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## 2009 Budget Action Obligates N.Y. to Hike Judges' Pay, Court Finds

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02-14-2011

ALBANY - The state is "obligated" to pay raises to its 1,300 judges retroactive to April 1, 2009, a judge on Long Island has ruled.

Nassau County Supreme Court Justice Karen Murphy ([See Profile](#)) determined that state judges' pay had been "duly increased" by the enactment of the 2009-2010 Judiciary budget.

The state acknowledged that the budget had contained an appropriation for the raises but argued that it could not go into effect without separate enabling legislation. Justice Murphy rejected that position, finding that the appropriation had been sufficient to give the judges their first salary increase since Jan. 1, 1999.

Ruling in [Pines v. State of New York](#), 13518/10, Justice Murphy on Thursday rejected a state motion to dismiss and granted summary judgment in favor of lead-plaintiff Justice Emily Pines of Suffolk County ([See Profile](#)) and five other plaintiff-judges.

**Editor's Note:** *An earlier version of this story incorrectly reported the holding of Justice Murphy's decision.*

The judge grounded her decision on Chapter 51 of the Laws of 2009, which re-appropriated \$51,006,759 to compensate judges "and for such other services and expenses in section two" of the budget bill. That section set forth specific compensation, including raises, for the judges.

Under the salary schedule, the pay of Supreme Court justices was to increase to \$170,000 from \$136,700, and other judges were to receive proportionate raises.

"Clearly, the constitutional requirement that judicial compensation be 'established by law' is met by Chapter 51, as enacted," Justice Murphy concluded. "Lack of itemization in, and the absence of additional enabling legislation for Chapter 51, are not fatal, nor is the absence of revisions to the judicial salary schedules set forth in the Judiciary Law."

She added, "The State Constitution does not mandate a specific format for judicial salaries, and consequently, Chapter 51 is enforceable as it stands."

Justice Murphy said Governor David A. Paterson authorized the pay raises when signing Chapter 51 without any enabling language for the pay-raise appropriation.

The judge said that she was not persuaded by transcripts of Assembly and Senate debates during which lawmakers insisted that the budget did not include a raise for the judges (**NYLJ, April 3, 2009**).

Justice Murphy noted that all parties in the budget negotiations agreed that raises were "both warranted and deserved."

"Surely, [the state] is not suggesting that this Court give credence to the argument that Chapter 51 is merely the Legislature's transparent attempt to, once again, mollify the judiciary by acknowledging the obvious need for salary increases, while, with the other hand, attempting to withhold those earned and deserved raises."

Rather than declaring that the Legislature had engaged in "subterfuge," Justice Murphy concluded that legislators had indeed "properly enacted" raises for the judges.

Justice Pines, reached yesterday by telephone at her chambers in Riverhead, said she was "very gratified" by the ruling.

"I thought it was an extremely intelligent decision," Justice Pines said.

Steven Cohn of Carle Place, the plaintiffs' attorney, said Justice Murphy's ruling ran counter to the finding of the Court of Appeals in **Maron v. Silver**, 14 NY 3d 230, one of three judicial pay raise cases it decided in judges' favor last year. In that ruling, the state's highest court said enabling legislation was needed after the passage of the 2005-06 budget before the money for raises could be released.

"What the judge [Justice Murphy] said was there was no further language needed" with respect to the 2009-10 budget, Mr. Cohn said in an interview Thursday.

Justice Murphy pointed out in her decision that the Chapter 51 language in the latter year, the provision before her, eliminated the phrase "pursuant to a subsequent chapter of law specifying such salary levels."

There was no immediate comment from legislative spokespersons or Governor Andrew M. Cuomo's office.

Other plaintiffs in the suit were St. Lawrence County Supreme Court Justice David Demarest (**See Profile**); acting Queens Supreme Court Justice Jeffrey D. Lebowitz (**See Profile**); Saratoga County Supreme Court Justice Stephen Ferradino (**See Profile**); Niagara County Supreme Court Justice Ralph A. Boniello III (**See Profile**) and acting Nassau County Supreme Court Justice Joseph C. Calabrese (**See Profile**).

The Court of Appeals last year found that the Legislature violated the state Constitution by, year after year, linking a judicial pay to issues that were unrelated to compensation. However, it did not specify any remedy for that violation, other than consideration of judicial compensation on its merits (**NYLJ, Feb. 24, 2010**).

Last month, the Court of Appeals declined to hear rearguments in one of the 2010 pay cases in which plaintiffs sought for the court to enforce its ruling last year. The plaintiffs contended that the Legislature had failed to make a consideration of a judicial pay raise independent of other issues (**NYLJ, Jan. 19**).

Mr. Cohn, who is representing the plaintiff judges in *Maron*, has filed a claim against the state in the Court of Claims seeking back pay for state judges to April 1, 2005.

Since the 2010 decision by the Court of Appeals, legislators have approved creation of a special commission that would recommend judicial compensation effective April 1, 2012.

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