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The New York Times

A Justice Orders a Pay Raise for New York's Judges: [Metropolitan Desk]

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In April, the state's chief judge, Judith S. Kaye, filed a suit on behalf of New York's judges charging that the political process has denied them their constitutional right to an "adequate" salary, because the State Legislature has refused to give them a raise for the last decade.

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Weighing in on a longstanding tug of war between New York's jurists and lawmakers, a State Supreme Court justice ordered the Legislature on Wednesday to give the state's 1,250 judges their first pay raise in 10 years.

The ruling, by Justice Edward H. Lehner, came in response to a lawsuit filed last September by Patricia M. Nunez of New York City Criminal Court, Michael L. Nenzo of Cattaraugus County Family Court, Susan R. Larabee of New York City Family Court and Geoffrey D. Wright of New York City Civil Court. Justice Lehner gave the Legislature 90 days to increase the current salary of \$136,700 for all New York State trial judges.

But the judges may have to wait much longer if the Legislature appeals the ruling.

Gov. David A. Paterson's office released a statement saying that his administration was considering its options.

"While the governor has long supported salary increases for judges, today's opinion flies in the face of the State Constitution, which makes clear that only the Legislature has the power to set judicial salaries," the statement said.

Judges have argued that the Legislature has unconstitutionally linked the salaries of lawmakers and judges, stonewalling the judges from pay increases in line with inflation. Judges say that lawyers fresh out of law school working at New York City firms earn more than they do.

In April, the state's chief judge, Judith S. Kaye, filed a suit on behalf of New York's judges charging that the political process has denied them their constitutional right to an "adequate" salary, because the State Legislature has refused to give them a raise for the last decade.

A hearing is scheduled next month for Judge Kaye's lawsuit, which Justice Lehner will hear as well.

In his 17-page decision, Justice Lehner, who himself would get a pay raise under the ruling, said he believed that legislators did unfairly link their desire for a pay raise with that of the judges.

The government has used "judicial pay as a pawn in dealing with the unresolved political issue of legislative compensation," he wrote. He said the link was "an abuse of power by defendants and constitutes an unconstitutional interference upon the independence of the judiciary."

George Bundy Smith, a lawyer for the judges who filed the suit, praised the decision.

"It's certainly a giant step," said Mr. Smith, a former judge on the State Court of Appeals. "If there is an appeal, we are prepared to argue that appeal and to go as far as necessary."

Mark Hansen, a spokesman for the Senate majority leader, Joseph L. Bruno, declined to comment. But he noted that Mr. Bruno had voted twice last year for judicial pay raises. Both bills passed in the Senate but did not get through the Assembly.

Dan Weiller, a spokesman for the Assembly speaker, Sheldon Silver, said only that his office was still reviewing the decision.

The lawsuit filed by the four judges did not request a specific salary, but did request an award of \$600,000 for each judge, an amount that would account for cost of living increases since 2000.

Justice Lehner did not specify a salary amount, but instructed the Legislature to proceed "in good faith to adjust the compensation payable to members of the judiciary," and to consider compensating judges for salary shortfalls in previous years.

Mr. Smith, the lawyer for the four judges, said he believed that state judges should earn a salary comparable to that of Federal District Court judges, who currently earn \$169,300 annually.

The lawsuit filed by Judge Kaye says that New York's judges have not received a raise since January 1999, a longer time than federal judges and state judges in all other states, and that the situation was hurting recruitment efforts and morale.

While Justice Lehner's ruling is a positive step, a lawyer representing Judge Kaye said it was important to continue with that suit because it was filed on behalf of all the state's judges.

The lawyer, Bernard W. Nussbaum, added that the lawsuit went beyond the issue of a link between the salaries of judges and legislators by arguing that the Legislature has discriminated against judges, pointing out that while virtually all of the state's 195,000 employees have received inflation raises, the judges' salaries have been frozen. It also argues that judges' salaries are unconstitutionally inadequate.

Mr. Nussbaum said that Judge Kaye's lawsuit would proceed unless the governor and the Legislature agreed to judicial pay raises.

"If they do the right thing," Mr. Nussbaum said, "we won't have to go forward."

But the legal terrain on this issue could get tricky.

If the governor and the Legislature appeal Justice Lehner's ruling, the court could grant a stay on the decision, meaning no action would be taken on the salaries until the appeals process was completed. That process could take as long as a year, legal experts say.

The issue of pay raises for judges has also raised an ethical question: Can judges rule fairly on a case that would affect them directly?

Justice Lehner wrote in his decision that under the "rule of necessity," only the New York State Supreme Court had the jurisdiction to rule on the issue of its judges' salaries. Therefore, he said, it was appropriate for him to hear the case.

But James Sample, a lawyer with the Brennan Center at the New York University School of Law, said that although the state's judges deserved a raise, Justice Lehner's decision might not be so clear-cut.

"Given the serious conflict of interest of Justice Lehner's ruling, the decision likely sets a political marker more than a legal marker," Mr. Sample said.

Carl W. Tobias, a law professor at Richmond University, said that Wednesday's decision, along with Judge Kaye's looming lawsuit, might force legislators to soften their stance.

"I think the defendants will need to take it seriously, perhaps even seriously consider settlement negotiations," Mr. Tobias said.

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