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Special Commission on Judicial Compensation
Testimony of Robert Megna
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Chairman Thompson and members of the Special Commission on Judicial Compensation, thank you for this opportunity to provide testimony that I hope will provide guidance when making your determination on judicial compensation.

My focus today will be twofold:

- First, the Commission should consider the State's fiscal outlook when setting judicial compensation.
- Second, judicial compensation should be done in the context of public service, i.e. the increase must be rational so it does not distort the entire salary structure for our public employees.

Ongoing, Unprecedented Budgetary Pressures

As you know, the statute that created the Commission stated that among other factors, the State's overall economic climate should be considered when setting a new level of judicial compensation. Similar to most other states, New York has operated under challenging fiscal and economic conditions for the past several years. As a result, New York has faced unprecedented multi-billion dollar budget gaps.

However, the State's current fiscal stress was due, in large part, to the cumulative impact of authorizing spending commitments well beyond the capacity of the State's tax structure to support them. Throughout much of the last decade, the State permitted spending to grow faster than its ability to pay for them. Over the past decade, State spending grew faster than State tax receipts, personal income, and inflation.

For instance, State-funded spending grew at a rate of approximately 5.7 percent annually over this period. In comparison, tax receipts grew at a rate of only 3.8 percent, personal income at 3.7 percent and inflation at 2.4 percent. The difference between what the State spent and received was "covered," albeit temporarily, through non-recurring resources or "one-shots", billions in additional non-recurring federal aid, and the management of payments to the various entities which rely on State government for funding. However, it is unlikely that in the near future the State will be able to rely on such resources to aid in closing budget gaps.

The State is on the Right Path but Continued Caution is Warranted

This year Governor Cuomo's transformational budget has begun to redesign government and put the State on the path to prosperity. The Governor's budget marked an important milestone in reversing the deterioration in State finances: it closed a $10 billion budget gap, without any new taxes, and substantially reduced the projected budget gaps that must be closed in future years.

However, fiscal challenges remain. Although the Governor was successful in reducing the $15 billion budget deficit next year, there still is almost a $2.5 billion dollar deficit and more than $10 billion over the next three years that must be closed. Several factors, including a continued weak economic environment, needed savings from both the personal service and non-personal service components of the budget (even after a 10 percent across the board reduction to agencies in this year's budget), and increases in fixed costs, debt service and employee fringe benefits (especially pension costs) require continued vigilance and fiscal discipline.

Uncertain Economic Outlook

Over the next few years the State will continue to face budget deficits based upon a combination of years of unsustainable spending in addition to the ongoing "Great Recession," which has reduced the volume of real U.S. economic activity by the largest magnitude since the 1930s. This fact is illustrated by four monthly data series that the National Bureau of Economic Research Business Cycle Dating Committee identifies as key coincident indicators of national economic activity: total employment, industrial production, real personal income minus transfers, and real manufacturing and trade sales. Based on the most recent data, all four indicators remain well below their prior peaks. Indeed, two full years into the current economic recovery, employment remains 5.1 percent *below* its prior peak; industrial production, 7.7 percent below; real personal income minus transfers, 3.4 percent below; and real manufacturing and trade sales, 5.2 percent below. Unfortunately, recent data suggests the economy will remain very weak.

The U.S. labor market was ravaged during the downturn, losing 8.8 million private sector jobs. Private employment is not expected to return to its prior peak until the second half of 2014. This forecast implies a historically low recovery rate for the job market, when compared to previous recoveries.

If since the June 2009 official business cycle trough, employment had grown at a rate equal to the average rate over the previous five recoveries, the U.S. labor market would have created four million more jobs than have been created thus far. As a consequence, the unemployment rate remains historically high at the end of two years of economic expansion. The unemployment rate, at 9.2 percent as of June 2011, was down less than a full percentage point from its October 2009 peak of 10.1 percent. In addition, the average weekly duration of unemployment also remains at a historically high level. The labor market data cited above suggest that the weak labor market will likely remain a large drag on economic momentum for years to come. A weak labor market puts downward pressure on wages and aggregate demand, which, in turn, puts downward pressure on prices. As a result, consumer price inflation has remained historically low, particularly when excluding volatile food and energy prices. Low inflation, combined with a stagnant housing market, will continue to limit the growth in State and local revenues.

For New York State in particular, the collapse of the credit bubble in 2007 and 2008 was devastating to State revenues. State finance and insurance sector bonuses fell from their estimated 2007-08 fiscal year peak of $51.9 billion to $32.7 billion in 2008-09, a decline of 37 percent. Similarly, positive capital gains realizations, a significant source of personal income tax revenues, peaked at $118 billion in 2007. The forecast for the 2012 tax year is only about half that amount, and it will take 4-5 years for taxable gains to reach pre-downturn levels. Finally, the fiscal discussion in Washington appears headed towards reducing federal aid to the states, something that will add additional economic pressure to the State.

The System Must Be Rational

Aside from the fiscal situation of the State, it is critical that whatever system is adopted be rational and fair. Unfortunately, certain proposals that recommend significant salary increases would skew the entire system. In essence, such proposals—proposals that would increase judicial salaries well-above most public officials—cannot be rationalized. Public service is noble profession and we must be mindful that it's not always about how much a person makes. Thus, it is imperative that any salary increase can be justified in the current system.

While judicial salaries have remained unchanged since 1999, the question of the affordability and rationality of future salary increases must be considered carefully. In addition to the current fiscal constraints, the State will continue to face budget deficits in the foreseeable future and any increase, even a modest one, will only serve to widen that gap. It is my hope that the information provided in this testimony will be help the Commission understand the State's current fiscal constraints as it considers fair, affordable and sustainable compensation levels for the State's judges.