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## Staged Raise of 27% Is Endorsed for Judges

A special pay commission voted 4-3 on Friday to gradually over the next three years raise the \$136,700 salary of State Supreme Court justices to \$174,000. The raise was considerably less than the immediate increase of \$192,000 to \$220,000 that had been supported by court administrators, judges, bar groups and others, who expressed disappointment. Chief Judge Jonathan Lippman, while acknowledging that some judges will be unhappy, said that the judges still are in line for "significant" pay boosts.

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A special pay commission voted 4-3 on Friday to gradually raise the \$136,700 salary of state Supreme Court justices to the \$174,000 now earned by federal district judges.

The state justices would earn \$160,000 as of April 1, 2012; \$167,000 as of April 1, 2013; and \$174,000 as of April 1, 2014.

Pay for other judges would be raised by the same percentages as Supreme Court justices, or by 17 percent in the first year and 27 percent for the entire three years.

The raise was considerably less than the substantial and immediate increase of between \$192,000 to \$220,000 that had been supported by court administrators, judges, bar groups and others. Under the proposal, there would be no raise at all in 2015.

Judges and bar groups expressed disappointment at the size of the proposed raises, the first since Jan. 1, 1999, for the state's 1,200 judges.

"I think we got stiffed," said Albany County Family Court Judge W. Dennis Duggan ([See Profile](#)), who lobbied for a salary of \$192,500 for Supreme Court justices and comparable increases for other judges on behalf of 12 judicial associations.

"It is a terribly disappointing outcome for judges, a complete defeat," he said. "This puts our salary at a cost-of-living adjusted level at around 2006. I understand that these are terrible times, but they found money to give raises to everyone else for the past 13 years. It is just a sad day for judges."

Chief Judge Jonathan Lippman, who pushed hard for the establishment of the commission last year, acknowledged that some judges will be unhappy at the panel's action. But he said that the judges still are in line for "significant" pay boosts. He also stressed that a mechanism has been established to pave the way for future raises without depending on the Legislature and the governor.

"I think this is, for the next four years, what it is," Judge Lippman said in an interview Friday. "We have broken this horrible, horrendous string of no-raises."

By law, the raises recommended Friday will go into effect automatically unless the Legislature and the governor specifically act to block them.

Former New York City Comptroller William C. Thompson Jr., chairman of the commission, said at Friday's meeting that the panel's majority would have preferred to give more money to the judges.

But given the state's grim economic reality, he said that the commission could not endorse raises so large as to encourage the Legislature and the governor to repudiate its work.

"I think the members of this commission understand that we might not be... the final word on judicial raises," Mr. Thompson said. "Our decision will be reviewed by the Legislature and the governor and if it's felt that it is too out of line with the fiscal realities it could be overturned, and I think that would be disastrous to a Judiciary that has waited for over a decade for raises."

He added that had the commission been formed four or five years ago, when the state government was in better condition, there would have been few objections to a \$190,000 salary.

The plan calls for no retroactive raises or automatic cost-of-living adjustments. Nor does it revise the relationship of the salaries of different kinds of judges.

The final recommendation was put forward by Mr. Thompson on Friday, after he said he had talked to other commission members.

Mr. Thompson and Mr. Cuomo's two other appointees to the commission, William Mulrow, an investment adviser with Blackstone, and Richard Cotton, general counsel of NBC-Universal, all voted for the recommendation. Assembly Speaker Sheldon Silver's appointee, health care executive and former Assembly Democratic majority leader James Tallon, also voted for the recommendation.

Judge Lippman's two selections, Robert Fiske Jr. of Davis, Polk & Wardwell, and Kathryn Wylde, president of the Partnership for New York City, voted against the recommendation as did Mark S. Mulholland of Ruskin Moscou Faltischek in Uniondale, the pick of Senate Republican Majority Leader Dean Skelos.

Mr. Fiske said Supreme Court justices should get immediate raises to at least \$195,000 a year. He estimated that Supreme Court justices have each lost \$330,000 from not receiving raises that kept pace with inflation, which has run at about 42 percent since 1999. At the same time, he said that the state has saved \$550 million.

Ms. Wylde said she did not find the numbers proposed by Mr. Thompson to be unreasonable given the state of the economy. But she worried they were inadequate to show how valued judges are to the state and the legal system.

"This is also about the symbolism to a Judiciary that... has felt demeaned, has felt disrespected and I think are looking from this commission... that they are getting some recognition of their status, the status of their role, the kind of thing that will continue to attract and keep good people," Ms. Wylde said. "It's not just the money, but the fact that they are a respected third branch of government."

#### Political Skirmish

Mr. Mulholland, who proposed immediate pay increases to \$192,000 a year, was rebuked by several panel members when he criticized Mr. Tallon for going along with the Cuomo appointees' pay-raise proposal rather than forming a united legislative front with the Senate.

"I'm disappointed that the Assembly's legislative appointee does not sufficiently recognize the fundamental importance of this decision to the steady, stable functioning of New York's government," Mr. Mulholland said. "I'm disappointed that the Assembly's legislative appointee has not seen fit to close ranks with me, to stand arm-in-arm with me, the Senate majority's appointee, to show the Judiciary that the full Legislature has its back."

Mr. Thompson replied that he considered the seven members of the commission to be independent appointees and not representatives of the Legislature, the governor or the chief judge.

"I never looked at myself as the governor's appointee," he said.

Mr. Cotton told Mr. Mulholland, "It is highly unfortunate to inject the scoring of political points in this discussion."

For his part, Mr. Tallon said he was surprised at being accused of not supporting the Judiciary.

"But as I said earlier, this is a politically volatile issue," said Mr. Tallon, a former state assemblyman from the Binghamton area.

Mr. Silver said in a statement Friday that the political skirmishing prompted by Mr. Mulholland's comment was what the commission was designed to avoid.

## Key Developments

**Jan. 1, 1999:** Judges receive their last raise: a 21 percent increase as part of a deal between the Legislature and Governor George E. Pataki that also includes salary boosts for legislators and state government agency heads. In return, the Legislature accedes to Mr. Pataki's demand that charter schools be established in the state.

**Feb. 25, 2004:** Chief Judge Judith S. Kaye decries a system that forces judges to "beg and plead" for pay raises from their counterparts in co-equal branches of government and promises to submit legislation for automatic cost-of-living increases for judges.

**Dec. 3, 2004:** The Judiciary, reflecting the growing concerns of judges, breaks with tradition and includes a proposed pay increase for judges in its 2005-06 budget. It repeats the move in subsequent years.

**March 30, 2007:** On the verge of pay increase agreement in the 2007-08 budget, Governor Eliot Spitzer says he will withhold judges' raises until lawmakers accede to his demands for ethics reforms. Legislators did not, and [the raise proposal dies](#).

**April 9, 2007:** Judge Kaye [suggests](#) for the first time that she will sue the other branches of government if they do not give judges a raise.

**April 10, 2008:** Judge Kaye [files suit](#) against the governor and Legislature in Manhattan Supreme Court to remedy the "intolerable situation" facing the Judiciary. Her action joins two other suits by individual judges.

**Feb. 23, 2010:** [The Court of Appeals rules](#) in *Maron v. Silver*, 14 NY2d 230, that by not granting judges a raise, the Legislature has created a "crisis" violating the separation of powers doctrine. It does not impose a salary increase but orders the Legislature to consider the pay question separately from unrelated public policy issues.

**Nov. 30, 2010:** The Legislature [approves a bill](#) creating a commission to meet every four years to recommend raises. The first recommendations are to go into effect on April 1, 2012, unless specifically countermanded by the Legislature.

**Dec. 10, 2010:** Governor David A. Paterson [signs legislation](#) creating the pay commission and proclaims that "the judges of this state will get [the salaries] they deserve," which "is important to creating the highest standard of jurisprudence in this nation."

**June 10, 2011:** Governor Andrew M. Cuomo rounds out the composition of the seven-member commission with [his appointment of three members](#), including Chairman William Thompson Jr., New York City's former comptroller.

**July 20, 2011:** The pay commission [holds its only public hearing](#), in Albany. The panel has received submissions from 46 organizations and individuals. They are posted at [www.judicialcompensation.ny.gov/submissions](http://www.judicialcompensation.ny.gov/submissions).

**Friday:** The commission votes 4-3 to gradually raise the \$136,700 salary of Supreme Court justices to the \$174,000 now earned by federal district judges. The justices would earn \$160,000 as of April 1, 2012; \$167,000 as of April 1, 2013; and \$174,000 as of April 1, 2014. The pay of other state judges would be increased proportionately.

"An independent commission was created to take the decision away from the Legislature and away from political finger pointing," Mr. Silver said. "I have not spoken to my appointee to the commission except during the initial process. Each commissioner made an independent determination reflecting their own personal judgment, not the judgment of the Senate, Assembly or governor."



James R. Tallon, Jr., right, speaks as Mark C. Mulholland listens during the final meeting of the Commission on Judicial Compensation.  
Rohanna Mertens

State Senator John Bonacic, R-Mount Hope and chairman of the Senate Judiciary Committee, said he was disappointed that a clear consensus was not reached by the commission.

"The existence of the commission was only necessitated by the Assembly's failure to act [to raise judicial pay] when the Senate did in 2007," Mr. Bonacic said in a statement. "That said, the commission has made its decision, and a 4-3 vote, is still a majority."

He did not say whether he would support the recommendation.

The commission will go out of existence after transmitting its final report to the Legislature and the governor on Monday. A new commission will be appointed to recommend salary adjustments for the four state fiscal years starting April 1, 2016.

Mr. Thompson said the third-year pay for Supreme Court justices would match the current salary levels for U.S. District Court judges, which Chief Judge John Roberts has been lobbying Congress to increase for years. Mr. Thompson said he would not object if the commission's final report contained a request that the Legislature and

the governor should raise Supreme Court justices' pay to the level of U.S. District Court judges in the fourth year of the pay plan, if the federal judges get raises in the meantime.

New York City Corporation Counsel Michael A. Cardozo said that the plan backed by the commission will take too long to restore an adequate salary for judges.

"Waiting until 2014 to provide judges with an appropriate salary—which will by then be reduced by inflation—fails to recognize their critical role in society," Mr. Cardozo said in a statement.

George Bundy Smith, a retired Court of Appeals judge now at Chadbourne & Parke, helped represent judges in a suit seeking to force the Legislature and governor to grant judges higher salaries. He said the lack of retroactivity in the recommendations means that judges will continue to be "short-changed." Mr. Smith said he considers that to be a "form of age discrimination" against judges who have been forced to step down since 1999 due to their age and who will not be compensated for wages they lost to the pay impasses in Albany.

Vincent E. Doyle III, president of the New York State Bar Association, expressed concern over what he called the "relatively modest salary adjustment" recommended by the commission and the fact it will be phased in over three years.

"Judges have waited long enough," Mr. Doyle, of Connors and Villardo in Buffalo, said in a statement. "We recognize the state's fiscal problems and that many New Yorkers have been forced to sacrifice. For judges, the sacrifice has been particularly long and onerous. Since 1999, in good economic times and bad, judges' salaries have not increased by even one cent."

The New York City Bar and the New York County Lawyers' Association also issued statements criticizing the size of the recommended raise.

Milton Williams Jr., chair of the Fund for Modern Courts, stated that the organization appreciated that the compensation commission "has taken the first step, through a modest salary adjustment phased in over the next three years, to redress the grossly inadequate salaries of the judiciary in New York state. We continue to believe that judicial compensation, which has been frozen for the past dozen years, must be adjusted to at least take into account the significant cost of living increases during this time. We urge the next special commission to fully address this continuing inequity."

Judge Lippman's own salary will increase from \$156,000 a year to \$182,500 in the first year under the salary recommendation and to \$197,100 in the third year.

He said that Mr. Thompson may be correct in his calculation that recommendations of the order sought by Messrs. Fiske and Mulholland may have caused a backlash from the Legislature and the governor.

"Yes, it is possible to view it that if it were higher, there might have been a challenge," the chief judge said.

Mr. Cuomo, whose office did not immediately respond to requests for comment Friday, is projecting budget gaps of more than \$2 billion in each of the next two state fiscal years.

Brooklyn Family Court Judge Daniel Turbow ([See Profile](#)), head of the New York City Family Court Judges Association, said he was "very disappointed" with the result of the commission's work. At the least, he said he expected an immediate increase for judges to the \$174,000 level for federal District Court judges.

"Frankly, I'm shocked," said Judge Turbow, who attended Friday's commission meeting.

The recommendations cover 1,200 state-paid judges; town and village court justices are not affected.

@Joel Stashenko can be contacted at [jstashenko@alm.com](mailto:jstashenko@alm.com). John Caher contributed to this report.

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