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WATCH THE TRAILER

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Pay Frozen, More New York Judges Leave Bench

By **WILLIAM GLABERSON**

There is perhaps no more fitting finale to a long legal career than a judgeship. Ascending the bench after years appearing before it can bring power, respect, personal satisfaction, reasonable hours and, often, free parking. There have traditionally been few steps beyond: Retirement. Or death.

But across the country — and in New York, more than most places — being a judge has in recent years come with one big negative: the salary. New York judges have not had a raise in 12 years, making the state one of the more extreme examples of a growing pay gap nationally between judges and other professionals, including partners at top law firms, who can earn 10 times the salary of the judge before whom they are arguing a case.

Now, for the first time in memory, judges are leaving the bench in relatively large numbers — not to retire, but to return to being practicing lawyers. Turnover in New York has increased rapidly in the last few years: nearly 1 in 10 judges are now leaving annually, a new study shows.

In New York State, at least a dozen have resigned and explicitly cited the pay. The latest is James M. McGuire, a judge on the intermediate state appeals court in Manhattan, who last week resigned his position at the white marble courthouse on Madison Avenue. His judicial salary was \$144,000. He stepped down to be a partner at a law firm, Dechert LLP, where average partner pay is \$1.4 million.

New York, as the state with what officials say is the longest judicial pay freeze, is the focus of a national debate about whether controversial rulings, court corruption and politicized judicial campaigns have so eroded support for courts that there is no constituency for increasing judges' pay. "I never expected to get rich as a judge, but I never expected to get poor either," said Robert A. Spolzino, who resigned as an appellate judge in Brooklyn two years ago to return to law practice.

Judges in New York were the best paid nationally in the 1970s. But their salaries now are

ranked 46th in the country when measured by the cost of living, according to the National Center for State Courts.

Critics contend that some judges do not work very hard and that many of them would never earn the profession's top pay. Eric A. Posner, a University of Chicago law professor, argued in a law review article in 2009 with two other law professors that there was no evidence that better-paid judges did a better job.

"The absence of raises," he wrote in a recent e-mail exchange, "is a problem only if judges weren't overpaid to begin with."

Indeed, in a series of interviews, judges acknowledged that it could be difficult to make the case for a judicial pay raise in hard economic times. Justices of New York's highest-level trial court, the State Supreme Court, make \$136,700. The chief judge of the state makes \$156,000. Across the country, "there is a devaluing of the job that judges do," so there is little pressure to pay them well, said Seth S. Andersen, the executive director of the American Judicature Society in Des Moines, which studies and evaluates judicial systems.

Current and former judges described the pressures they felt in fending off offers and trying to pay for mortgages and tuition bills. Mr. Spolzino, 52, said he had expected that he would remain until retirement, as judges did in the past.

"It's very heady when you walk into a room and everybody rises, people laugh at your jokes," he said.

Emily Jane Goodman, a State Supreme Court justice in Manhattan, said the practical effect of her stalled pay was that she had to sell a summer home in the Hamptons and was having trouble paying for increasing fees on her two-bedroom apartment in the city.

"Here I am," Justice Goodman said, "in a position where I'm working to achieve justice for other people and I don't feel that I'm experiencing justice."

On one of his final days at the Appellate Division on Madison Avenue, Justice McGuire, who was once chief counsel to Gov. George E. Pataki, said he had grown increasingly dismayed as the state failed year after year to raise judicial pay.

"I tormented myself for the longest period of time about whether I should go, because I love the work," he said. "And then I realized, 'I've got no choice. The only responsible thing for my family is to go.'" Justice McGuire, 57, has two children, ages 5 and 3.

In New York, the financial pressures are particularly intense because top law firms compete to hire lawyers — and, now, judges. In response to questions for this article, the state's

Office of Court Administration studied judicial attrition. The analysis found that in 1999, 48 of the 1,300 state judges left their positions. Last year, 110 judges left, with the number of departures increasing sharply over the last five years.

New York's chief judge, Jonathan Lippman, said in an interview that the departures showed only part of the problem. "Why would a talented lawyer," Judge Lippman asked, "want to join an institution that hasn't had even a cost of living increase in 12 years?"

The State Legislature's failure to increase judicial pay since 1999 was the subject of bitter political disputes and court battles before legislation passed in November creating a commission on judicial salaries. It is expected to decide by September whether state judicial salaries will increase and by how much.

Nationally, many judicial salaries have lagged behind the pay not only of top lawyers, but also of some academics, school administrators, elected officials and even some courthouse employees. In New York City, some law clerks earn more than the judges they work for.

The chief justice of the United States, John G. Roberts Jr., has noted that federal judicial salaries have slipped below the pay of top law school deans and other law professors and has said the pay gap could undermine the strength of the federal courts.

The salaries of state trial judges nationally rose 34 percent to a median of \$116,100 in the decade ending in 2005. But during the same period, the median partners' share of profits at large law firms jumped 141 percent to \$957,500, Roy A. Schotland, an emeritus law professor at Georgetown, showed in a law review article. In an interview, Professor Schotland, who studies state courts, said that, nationally, stagnant pay was "the single most important problem for our courts."