



## CIVIL COURT OF THE CITY OF NEW YORK

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CHAMBERS OF  
HON. GERALD LEBOVITS  
JUDGE, CIVIL COURT

New York State Commission on  
Legislative, Judicial & Executive Compensation

November 18, 2015

Dear Commissioners:

I write on behalf of the Board of Judges of the Civil Court of the City of New York, a 120-Judge association representing nearly 10% of the State's judiciary, to support pay raises for Civil Court Judges effective April 1, 2016, the earliest date that State legislation allows the Judges to get a raise.

New York City Civil Court Judges proudly serve with distinction:

\* Civil Court is one of the nation's busiest courts. In 2014, 257,675 new cases (not including cases filed in Housing Court, a branch of the Civil Court) were filed in Civil Court. To serve the public best, 74 of our Judges are currently assigned across New York City's five counties, often outside the county in which they were elected, to the Criminal, Family, and Supreme (Civil and Criminal Terms) Courts. No other State Judges are similarly transferred from court to court or from county to county. Only 46 of our Judges currently preside in Civil Court. Our Civil Court Judges do herculean work successfully resolving hundreds of thousands of cases each year in the Civil, Criminal, Family, and Supreme Courts.

\* Civil Court Judges are the face of justice for New York City's most indigent. Because of our unlimited money jurisdiction in Supreme Court and in Civil Court commercial landlord-tenant proceedings, we are the face of justice for many of the richest as well.

\* Together with our New York City Criminal Court and Housing Court colleagues, Civil Court Judges are, by far, the lowest-paid Judges in the United States in terms of cost of living, and we have been the nation's lowest-paid Judges every year for more than a decade.

We understand that this Honorable Commission will likely calculate the Civil Court Judges' pay based on the New York State Supreme Court Justices' pay. We respectfully urge pay parity between Federal District Judges and our Supreme Court Justices with no phase-in and with incremental raises through March 31, 2020, consistent with the raises the Federal District Judges

receive according to the national rate of inflation as set by the Federal Government. We also respectfully urge parity, or at least narrowing the differential, between Supreme Court and Civil Court.

## I. THE FEDERAL BENCHMARK

The Commission should follow the highly persuasive recommendation of the 2011 Special Commission on Judicial Compensation. That Commission recommended as follows:

"The Federal judiciary sets a benchmark of both quality and compensation. New York State should seek to place its judiciary on par. That is where New York State judicial compensation was in the late 1990's and our recommendation is to re-establish this benchmark with a phase-in period that takes account of the State's current financial challenges." (2011 Report at 8.)

The Assembly, Senate, and Governor accepted the Commission's recommendation in full. They, too, agreed, at least tacitly, to re-establish State-Federal parity.

A 4-3 majority of the 2011 Commission recommended an unjustly long phase-in period due, it argued, to the post-Great Recession economic climate (the three dissenters urged immediate parity) with no raise at all in the final year of the four-year period the 2011 Commission was authorized to recommend raises. This time there should be no phase-in or any period in which our Judges receive no raise. State-Federal parity should become effective on April 1, 2016, and remain in place through March 31, 2020.

**(A) With a phase-in, New York judicial pay by 2020 will remain at the bottom of the nation.**

New York Judges went without a raise from 1999 until 2012. In 2011, the New York State judiciary ranked "last in the nation when salary is adjusted for cost of living." (2011 Report at 7.) In 2015, after the phased-in 27% raise, New York Judges rank an unenviable 47th in the nation when salary is adjusted for cost of living, according to the National Center for State Courts. *See* <http://www.ncsc.org/FlashMicrosites/JudicialSalaryReview/2015/resources/CurrentJudicialSalaries.pdf>. But that only begins to tell the story: the 2011 Commission and National Center for State Courts assessed only our Supreme Court Justices' pay. Civil Court pay has hovered between 92% and 93% of Supreme Court pay in years past. That makes our Civil Court Judges America's worst-paid Judges. The Commission must ask itself whether New York can afford to maintain the dubious distinction of paying Civil Court Judges so miserly.

A quality judiciary is necessary to protect the public; to safeguard every New Yorker's right to quick, fair, and equal justice under the law; and to assure that New York remains a world financial capital. Judging is a demanding, all-consuming, and important public responsibility that requires acumen, attention, common sense, independence, integrity, scholarship, temperament,

and wisdom. Required are years of expensive schooling and practicing law (and, for Civil Court Judges, getting elected) just to be eligible for a position that prohibits, except in very limited circumstances, earning extra money but dictates a life of prudence and discretion. The pay must attract, rather than deter, the best to aspire to the judiciary and encourage them to stay there until they retire. The pay must guarantee that Judges spend their days and nights thinking about their cases and not worrying about how they can support their families.

The Commission should not countenance a pay scale in which our State Judges' pay in April 2020, when the next Commission's recommendations go into effect, will still be at the bottom of the fifty states. So many years of rock-bottom pay is a travesty to the Judges — especially the Civil Court Judges — and contravenes the public interest. A quality judiciary cannot rest on inadequate compensation.

**(B) The 2011 Commission's intention to award Federal District Court parity to State Supreme Court Justices must be honored.**

After Federal litigation concluded that Federal Judges were illegally denied cost-of-living increases for many years, the Federal Executive Branch decided not to appeal and instead to pay Federal District Judges a salary that is now \$201,100. Every Federal Judge, including retired Judges, received full retroactive pay and statutory interest. To achieve parity, the Commission should not recommend mere parity going forward. It should also recommend retroactive pay with interest to the State Judges, including our retired Judges, for the same reasons the Federal judges received retroactive pay with interest. Absent recommending retroactive pay, the Commission should recommend full State-Federal parity effective April 1, 2016.

**(C) The State's excellent economic health compels immediate parity.**

The 2011 Commission's 4-3 majority repeatedly argued in its report (pages i, 3, and 7) that the State's economic circumstances required a phase-in. In 2012, when the phased-in raise began, the State ran a \$10 billion budget deficit. The state now has a \$5 billion budget surplus. The two factors on which the 2011 Commission's 4-3 majority relied — "[t]he overall economic climate" and "[t]he State's ability to fund increases in compensation and non-salary benefits" — militate decisively this time for immediate parity with Federal Judges.

**(D) Even without immediate Federal parity, the Commission should recommend an immediate raise about as high as or even higher than Federal pay.**

According to the Commission's November 5, 2015, minutes, "[t]he Commission also will review historical Consumer Price Index data for the Northeast Urban Region (CPI-U)." See <http://www.nyscommissiononcompensation.org/Minutes%20Commission%20Nov%203%202015.pdf>. The Board of Judges accepts that formulation, even though it will lead to a low calculation that does not reflect New York City's higher price index.

The 2011 Commission mentioned 1999 in recommending the Federal benchmark because that was the prior year in which the State Judges got a raise. The Northeast Urban Region CPI-U

in 1999 was 173.5. The CPI-U in 2015 is 252.463. If this Commission rejects the 2011 Commission's intention to re-establish the Federal benchmark, it should follow the CPI-U and immediately set Supreme Court salary, which was \$136,700 in 1999, at \$198,912.29 for 2015, and higher come April 2016, when the next raise will go into effect.

But New York State Supreme Court salary was not always set to the Federal benchmark. For many years — when State Judges got a raise at all (which, ill-advisedly, was rare) — Supreme Court pay was higher than Federal pay. That higher pay was justified because the New York State cost of living is higher than the national average appropriately set for Federal Judges nationwide. In 1975, for example, our Supreme Court Justices earned \$48,998 while the Federal District Judges earned \$44,600. The CPI-U in 1975 was 55.8. Using that benchmark, the Commission should set Supreme Court pay at \$252,463 in 2015, and higher in April 2016.

We would be satisfied if the Commission were to recommend that we get parity with the Federal District Judges. If the Commission were to reject State-Federal parity or decline to recommend immediate State-Federal parity, it should recommend that we be immediately paid \$252,463 — a figure that itself does not even begin to compensate our Judges for our lost years of pitiable pay.

## II. INTRACITY PARITY

New York City Civil Court Judges should be paid the same as the elected State Supreme Court Justices, the elected New York City Surrogate's Court Judges, and the appointed New York City Family Court Judges. Civil Court Judges must, by law, live in New York City, where the cost of living is significantly higher than in other parts of the State. Elected Supreme Court Justices may live anywhere in the State. Parity with Supreme Court will end the anomaly that Civil Judges are paid less than elected Supreme Court Justices, who may live in less expensive areas of the State. Moreover, elected Supreme Court Justices, unlike Civil Judges, who must retire on December 31 of the year in which they turn 70, are entitled to seek three two-year certifications that allow them to continue paid judicial service until December 31 of the year in which they turn 76. Compared to the elected Supreme Court Justices, we automatically lose six years of pay. And with that, we automatically also suffer an overwhelming reduction in pension benefits.

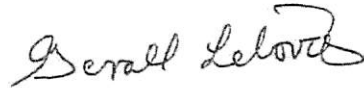
Furthermore, parity with Surrogate's Court and Family Court Judges, who in New York City earn Supreme Court pay, will remedy the unwarranted inconsistency that some Judges not in Supreme Court earn more than other Judges not in Supreme Court.

If the Commission disagrees, it should, in the alternative, narrow the difference between Supreme, Surrogate, and Family Court pay on the one hand and Civil Court pay on the other hand by changing the current differential to at least a 95% differential. The Commission should not let the Civil Court Judges, who serve honorably and are essential to the vitality of our great State, continue to be America's poorest judges.

New York State Commission on  
Legislative, Judicial & Executive Compensation  
November 18, 2015

The Board of Judges thanks the Commission for its important service and hopes that all the Commissioners will support our recommendations.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Gerald Lebovits". The signature is fluid and cursive, with the first name "Gerald" and last name "Lebovits" clearly distinguishable.

Gerald Lebovits  
Acting Supreme Court Justice &  
President, Board of Judges  
New York City Civil Court