

LAW.COM

ALM Properties, Inc.

Page printed from: <http://www.law.com>

[Back to Article](#)

N.Y. Judges' Groups Ask to Keep Yearly \$10K Stipend With Pay Hike

New York state judges are pressing court administrators to keep in place a yearly \$10,000 stipend provided to the judges in recognition of their years without a raise even after the judges begin receiving higher pay recommended last month by a special judicial compensation commission.

Joel Stashenko

09-30-2011

New York state judges are pressing court administrators to keep in place a \$10,000 stipend provided to the judges in recognition of their years without a raise even after the judges begin receiving higher pay recommended last month by a special judicial compensation commission.

The commission recommended pushing annual salaries for state Supreme Court justices from \$136,700 to \$160,000 starting on April 1, 2012; to \$167,000 beginning April 1, 2013; and to \$174,000 beginning April 1, 2014. Other judges will get proportional raises, if the Legislature and Gov. Andrew M. Cuomo do not alter the recommendations over the next six months.

The state's judges have not gotten a salary increase since 1999. In light of that fact, Chief Administrative Judge Ann Pfau said when she introduced the supplemental fund in 2007 that administrators "wanted to look at anything we can do in the interim to make their lives better."

Brooklyn Family Court Judge Daniel Turbow said in an interview Tuesday that judicial groups have been engaged in an "ongoing discussion" with administrators for weeks about the judges' desire for the stipends to continue.

"We were told that it depends on the budget and we made it clear that we believe it should be continued. Indeed, some of us think it should be enhanced," Turbow said.

He added that a coalition comprising 11 judicial groups "will probably submit some type of formal request [to court administrators] within the next couple of weeks."

Turbow is president of the New York City Family Court Judges Association. He and Albany County Family Court Judge W. Dennis Duggan have been active in urging the judges to speak together.

The Office of Court Administration must make its next budget presentation, for the 2012-13 fiscal year, to the Legislature and governor by Dec. 1.

Chief Judge Jonathan Lippman said one decision to be made will be on the fate of the judicial supplement

fund.

"We always said that once we get a raise, we would revisit and see where we are," Lippman said. "Really, there has been no decision made about it."

He said the pay raises recommended for the next fiscal year will total \$30 million of the next budget. Continuing the stipends would add another \$12 million.

Judge Turbow called the supplemental fund a "chamber allowance," and said it was similar to those received by judges in other states.

"It's a routine thing for judges to get," he said.

The fund is intended to offset expenses for such things as bar association dues, the purchase of legal materials and robes, insurance premiums and expenses related to operating satellite offices from their homes. But there are no restrictions on how the money may be spent, and judges must pay taxes on it if they take it in a lump sum.

The supplemental fund was initially \$5,000, but was increased to \$10,000 a year in 2010.

Cortland County Justice Phillip R. Rumsey, president of the New York State Supreme Court Justices Association, said members of his group discussed several matters with Judges Lippman and Pfau at a meeting last week in New Paltz. Rumsey said further talks are planned, but he refused to discuss whether the future of the supplemental fund came up.

COURT CHALLENGE FLOATED

Meanwhile, dissatisfaction among judges at the pay commission's recommendation remains visible.

Earlier this month, Justice David B. Saxe of the Appellate Division, 1st Department, circulated on the judges' online discussion site a way to bring what he called a "viable" CPLR Article 78 challenge to the commission's findings. Specifically, Saxe invited one or more judicial associations to sue to eliminate the first two incremental increases as being in violation of the commission's legislative mandate to recommend judicial salaries at "adequate" levels.

According to Saxe's outline of an Article 78 action, evidence gathered by the pay commission properly concluded that the \$174,000 a year recommended for Supreme Court justices in the third year was reasonable. That salary is what federal district judges now receive.

"Having determined the salary level that it deemed adequate for an increase was to bring the state judges in parity with the federal judges, the commission then adopted a planned increase that left the state judges with an inadequate salary for the first two years, by not raising salaries to that adequate level until April 1, 2014," he wrote to his colleagues. "In so doing, it violated its very mandate."

Saxe said he thought the commission could be compelled by a court to set the pay level at the "adequate" rate of \$174,000 beginning April 1, 2012.

However, he said an action should carry the imprimatur of one or more of the judicial groups because the pay of state judges at all levels would be at stake.

"I certainly could never be a lone ranger," he said.

Saxe said he knew of no association willing to pursue an Article 78 action as he proposed.

"I think some judges are reluctant to do it, because they see a raise on April 1," Saxe said. "It's not what they want, but they are willing to take it."

Jeffrey D. Lebowitz, an acting Supreme Court justice in Queens who has been an outspoken advocate of a pay raise, said he also knows of no group planning an Article 78 proceeding against the pay commission.

Lebowitz said some judges fear that by winning a suit like that proposed by Saxe, the Judiciary could antagonize the Legislature and governor, compelling them to undo all of the commission's recommendations.

Copyright 2011. ALM Media Properties, LLC. All rights reserved.