensation Commission Submitted by the Coalition of New York State Judicial Associations, Executive Summary (June 13, 2011).

² Atlantic Legal Foundation, Report, Adequate Compensation for Judges is Essential for New York's Business and Economy (Oct. 2008) (www.atlanticlegal.org).

judges' salaries at only the level of junior or mid-level associates in large Manhattan law firms.

Mr. Chairman, our judges dedicated themselves to a career in public service. They do not expect to be compensated at the levels of private sector attorneys. They do expect, however, that the State will protect the integrity of their position and provide a salary commensurate with the solemn duties that a judgeship entails. In the words of Teddy Roosevelt over a century ago: "It is not befitting the dignity of the Nation that its most honored public servants should be paid sums so small compared to what they would earn in private life that the performance of public service by them implies an exceedingly heavy pecuniary sacrifice."³

The Effect of Inadequate Judicial Compensation

Rather than dwelling unduly on the inadequacy of current judicial pay, an inadequacy that we all acknowledge, I would ask this Commission to examine the corrosive effect that inadequate compensation could have on the integrity of our judiciary if the situation is not reversed. NYCLA submits that for the judiciary to maintain its high level of expertise and qualifications, our State must, even in a period of declining resources, make the relatively modest investment necessary to maintain a judiciary of the highest quality and competence.

If New York does not take decisive steps to address the judicial compensation crisis, the current levels of compensation will inexorably erode the quality of our judiciary. Low judicial pay will render it difficult to attract judges from the ranks of experienced private practitioners. With their burgeoning dockets replete with complex

³ Pres. Roosevelt, Eighth Annual Message to Congress (Dec. 8, 1908) (quoted in L. Thompson and C. Cooper, *The State of the Judiciary: A Corporate Perspective*, 95 Georgetown L.J. 1107, 1114 (2007)).

commercial cases, New York’s courts cannot function without the demonstrated wisdom, skill and experience of judges from the private sector. As former Chief Justice Rehnquist has noted, experienced private lawyers bring to the bench “a perspective and an independence that is vital to the judiciary.”⁴

The NYCLA and OCA Positions

NYCLA believes that OCA’s submission makes a compelling case for an immediate increase in judicial salaries to the \$190,000 to \$196,000 figure that NYCLA advocates. OCA focused on four analytical pathways, each of which leads to the same result. Past judicial compensation commissions, including the 1998 New York commission, have considered each of these four factors. And this Commission’s governing mandate explicitly permits you to consider these factors.

Adjustment for Inflation. The first factor is the effect of inflation. As Commissioner Mulholland has noted, information on the purchasing power of judicial salaries is “a critical starting point.”⁵ A 41% increase of the salary for Supreme Court justices – from the current \$136,700 to \$195,754 – would be required to restore judges to the purchasing power they enjoyed in 1999. And even at this level judges would not be compensated for the \$332,583 that the average judge lost in purchasing power during 1999-2011. NYCLA believes that an adjustment to compensate for lost purchasing power is required.

Judicial Compensation in Other States. The second factor is judicial compensation in other states. The OCA submission notes that New York judicial

⁴ Rehnquist Statement before the National Commission on the Public Service (July 15, 2002).

⁵ 7/12/11 New York Law Journal

(<http://www.lawjobs.com/newsandviews/LawArticle.jsp?id=1202500547719&slreturn=1&hbxlogin=1>)

compensation (adjusted for cost of living) now ranks last among the 50 states' judiciaries. As OCA correctly indicates, New York's ranking in judicial salaries *vis-a-vis* other states "measures our understanding, relative to that of other states, that exceptional judges are not a luxury, but a necessity of a state of national and international prominence. . . ." An increase in our judges' salaries to \$194,000 would bring judicial salaries only to number 40 in the national ranking (when adjusted for cost of living). But number 40 is better than number 50 and NYCLA urges such a level of increase.

Non-judicial Staff Salaries. The third factor is non-judicial staff salaries. As the OCA submission notes, in 1999, judicial law clerks earned between 51.5% and 73.5% of the salaries then earned by judges. Today, senior law clerks earn *more* than judges do. An adjustment to restore the 1999 ratio between judicial and senior law clerk salaries would require an increase in Supreme Court justice salary to \$195,754. NYCLA supports an adjustment of similar magnitude.

Federal Court Salaries. The fourth factor is federal court salaries. OCA correctly points out that federal judge and New York State Supreme Court salaries were equivalent in 1998. Now, federal court salaries outstrip New York State Supreme Court salaries by more than \$37,000 -- \$174,000 versus \$136,700. And, notably, federal judges, too, have received inadequate cost-of-living increases since 2006. To compensate for inflation, federal judge salaries should now be \$193,813. This is in the range in which state judges should be paid.

The New York Budget Crisis

NYCLA is acutely aware that it is calling for judicial salaries that far outstrip the salary of the average American and even surpass the compensation of the average New York attorney. NYCLA is also painfully aware of the national fiscal crisis, which has led to draconian budget cutting and belt tightening.

NYCLA does not want to trivialize the amount of money at stake here – it amounts to tens of millions of dollars. However, within the context of New York’s overall state budget, or even its budget for the judiciary, the amount of money necessary to improve judicial salaries is relatively small. As noted earlier, this is an investment that the State of New York must make in its system of justice.

Importantly, the size of the judicial pay increase that NYCLA has recommended reflects nothing more than the long period of time that has lapsed since the last judicial pay increase. As your predecessors on the 1998 pay commission wrote:

The Commission recognized that, considered in isolation, the recommended increase is substantial. Understood in context however, the increase is fully warranted and the Commission believes, necessary. The size of the recommended increase is consistent with the history of judicial salaries in this State, a history of long periods of no increases, interspersed with a few double digit “catch up” increases. Those increases, however, never made up for the economic loss suffered during the long periods between increases.

We again express our appreciation, not only for the opportunity to submit testimony today, but also for the important work that the Commission is doing. We at NYCLA are confident that this Commission will take the steps necessary to address the judicial compensation crisis that we now face.