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DA Raises Triggered by Judicial Pay Hikes, Angering Counties

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ALBANY - A state law requiring state judges and district attorneys outside of New York City to be paid the same has angered some county officials, who say they can't afford raises for their local prosecutors equal to the 11 percent salary hikes that took effect for judges three weeks ago.

County officials argue that it's unfair to compel them to raise district attorney pay to the amount that the New York Commission on Legislative, Judicial and Executive Compensation voted for judges starting April 1 ([NYLJ, April 4](#)).

In addition, several officials contend that while the state has traditionally helped fund raises for the district attorneys, the 2016-17 state budget contains no extra money for prosecutors' salaries.

"We still have not been given a rational explanation as to why it was excluded," Stephen Acquario, executive director of the New York Association of Counties, said this week. "What we were told is that it was an oversight."

Acquario said the action will cost counties an additional \$1.6 million this year in parity pay, which he said amounts to an unfunded mandate. He said some counties are paying the higher salaries, but others have balked.

"There is some confusion," Acquario said. "Some are saying that the intent of the commission was not to raise the DAs' salary, therefore it was not increased automatically. The issue may need to be clarified in the courts. I hope it doesn't get to the point that litigation is needed but, for the past 50 years, the state has always paid for it. To avoid confusion, they should simply appropriate the money for it now."

Rockland County District Attorney Thomas Zugibe, the president of the District Attorneys Association of New York, said members of his group are sympathetic to the counties' arguments, especially considering that counties operate on different fiscal years than the state and had already determined their budgets for 2016 when the judicial raises were approved.

But Zugibe said district attorneys insist that their raises went into effect automatically when the judges got their raises.

"We believe the state Judiciary Law makes it very clear that DAs' salaries are linked to the salaries granted to Supreme and County court judges," Zugibe said. "This is not something that was solicited [by the district attorneys]."

While disagreeing over the obligation of counties, the Association of Counties and the DAs' association have collaborated on [a letter sent to legislative leaders](#) in Albany this week asking the state to cover the counties' extra costs.

"DAs are entitled to the fair and just compensation pursuant to law for fulfilling the state constitutional and statutory duties related to the enforcement of the state Penal Law," the joint letter signed by Zugibe and William Cherry, Schoharie County treasurer and president of the Association of Counties, said. "However, any state mandated increase to a local government official's salary, as a matter of equity and fairness, must be met by the state."

State Judiciary Law §183-a mandates that counties with populations of 500,000 or more must pay their district attorneys a salary equivalent to those of Supreme Court justices. Counties with between 100,000 and 500,000 residents must pay their district attorneys what their local County Court judges make.

District attorneys argue that the question of counties' obligation for parity pay was settled conclusively in [Kelley v. McGee](#), 57 NY2d 522 (1982). In that case, the Court of Appeals ruled that pay raises for district attorneys in Clinton, Dutchess and Ontario counties automatically took effect when judges got a salary increase in 1979, and that the linkage in Judiciary Law §183-a did not violate home rule provisions in the state Constitution or other statutes.

The district attorneys' association said the salary linkage means that annual pay for DAs in the biggest counties in the state, such as Nassau (where Madeline Singas is district attorney), Suffolk (Thomas Spota) and Westchester (James McCarty), went from \$174,000 to \$193,000 as of April 1.

For DAs in smaller counties, their new annual salaries will generally rise to \$183,350, as the recommendations of the judicial pay raise commission eliminated variations in County Court judge salaries in favor of a flat rate based on 95 percent of what Supreme Court justices are paid.

District attorney pay in smaller counties varied between \$152,500 and \$174,000, based on salaries of local County Court judges.

DA salaries in New York City are set differently and are not affected by the controversy. Those salaries are established by a city commission which revises pay for its top prosecutors and other city officials, such as mayor, comptroller and city borough presidents, once every four years.

According to the latest revision by the Quadrennial Advisory Commission, the annual salary of DAs in the city increased from \$190,000 to \$212,800 ([NYLJ, Feb. 22](#)).

State Sen. Catharine Young (R-Olean), who chairs the Senate Finance Committee, has asked Gov. Andrew Cuomo to agree to a supplemental budget appropriation to cover the counties' extra costs.

Cuomo believes the state has provided ample mandate relief to counties and does not support an additional appropriation, according to his deputy press secretary Maxwell Morgan.

"New York state has provided counties with significant mandate relief, including \$2.8 billion of local savings in the Medicaid program alone," Morgan said.

In the meantime, confusion may continue in some counties.

Steuben County Attorney Alan Reed said he has advised county officials to put on hold a raise for District Attorney Brooks Baker as Reed studies the situation.

"Historically, there is the case *Kelley v. McGee*, but we don't know that it is appropriate to import that construction in the current budgetary bill," Reed said in an interview this week. "It leaves us unsettled. It'd be nice to have some direction what we should do."

The district attorneys association has circulated [a draft resolution](#) it is inviting county legislatures and boards of supervisors to adopt calling on the state to appropriate the \$1.6 million in raises.

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