

Remarks to the 2011 Commission on Judicial Compensation
Hon. Ann Pfau
Chief Administrative Judge of the State of New York
July 20, 2011

Chairman Thompson and honored members of the Commission, I thank you for giving me the opportunity to present remarks to you this morning on the issue of compensation to New York's State-paid judges and justices. Today's hearing and this Commission's work over the next six weeks represent an historic moment for New York's Judiciary. It is an unprecedented opportunity to cure, once and for all, a problem of governance that has plagued this State for several decades – a problem that has frayed the patience and morale of our judges, raised serious constitutional questions of separation of powers, and threatened the institutional health and long-term integrity of our Third Branch. We believe that the cure is clear: an immediate and complete salary adjustment for judges that restores to them in April 2012 the purchasing power of their salaries at the time of the last adjustment in 1999, together with provision for future cost of living adjustments through March 2016. Only this can restore to the public the confidence that the Judiciary is a valued institution in this State; only this will assure that we continue to attract the most able individuals to judicial service. It is unquestionably within the power of the Commission to bring about this result. Any lesser course, we submit – any diminution, delay, or protraction in reaching a fair and full salary – is neither beneficial to our polity nor equitable to our judges.

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Institutional Integrity

As you know, the Judiciary has already presented a formal Submission for the Commission's consideration, together with supporting expert opinions and a lengthy Supplemental Appendix. My remarks this morning will not restate that Submission, but will focus instead on one of its major themes: the institutional integrity of the Courts.

Simply stated, institutional integrity for the Judiciary means that the structure of judicial compensation should promote public confidence in the independence, neutrality, excellence and diversity of the Judges in New York. It means that every New Yorker exercising his or her fundamental constitutional right to seek justice in the courts – whether rich or poor, individual or Fortune 500 corporation – will stand before a judge who is smart, fair, dedicated and unbiased, and the best New York has to offer.

I know how important that integrity is to the trust and confidence that the public has in the justice system. I hear it from all corners of the State. I hear from families who thank us for judges who understand and are sensitive to the dynamic of a family being wrenched apart. I hear from businesses who employ contractual forum selection clauses to bring disputes to the New York courts because of our commercial expertise. I hear from victims of domestic violence who are grateful that the judge handling their case understands the unique pressures that the legal system can impose on the victim. I hear from recovered drug addicts who would still be on the street or in jail but for the tough understanding of the treatment judge who has seen it all.

A Judiciary must be independent, objective and unbiased. It must be highly educated, and greatly experienced. It must be as diverse and broad in its membership and outlook as the

population of the State it serves.

It must be these things in any society – but especially in New York State. We are a worldwide center of business and commerce. Our judges routinely face the most sophisticated questions of banking, securities regulation, contract, commercial real estate, and the like, of any courts in the nation. We are a center of social justice – a State that has long opened its doors to the world, and the doors of its courts to the impoverished, the victimized, the unrepresented. In our family courts and elsewhere, our judges regularly enforce the law’s protection of our most vulnerable. We are a center of the legal community – the home court to the most sophisticated legal practitioners in the country and the world. Our judges routinely face multi-party litigations over the most complicated legal problems of the day, presented by counsel who are the very best and brightest in their fields. We are a center of journalism, entertainment and communications. Our judges address cutting edge constitutional questions of freedom of expression and protection of intellectual property rights. We are a State of extraordinary diversity in ethnicity, language, religion, and culture. Our judges are called upon to comprehend and assess many, many issues of multicultural perspective. We are a State whose Executive and Legislature are at the forefront of innovative and dynamic government. Our judges are called upon routinely to interpret and apply the acts of our lawgivers, often as matters of first impression, and to address their many challenging questions and unanticipated consequences of legislative action.

For these reasons, we have always required a New York State Judiciary second to none in intellect, experience, capacity, and commitment. The assurance of judicial institutional excellence is an essential priority of any State government, but especially our own.

Current Circumstances

Unfortunately, we have failed recently in that assurance.

As we noted in the Submission, New York now ranks dead last in judicial compensation, when weighted for cost-of-living.¹ Inflation has raised real living costs in New York by 41% since the last judicial salary adjustment in 1999. Judges now often earn less than their clerks, and many other employees of the State both inside and outside the court system, whose salaries typically increased by more than 40% during this period. Though state judges earned the same salary as their federal court counterparts in 1999, federal judges now earn 27% more – and are themselves underpaid.

These statistics and this last place rank have consequences. As Professor Peter Bearman of Columbia put it so well in his supporting letter to our Submission, “[n]o state would like to be thought of as the State that values its judges the least.” Particularly not New York – particularly in light of its place in the nation and in the world. Such low ranking diminishes the stature of the bench as a forum for the resolution of disputes, or as a career path for our best and brightest

¹ New York's adjusted salary ranking as stated in the Judiciary Submission (50th among the states) differs slightly from New York's adjusted ranking (46th) in the National Center for State Courts Survey of Judicial Salaries (see, e.g., Glaberson, “Pay Frozen, More New York Judges Leave Bench,” New York Times, July 5, 2011). While both rankings are based on local cost-of-living data from the Council on Community and Economic Research (C2ER), the Submission ranking is based on a statewide average weighted by population, while the NCSC Survey is unweighted. For example, if C2ER were to collect data from ten localities in a state, the NCSC Survey would simply average this data to determine a statewide cost of living, thereby giving the same weight to costs in less populated regions as it does to large population areas. In contrast, the methodology used in the Judiciary's Submission takes into account the relative populations of the reporting localities within each state, so that the statewide average more accurately reflects the true cost of living of the State's residents.

attorneys. It eliminates a large group of potential judges who cannot serve for economic reasons. It damages morale, commitment, and identity of those who serve.

For close to thirteen years, our judges have fulfilled their duties notwithstanding this compensation freeze. They have continued to perform exceptionally – even while their workloads have steadily increased; while the state budget almost doubled in size; while most others in State service received substantially increased pay.

They have continued to hold faith that their government would do the right thing.

That faith now rests with this Commission.

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Maintenance of Cost of Living

As we described in our Submission, there are a number of measurements which establish an appropriate salary range for our judges. Each is well within the State's power to pay. All are justifiable in light of past practice. However, if the Commission views its mandate as restoration of judicial income to its most appropriate level, then application of the CPI-U to measure inflation since 1999 – the most recent prior adjustment – is the simplest and fairest way to achieve that goal. The CPI-U is independently established by a reputable national source (the Bureau of Labor Statistics). It is incremental, transparent, and divorced from political decision-making. It allows some measure of confidence, predictability, and institutional integrity. Its application would remove New York from its last-place position in judicial compensation rankings, and restore the internal ratio of judicial to non-judicial staff salaries – sending a clear signal that the State's priorities include a healthy Judiciary, in which great value is placed on the

recruitment of Judges of the highest ability. Through its use, our judges would not grow wealthy – but they would be rewarded appropriately for their lengthy service with a reasonable measure of value, and a high measure of respect.

Finally, the adoption of this standard by the Commission would set an extraordinary precedent in judicial compensation nationwide. It would not only fix a longstanding problem – but also would establish a process and a presumptive standard for all future adjustments. Of course, this measure would not recapture for our judges the hundreds of thousands of dollars in compensation that they did not receive because of the failure to adjust salaries sooner. But it would assure that those losses never recur.

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Federal Judicial Salaries

I'd like to take a moment to address an alternate measure that some have suggested – the salary of federal district court judges, currently \$174,000. As the Commission is aware, as a general matter, we support parity with the federal courts. We believed it appropriate in 1999 – when supreme court and federal district court salaries were identical -- and we have urged it on several occasions since, as recently as a few years ago.

However, federal salaries have not been altered for cost-of-living since 2009, and have trailed inflation significantly since 2006. Many influential voices in the federal court system believe them to be currently inadequate. For this reason, we believe that they are not currently an appropriate comparative measure – unless adjusted for inflation.

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Phase-in Period

Another issue requires particular attention. As noted in the Submission, we strongly believe that any award should be immediate and complete – that is, it should not be staggered or phased in over a period of several years in light of the State’s current fiscal difficulties. Such a phase-in would accomplish little and damage a good deal.

It would say, in effect: we understand what the fair and appropriate number is; we acknowledge that judges have lost hundreds of thousands of dollars over the years individually, and more than half a billion dollars collectively . . . but the very magnitude of the State’s past error, the very size of the gap between what judges now earn and what is appropriate, requires that fairness be postponed for another three years.

Such an approach is flawed in numerous respects. It is poor fiscal management – for the savings to be achieved by such a method are minute, and there is no dispute that the State can afford the full sum immediately. It is poor logic – for if this number is correct, it is correct now; it only gets less accurate over the phase-in period (unless modified by future cost of living adjustments). It postpones performance of the Commission’s mandate: for rather than correcting past mistakes and bringing finality and closure to the salary issue, it leaves the Judiciary vulnerable to and dependent upon political vagaries years in the future. Above all, it is terribly unfair to our judges, who will, by the end of the phase-in, have waited more than sixteen years for a complete appropriate adjustment. It is particularly inequitable to those who, having long served, may be compelled to retire over the next several years, and will not enjoy the benefit. But it broadly and unwisely extends the institutional harms that Professor Bearman described so well in his letter included in our Submission.

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Conclusion

In sum, our Submission's recommendation of an immediate and substantial salary increase – sufficient to restore the purchasing power of judicial salaries lost over the past thirteen years – is prudent, responsible, and necessary. Fairness, rationality, and the Judiciary's institutional integrity as an independent branch of government require nothing less.

Thank you again for the opportunity to appear before you today.