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Key Developments in Judges' Pay Cases

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1999

• **Jan. 1:** An across-the-board 21 percent pay raise goes into effect for all state judges. Legislators and agency heads receive comparable raises. The judges previous raise, of 20 percent, was phased in over an 18-month period beginning in 1993

2005

• **Feb. 7:** In her State of the Judiciary address, **Chief Judge Judith S. Kaye** says the adoption of a raise had become a matter of "utmost importance." She calls for consideration of cost-of-living increases or "commission-recommended adjustments" to give the judiciary regular raises.

• **June:** In an effort organized by **Chief Administrative Judge Jonathan Lippman**, dozens of judges lobby lawmakers in Albany during the final month of the regular legislative session. But lawmakers conclude the session without granting the raises because of legislators' own desires for a raise and Governor George E. Pataki's attempts to link raises to concessions on unrelated issues.



• **Nov. 30:** Court administrators, breaking with usual budgeting procedures, include \$69 million for a raise in their proposed spending plan for fiscal 2006-07.

2006

• **Feb. 6:** In an attempt to de-politicize the process, Chief Judge Kaye proposes a commission to periodically recommend salary increases for the judiciary, the Legislature and top executive branch officials.

- **April 12:** In a pattern that will be repeated in future years, money for a raise survives in the 2006-07 budget approved by the governor and Legislature, but without the necessary legislation authorizing its expenditure.

2007



- **Jan. 2:** Four judges, including then-Nassau District Court **Judge Edward Maron**, file *Maron v. Silver*, which seeks a 30 percent raise and argues the governor and Legislature have unconstitutionally diminished the salaries of judges and violated the separation of powers doctrine by holding their pay hostage to unrelated priorities.

- **Jan. 31:** Governor Eliot Spitzer includes \$111 million in his executive budget for a raise of nearly 25 percent "as a matter of fairness to judges and their families and as a matter of public policy."

- **March 30:** Money for a raise is removed from the 2007-08 budget amid bickering between Mr. Spitzer and the Legislature over ethics-in-government legislation, a legislative pay raise and creation of a commission to recommend future pay hikes.

- **June 22:** Mr. Spitzer calls "frivolous" a suggestion by Chief Judge Kaye that the court system might have to sue, "as a last resort," the other branches of government to force them to grant a raise. "The judges should know better," the governor says.

- **Sept. 12:** *Larabee v. Governor* is filed by Manhattan Family Court **Judge Susan R. Larabee** and three other judges calling for an immediate 26 percent pay increase.

- **Nov. 1:** To soften the impact of years without a salary increase, court administrators make up to \$5,000 a year available to reimburse judges for insurance, training and other office-related costs.



- **Nov. 30:** Acting Supreme Court **Justice Thomas J. McNamara** in Albany rejects a variety of constitutional and statutory arguments made by the plaintiffs in *Maron v. Silver*. He allows to proceed a claim that the absence of a raise is an attempt by the Legislature to curb the judges' independence but says that might be difficult to prove given the fact that legislators and top executive branch employees had also gone without a raise since 1999.



2008

- **Feb. 5:** Supreme Court **Justice Edward Lehner** in Manhattan rules that *Larabee v. Governor* may proceed on a separation of powers claim, and suggests the plaintiffs would have a significantly lower level of proof than Justice McNamara had found for the *Maron v. Silver* plaintiffs.

- **March 13:** Though he says judges deserve more money, soon-to-be Governor David A. Paterson calls the prospects for a raise "very difficult" until the economy and state finances improve.

- **March 31:** The state's budget for 2008-09 again does not include a raise.

- **April 10:** Calling the filing of a lawsuit "regrettable," Judge Kaye sues the Legislature and governor, seeking a 25 percent pay increase. The suit, *Kaye v. Silver*, is retitled *Chief Judge v. Governor* when Jonathan Lippman becomes chief judge in 2009.

- **May 1:** Judge Kaye warns in an e-mail to judges that they will "hurt our cause" by insulting state officials and recusing themselves in retaliation from cases in which legislators or their firms appear.

- **May 13:** The Commission on Judicial Conduct warns that while frustration among judges over the lack of a raise is "understandable," as many as 10 different sections of the Rules Governing Judicial Conduct could be violated when judges refuse to hear cases where parties are represented by lawmakers or their law firms.

- **Nov. 13:** A 4-1 Third Department panel rules against the judges in *Maron v. Silver*, 58 AD3d 102, rejecting claims that their salaries had been unconstitutionally "reduced" due to inflation and improperly linked to unrelated issues.



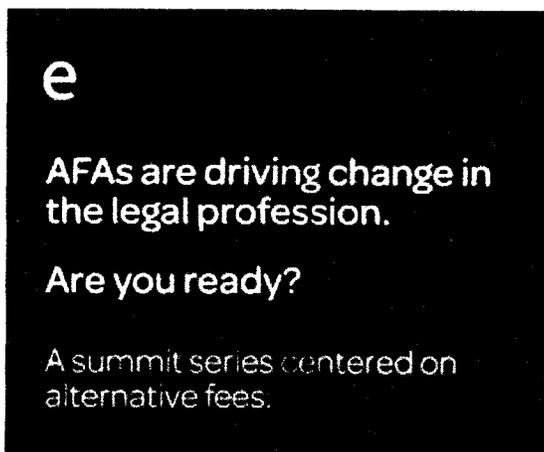
2009

- **June 2:** A First Department panel rules 5-0 in *Larabee v. Governor*, 65 AD3d 74, that raises for judges have been unconstitutionally subject to the "whims and caprices" of legislators and the governor.

- **June 15:** Justice Lehner decides in *Chief Judge v. Governor*, 25 Misc.3d 268, that the linkage of a judicial raise to unrelated legislation violates the Constitution's separation of powers doctrine.
- **Sept. 24:** The Court of Appeals sets Jan. 12 to hear oral arguments of appeals in *Maron v. Silver* and *Larabee v. Governor*. The Court later accepts a motion to hear the appeal in *Chief Judge v. Governor* directly from the Supreme Court and adds it to the Jan. 12 calendar.
- **Oct. 14:** Judge Lippman says the maximum allowance for judges will be doubled to \$10,000 a year beginning in April.
- **Dec. 28:** Cattaraugus County Judge Larry M. Himelein accepts censure from the Commission on Judicial Conduct for trying to organize other judges to boycott cases involving the law firms of legislators who have denied the judiciary a raise.

2010

- **Jan. 12:** The Court of Appeals hears oral arguments on all three pay suits. Several judges bridle at the contention of Richard H. Dolan, attorney arguing for the governor and the Legislature, that the Court is legally powerless to intervene to compel the governor and Legislature to act on a raise.
- **Yesterday:** The Court of Appeals rules 5-1 that the absence of a raise is an unconstitutional violation of the separation of powers principle but does not order a specific remedy.



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