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Another Round of Lobbying Anticipated in Legislature

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Chief Judge Jonathan Lippman praised a "landmark" ruling on judicial pay by the Court of Appeals yesterday, as court officials began to prepare a new campaign to persuade lawmakers to give the state's 1,300 judges a raise.

The ruling "vindicates" the judiciary's contention that the denial of a raise since 1999 constituted a violation of the state Constitution's separation of powers doctrine, the chief judge told judges in a webcast yesterday.

The decision takes the pay raise focus away from the courts, where it has largely been for two years, and redirects it back on the Legislature, where lobbying by the judges has been unsuccessful and economic woes are putting the brakes on increased spending of any kind.

Chief Administrative Judge Ann Pfau said court administrators would devise a lobbying strategy in light of the ruling.

"We are seeing what the situation warrants," she said.

Judge Lippman, who took no part in yesterday's ruling because he was a plaintiff in one of the cases, said in his webcast that the decision established the useful principle that the Legislature must consider future judicial raises without linking them to unrelated issues. But he also noted that the ruling set no time frame for legislative review of judicial pay and leaves to the Legislature the ultimate power of setting judges' pay levels.

All told, Judge Lippman said the ruling should hearten judges who want more pay and brings them closer to getting it.

"How exactly all of this develops remains to be seen," the chief judge said. "I would be less than forthright if I said to you that this decision represents all that we hoped for in terms of an immediate remedy. But our resolve is strengthened by the Court's declaration."

Judge Lippman said the decision was also important because the Court reserved for itself the authority to revisit the issue if the Legislature does not correct the constitutional violation found by the Court.

"If the other branches do not proceed in accordance with the Court's decision, I will not hesitate to act in a manner consistent with the constitutional duties and obligations imposed upon me as the head of an independent branch of government," Judge Lippman said.

Individual judges agreed with Judge Lippman's comment that the ruling was not "all that we hoped for in terms of an immediate remedy."

Bronx County Supreme Court Justice Mark Friedlander, president of the Board of Justices of the Bronx County, said judges he spoke with yesterday were gratified that the ruling recognizes the "essential wrongfulness of what has been going on for 11 years."

However, he added, "We are troubled by the nature of the remedy which is to send this back to the Legislature." He called it "reminiscent of asking the wolves to oversee the feeding of the chickens."

"These are the people who created the problem in the first place," Justice Friedlander said. "Only time will tell if they will behave as they should."

'Better Than a Loss'

Brooklyn Supreme Court Justice Arthur M. Schack said of the decision, "At least it's not a loss."

"People would rather have seen a different remedy that would have resolved it much more expeditiously, but the consensus is that a win is better than a loss," Justice Schack said. "People are hopeful."

Genesee County Court Judge Robert C. Noonan, who heads the New York State County Judges Association, said he believed the court's ruling would make a difference in the long term.

If the Legislature does not act expeditiously, "there is at least the potential for an outside mechanism to make something happen," Judge Noonan said, adding that he hopes the situation does not reach that point.

Family Court Judge Mark M. Meddaugh in Sullivan County called the decision a "good compromise" that leaves the judiciary "the option to go back

into court if they feel that the Legislature is not acting in a timely manner or appropriate fashion."

Supreme Court Justice Joseph M. Sise in Albany, who heads the Association of Justices of the Supreme Court of the State of New York, said the group was "heartened."

"It is now time for the Legislature and the governor to fulfill that obligation with dispatch," he said.

Joseph L. Forstadt, legal counsel to the Associations of Supreme Court Justices of the City and State of New York, said the groups' members feel vindicated.

But Mr. Forstadt, of Stroock & Stroock & Lavan, said the ruling also shifts the matter back to the Legislature instead of providing a more immediate remedy.

"What is frustrating for us is that it means there is still a delay in ultimately vindicating the pocketbooks" of the judiciary, he said. "We are hopeful that this will bring a resolution to this unfair situation. It's lasted way too long."

Begging the Legislature again for a raise is not a prospect relished by judges.

Each year between 2005 and 2009, legislators failed to pass pay bills that were before them. In 2005 and 2007, especially, dozens of judges came to Albany to unsuccessfully lobby lawmakers in person to support the bills.

"We've been working for eight and a half years without one penny increase," Barbara R. Kapnick, a Manhattan Supreme Court justice, said during one visit to the Capitol in 2007. "I think that is very frustrating, especially for those of us in Manhattan, where the dollar goes a lot less far than upstate. ... We're really caught in the middle of a negotiation that we cannot be a part of," she said.

George Bundy Smith, a Chadbourne & Parke counsel and former Court of Appeals judge who helped represent the plaintiffs in *Larabee v. Governor*, said yesterday he hoped the ruling would bring the three branches together without more delay.

"It is wise to try to avoid a confrontation and I think if all persons put their heads together, there can be an ultimate solution to this injustice," Mr. Smith said.

But Steven Cohn of Carle Place, who argued on behalf of the judge-plaintiffs in *Maron v. Silver*, said he was sorry the Court failed to adopt his argument that the Legislature had adopted a judicial raise in the 2006-07 state budget, but that it has been improperly blocked by the state comptroller.

Mr. Cohn said adoption of his statutory argument could have saved lawyers many more years without a raise.

"I believed we had a way to shorten it," Mr. Cohn said. "Now, if I'm a judge, I may be looking at another five to seven years. That defeats the entire purpose. I think that the Court, while recognizing a constitutional standard, didn't do enough to protect the judges."

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