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Commission to Focus on Amount of Judges' Raise

Members of a special judicial compensation commission apparently are leaning toward recommending some kind of raise for 1,200 state judges—their first since Jan. 1, 1999—but have not reached a consensus yet on the size or timing of the hike. "I assume something will be done, but we have not had the discussion yet," William C. Thompson Jr., the chairman of the seven-member commission, said in an interview this week.

Joel Stashenko

07-29-2011

ALBANY - Members of a special judicial compensation commission apparently are leaning toward recommending some kind of raise for 1,200 state judges—their first since Jan. 1, 1999—but have not reached a consensus yet on the size or timing of the hike.

Former New York City Comptroller William C. Thompson Jr., the chairman of the seven-member commission, said he believes the panel members believe a pay hike is in order, but, with a month to go before its recommendations are due, have not begun to hash out the details.

"I assume something will be done, but we have not had the discussion yet," Mr. Thompson said in an interview this week. "I fully understand why we are there. This vehicle has been formed to create an unbiased and apolitical look at raises for judges. But we have not had any conversations yet" on exactly how much.

Mr. Thompson, who was appointed to the commission and designated as its chair by Governor Andrew M. Cuomo, said he does not believe "anybody has made up their minds" about specifics.

That perception is shared by three observers interviewed by the Law Journal familiar with the commission's work—two in the Judiciary and one in the Legislature.

Pay raise supporters, including the court system and bar groups, have pushed for an immediate large increase, in the range of around 40 percent to more than 60 percent, to make up for the eroding effects of inflation on judges' pay. Supreme Court justices now earn \$136,700 a year.

Another Cuomo appointee William Mulrow, a senior managing director at Blackstone, said the question is not whether the group will recommend some raise but how big it will be.

"I think everyone on the commission and anyone who has anything to do with the Judiciary sees that need [for higher pay] and believes that need has to be addressed," Mr. Mulrow said. "I don't think there is any question of that."

But although there is widespread agreement that judges deserve a raise, testimony before the commission last week by Robert Megna, Mr. Cuomo's budget director, raised the issue of just how much the state could afford.

After briefing the commission on the state's continued budget woes and the governor's efforts to deal with continuing "fiscal challenges," Mr. Megna urged the group to exercise caution in crafting its recommendations.

"In addition to the current fiscal constraints, the State will continue to face budget deficits in the foreseeable future and any increase, even a modest one, will only serve to widen the gap," the budget director warned in written testimony submitted to the commission.

Moreover, he suggested that any increase must be rational and fair.

"Unfortunately," he wrote, "certain proposals that recommend significant salary increases would skew the entire system. In essence, such proposals—proposals that would increase judicial salaries well above most public officials—cannot be rationalized. Public service is a noble profession and we must be mindful that it's not always about how much a person makes. Thus, it is imperative that any salary increase can be justified in the current system."

Mr. Thompson said he believes Mr. Cuomo is "committed" to seeing that judges get a raise.

"Any entity that doesn't have a raise for over 12 years, I think the governor would have to agree that is something that needs to be

done," Mr. Thompson said.

In addition to Messrs. Thompson and Mulrow, Mr. Cuomo's other appointee is Richard B. Cotton, general counsel of NBC-Universal.

Chief Judge Jonathan Lippman has two appointees: Robert B. Fiske Jr. of Davis Polk & Wardwell and Kathryn Wyld, president of Partnership for New York City.

Senate Republican Majority Leader Dean Skelos named his colleague at the Uniondale firm of Ruskin Moscou Faltischek, managing partner Mark Mulholland, as his representative.

Assembly Speaker Sheldon Silver selected one-time Assembly Majority Leader James Tallon Jr.

Observers of the commission speculate that Mr. Tallon's stance could be crucial if the governor's appointments back only a modest raise while Judge Lippman's appointees and Mr. Mulholland take a more generous view.

"Jim Tallon could be the swing vote deciding between judges getting a lot of up-front money and smaller, more incremental raises," one of the observers said.

Mr. Silver for years in the mid to late 2000s said judges deserved raises, but no pay bill passed in his house until the one creating the judicial pay commission late last year (NYLJ, Dec. 2, 2010). He has not indicated whether he backs large up-front hikes or more incremental increases.

"We have an independent commission that is examining that issue," Mr. Silver said through a spokesman but decline further comment.

Mr. Tallon has said little about the size or the configuration of a raise. He opined during a July 11 meeting that the panel should look at the "totality" of the state's compensation for other public employees in leadership and executive positions when formulating its decision for judges.

Mr. Tallon did not return calls for comment.

Business Community

Ms. Wyld helped organize a show of support by business leaders for a judicial pay raise in 2007, saying New York's role as a worldwide center of business and finance depended on a top-notch judiciary, especially the judges assigned to commercial parts.

She said this week that she found it compelling that between 2007 and 2009, only 18 percent of the people entering the judiciary were from the private sector.

"Particularly for the business community, having a judiciary with business experience is very important," she said.

But Ms. Wyld said there is a built-in tension in the views of her constituency.

"I do represent the pulse of the business community," she said, "but the business community is equally concerned about supporting fiscal discipline on the state's part" as it is about having judges receive fair

The Commissioners



William Thompson Jr., chairman, 58
Chief administrative officer and senior managing director at Siebert Brandford Shank & Co.; chair, Battery Park City Authority; Democratic candidate for New York City mayor, 2013.

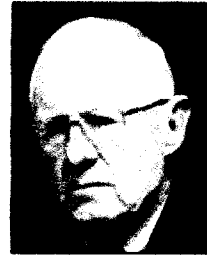
Past Experience: New York City comptroller, 2002-2009; unsuccessful mayoral candidate, 2009.
Appointed by Governor Cuomo



Richard B. Cotton, 66
Executive vice president/general counsel, NBC-Universal; chair, U.S. Chamber of Commerce's Coalition Against Counterfeiting and Piracy.

Past Experience: executive vice president/general counsel, NBC, 1990-2000; law clerk for U.S. Supreme Court Justice William J. Brennan Jr. and Judge J. Skelly Wright at the U.S. Court of Appeals for the Second Circuit.

Appointed by Governor Cuomo



Robert B. Fiske Jr., 80
Senior counsel, Davis Polk & Wardwell. Clients have included the National Football League in the antitrust suit brought by the U.S. Football League and the New York Mets in a dispute with Cablevision.

Past Experience: Southern District U.S. attorney, 1976-80; independent counsel for Whitewater investigation, 1994.

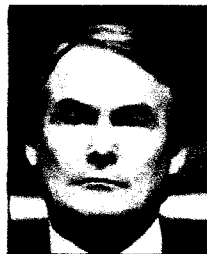
Appointed by Chief Judge Lippman



Mark S. Mulholland, 50
Managing partner, Ruskin Moscou Faltischek in Uniondale.

Past Experience: attorney at Willkie Farr & Gallagher; captain, U.S. Army Judge Advocate General's Corp.

Appointed by Senate Majority Leader Skelos



William Mulrow, 54
Senior managing director, Blackstone; chair, Sterling Suffolk Racecourse, East Boston, Mass.

Past Experience: director, United Nations' Develop-



James Tallon Jr., 69
President, United Hospital Fund of New York; chair, Commonwealth Fund; chair, Kaiser Commission on Medicaid and the Uninsured; member,



Kathryn S. Wyld, 65
President/CEO, Partnership for New York City; deputy chair of the board, Federal Reserve Bank of New York.
Past Experience:

compensation.

Ms. Wylde said she is "sympathetic to the compensation situation" of judges but has not made up her mind about the raises she could support.

Read Testimony and Submissions to the Commission on Judicial Compensation from:

Office of Court Administration

Robert Megna, Director
of the Division of the Budget

Coalition of 12 judicial groups
(Executive Summary and Full Report)

New York State Bar Association

New York City Bar Association

New York County Lawyers' Association

Women's Bar Association
of the State of New York

New York State Trial Lawyers Association

New York City Corporation Counsel
Michael A. Cardozo

The Fund for Modern Courts

Center for Judicial Accountability

See also: Legislation Establishing the Commission

Mr. Fiske, likewise, said this week he is not yet ready to publicly reveal his recommendations.

"I'd rather my colleagues hear it out of my mouth and not read it somewhere," he said.

Mr. Mulholland left no doubt where he stands generally on the issue.

"I have felt from the beginning of the process that a substantial and immediate raise is necessary and appropriate," he said.

Mr. Skelos, the Senate majority leader who appointed Mr. Mulholland, has a strong familial link to the Judiciary. The senator's brother, Peter B. Skelos, has been on the state bench since 1995 and on the Appellate Division, Second Department, since 2004.

Mr. Mulholland noted that Senate Republicans have been advocates for judicial pay increases dating back at least four years.

Nevertheless, he said that making up his mind about precise compensation levels this early in the commission's work "would be unfair to the process" and that he is reviewing the testimony before the commission and other information about judicial compensation.

Other members also insisted they are keeping an open mind and will come to conclusions independently of the views of those who appointed them.

"The understanding is that every commissioner has to use their best judgment regardless of who appointed them," Ms. Wylde said.

No Pressure Expected

Both Messrs. Thompson and Mulrow said they are undecided about salary levels and that they have not gotten, and do not expect to get, any pressure from Mr. Cuomo or other officials about what positions

to take.

Mr. Mulholland said that while his sympathies lie with judges and the dry spell in pay hikes that they have had to endure, he is not on the commission to do Mr. Skelos' bidding.

"My obligation is to do a conscientious, honest and responsible job," Mr. Mulholland said. "There are no obligations. There has been no number given to me, no direction given to me."

Mr. Cotton did not return calls for comment.

Mr. Thompson, who ran unsuccessfully for mayor and plans to run again in 2013, said he has amply demonstrated his independence in his previous politically charged roles as comptroller and president of the New York City Board of Education.

"I don't think the governor asked me to be a member of this commission to be a rubber stamp for anybody," Mr. Thompson said.

He said he knows the atmosphere surrounding the pay debate could heat up between now and Aug. 28, when the panel's recommendations are due.

"I think any time you are talking about raises for anybody in any group, that it has the potential to be a little bit contentious," Mr. Thompson said. "Any discussion of raises in the current economic times, or in good times for that matter, it's a hard conversation to have."

At the public hearing last week, for instance, the anti-raise Center for Judicial Accountability through its head Elena Sassower called on Mr. Thompson to recuse himself from the commission because his father, William Thompson Sr., was a long-time Supreme Court and Appellate Division justice.

The younger Mr. Thompson refused. He explained later that his father, now 86, has been off the bench since his mandatory retirement at age 76 and would not profit in any way by a salary adjustment.

Ms. Sassower and her allies insist that no raise should be adopted until procedures are put in place to root out what they claim is widespread corruption in the Judiciary.

Earliest Effective Date

If the Legislature does not act to block the commission's suggestions, they would automatically go into effect, at the earliest on April 1, 2012, the start of the state's next fiscal year.

Mr. Thompson said the commission would meet within the next two weeks to begin discussing pay levels. He said there likely would be another meeting to adopt its recommendations. Both sessions would be in Manhattan and open to the public.

The commission has no full-time staff. A non-attorney assistant within Mr. Cuomo's counsel's office has been coordinating meetings and compiling and distributing the information and comments it has received.

A simple four-member majority is needed to adopt the formal recommendations.

Mr. Thompson said individuals and groups are free to continue to file pertinent information or comment about a judicial salary adjustment to the commission's website, www.judicialcompensation.ny.gov.

The commission will go out of existence once it makes its recommendations. Its members are not being paid, except for expenses while on official business. Another commission will be appointed in 2016 to recommend pay adjustments for the four state fiscal years beginning with 2017-18.

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