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## Pay Commission Prompts Mixed Reviews From the Bench

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Creation of a commission to set higher pay levels for state judges beginning April 1, 2012, got mixed reviews yesterday.

Critics questioned why the judges, whose last raise came in 1999, must wait 16 more months for a salary increase under the legislation approved this week by lawmakers. Many also grumbled that the legislation includes no provision for retroactive compensation to make up the ground lost to inflation since 1999.

Chief Judge Jonathan Lippman, whose lobbying was crucial to passage of the legislation, said yesterday he was not fazed by the criticism and that most judges he was hearing from were pleased with the formation of the commission. He also said it was not "rational" for judges to expect an immediate raise or retroactivity given the current condition of the economy and the state's budget woes.

Acting Supreme Court Justice in Queens, Jeffrey D. Lebowitz ([See Profile](#)), said yesterday that judging from the nearly 20 e-mails he had received from colleagues on the bench, almost all were "very disappointed" about a further delay in raises and the lack of retroactivity for what by 2012 will be 13 years without a pay hike.

"Nobody has said this is great," said Justice Lebowitz, who is also president of the Designated Supreme Court Justices Association. "Either they are unhappy or mad or resigned. Nobody thinks this is a panacea."

Albany County Family Court Judge W. Dennis Duggan ([See Profile](#)), for years an outspoken advocate for a pay increase, called the salary commission a "half a loaf" approach that leaves unredressed the retroactivity issue.

"They could figure out what to pay other state employees over these years [since 1999]," Judge Duggan said. "Why do they need a commission? What do they need to study? I can do the cost-of-living numbers in five minutes... Why do we need a weatherman here to tell us which way the wind is blowing?"

Brooklyn Supreme Court Justice Arthur M. Schack ([See Profile](#)) called the commission a "step in the right direction" that should prevent long pay raise interruptions for judges in the future.

"But what about all the years already missed?" he said in an interview yesterday. "It will be not the first raise in this century, but the first raise in this millennium for these judges. It shows the disrespect with

which we're treated. The Legislature should give us a raise and have the commission."

Acting Supreme Court Justice Frank J. LaBuda ([See Profile](#)), in Sullivan County, called the commission an "excellent" idea for guiding future pay increases. But he also questioned the lack of retroactivity.

"It doesn't solve the immediate and crushing problem of trying to support a family on what I made 12 years ago," he said yesterday.

The legislation creates a seven-member commission on April 1, 2011, that will appraise the need for a judicial pay raise for the subsequent four years based on inflation, judicial salaries in other states and on the federal bench, the state's ability to afford raises and other factors ([NYLJ, Dec. 1](#)).

The first recommended raises would go into effect on April 1, 2012.

The commission would be re-formed on April 1, 2015, and every four years thereafter to take a fresh look at the need for raises. The increases would automatically go into effect unless the Legislature votes specifically against their implementation.

The judiciary has sought the formation of a commission since at least 2006 to take the question of pay raises out of the political give-and-take of the budgeting process in Albany between governors and lawmakers.

Judges have complained, and the state Court of Appeals agreed in a February 2010 decision, that judicial pay raises have been unfairly linked for years with unrelated issues in a way that has come to threaten the constitutional independence of the judicial branch.

#### Significant Milestone

Judge Lippman said yesterday the feedback he has received has been "overwhelmingly" positive. He said he has received a "ton" of congratulatory messages and comments at appearances since the Legislature approved the bill earlier this week.

He said he could understand the disappointment of some judges, such as those who plan to retire at the end of 2011 and will not benefit from the first expected raise on April 1, 2012.

"There are some people who say, 'Gee, it's too bad we're not getting anything right away,'" the chief judge said yesterday. "But I believe there is an overwhelming understanding of what's going on around us, with the [hiring] freezes, the layoffs at the federal and state level and with a new governor coming in who wants a frugal and responsible budget," he said. Anyone thinking about this seriously should not be surprised that there will not be an immediate pay hike, he said. "I don't think it is a rational way of looking at it."

Despite some continued short-term hardship for judges, creation of a "permanent, systematic" way of raising judges' pay outside of the legislative process will be far more in the best interests of the judiciary as an independent branch of government than securing a \$10,000 or \$20,000 pay increase right away, Judge Lippman said.

"Not only is this a milestone event, so essential to the future of our judiciary, but even today, it's still staggering that they [state legislators] actually did it," he added.

Judge Lippman said Governor David A. Paterson, who submitted the pay commission bill, said he would

sign the measure into law on Dec. 7.

One Brooklyn judge, who asked not to be identified, said he is "willing to put off the raise for another year and four months" if the delay buys future stability to the judicial pay approval process and integrity to the judiciary as a whole.

"It's a trade-off I am willing to make," the judge said.

Still, he said that he hopes the commission takes the extra year plus into consideration when it issues its recommendations.

Supreme Court Justice Joseph M. Sise ([See Profile](#)) in Montgomery County, the president of the Association of Justices of the Supreme Court of the State of New York, said members of his group were also expressing concern about waiting another 16 months for a pay increase and about the retroactivity issue.

But Justice Sise added, "Personally, I think this is a significant positive step forward" and he praised Judge Lippman and Chief Administrative Judge Ann Pfau, who also lobbied the Legislature for passage of the commission bill.

Judge Lippman said he planned a message to the 1,300 state judges either in writing or in an online video address. He stressed that he and others with appointment power to the commission will select their members soon and that the panel will begin its work on April 1.

"The process begins on April 1," the chief judge said. "It is not like we forget about it now."

#### Ongoing Litigation

Thomas Bezanson of Cohen & Gresser, one of the attorneys for the judge-plaintiffs in *Larabee v. State of New York*, said he will continue to pursue the litigation seeking a pay raise. He has filed a motion for reargument, asking the Court of Appeals to force the Legislature to consider the pay issue separate from non-related bills and to award damages to judges for having gone so long without raises.

Mr. Bezanson contends that judges have suffered, in essence, a 33 percent pay cut by going 12 years without a raise.

Justice Lebowitz is a plaintiff in *Pines v. State of New York*, a suit in which judges are trying to get the courts to recognize that an appropriation in the 2009-10 state budget providing for \$51 million in judicial pay raises is valid and should be enforced retroactively. The suit is awaiting a decision in Manhattan Supreme Court.

Justice Schack is a plaintiff in *Maron v. Silver*, one of three cases decided in February 2010 by the Court of Appeals.

Judge Lippman, the plaintiff in another pay suit, *Chief Judge v. Governor*, said the creation of the commission was "our main objective" in bringing the litigation, which was initiated by former Chief Judge Judith S. Kaye in 2008. He said he wanted to see the commission bill signed and the panel formed before deciding whether to pursue his case.

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