

**COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION**

**FINAL REPORT ON JUDICIAL COMPENSATION**

**December 24, 2015**

# COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

P.O. BOX 454, NEW YORK, NEW YORK 12224

December 24, 2015

The Honorable Andrew M. Cuomo  
Governor of the State of New York  
State Capitol  
Albany, New York 12224

The Honorable John J. Flanagan  
Temporary President and Majority Leader  
State Capitol Building, Room 330  
Albany, New York 12247

The Honorable Carl E. Heastie  
Speaker of the New York State Assembly  
Legislative Office Building, Room 932  
Albany, New York 12248

The Honorable Jonathan Lippman  
Chief Judge of the State of New York  
20 Eagle Street  
Albany, New York 12207

Dear Governor Cuomo, Temporary President Flanagan, Speaker Heastie and  
Chief Judge Lippman:

I am pleased to submit this report on behalf of the Commission on Legislative, Judicial and Executive Compensation. Pursuant to chapter 60 of the Laws of 2015, this report sets forth the Commission's recommendations with respect to the compensation levels of judges and justices of the State-paid courts of the Unified Court System over the next four fiscal years.

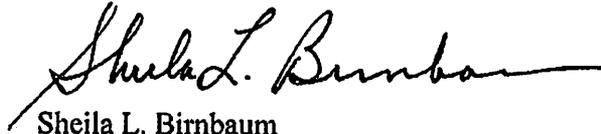
In furtherance of its statutory mandate, the Commission considered a broad range of pertinent data, beginning with the factors delineated in Part E of chapter 60. The Commission held a day-long public hearing and public meetings that were broadcast live over the Internet. The Commission carefully reviewed the public testimony and extensive written submissions received in connection with the question of appropriate compensation for New York State

judges. Witness lists, written submissions and other information about the Commission's work, including transcripts and videos of the Commission's public hearing and meetings, are available on our website at: [www.nyscommissiononcompensation.org/index.shtml](http://www.nyscommissiononcompensation.org/index.shtml).

In recommending the restoration by 2018 of parity between the salary of a New York State Supreme Court Justice and that of a Federal District Court Judge, I believe the Commission has come to a fair and reasoned conclusion that is well supported by the factual record and historical precedent. Each of the last two adjustments to judicial compensation – by the Legislature in 1999 and by the Commission in 2012 – were premised on the principle of pay parity between Supreme Court Justices and Federal District Court Judges. I believe that implementation of the Commission's recommendations will result in equitable, appropriate and competitive judicial salary levels that will attract highly-qualified lawyers to the New York State bench, retain those judges and ensure the strong and independent judicial system that all New Yorkers need and deserve.

I would like to commend the members of the Commission for the hard work and expertise they have contributed to this initial phase of our statutory mission. I look forward to working closely and productively with them as we move forward with the next phase of our important mission – determining appropriate levels of legislative and executive compensation.

Respectfully submitted,

A handwritten signature in black ink, reading "Sheila L. Birnbaum". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Sheila L. Birnbaum

Chair

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## Members of the Commission on Legislative, Judicial and Executive Compensation

**Sheila L. Birnbaum**, the co-Head of the Global Products Liability and Mass Torts practice at Quinn Emanuel Urquhart & Sullivan, has been national counsel or lead defense counsel for numerous Fortune 500 companies in some of the largest and most complicated tort cases in the country. She was chosen as the leading products liability lawyer in the world by *The International Who's Who of Product Liability*, one of the 10 most admired product liability attorneys in 2010 by *Law 360*, and one of the 25 most influential women in New York by *Crain's New York Business*. As a court-appointed mediator in federal court, she mediated a \$500 million settlement for 92 families of victims of the 2001 terrorist attack on the World Trade Center. In 2011, Attorney General Eric Holder appointed Ms. Birnbaum to serve as Special Master of the reactivated September 11th Victim Compensation Fund program. She oversees the administration of the \$2.7 billion fund created under the James Zadroga 9/11 Health and Compensation Act. Ms. Birnbaum is an appointee of the Chief Judge.

**Barry A. Cozier** is Senior Counsel in the litigation practice of LeClairRyan, where he represents institutions and individuals in complex business and commercial litigation, real estate litigation, estates litigation, federal and state appeals, arbitration and mediation. He also serves as a Special Master in state and federal court discovery proceedings. From 2006 to 2011, Mr. Cozier was a member of Epstein Becker & Green, P.C., in the firm's national litigation and labor and employment practice groups. He was formerly an Associate Justice of the Appellate Division of the Supreme Court, Second Judicial Department (2001-2006), Justice of the New York Supreme Court (1993-2001), Deputy Chief Administrative Judge for the NYS Courts (1994-1998), and a Judge of the Family Court (1986-1992). From 1998 to 2007, he also was an Adjunct Professor at Fordham University School of Law. Prior to his judicial service, Mr. Cozier was in private practice with a concentration in civil litigation, and served in various public sector legal positions. Mr. Cozier is an appointee of the Chief Judge.

**Roman B. Hedges** was Deputy Secretary of the New York State Assembly Committee on Ways and Means where he managed legislative operations, supervised research, and directed the budget, fiscal, and economic activities of the committee. He also served in a number of other positions in the Assembly. He was an Associate Professor of Political Science and Public Policy at the State University of New York at Albany where he taught graduate and undergraduate courses in American politics, research methodology, and public policy and conducted a research program in government, politics, and policy which resulted in numerous scholarly publications, professional papers, and reports. He is a member of the Board of the Dormitory Authority of the State of New York. He holds a Doctor of Philosophy and a Master of Arts degree from the University of Rochester, and a Bachelor of Arts degree from Knox College. Mr. Hedges is the appointee of the Speaker of the New York State Assembly.

**Mitra Hormozi** is General Counsel & Chief Compliance Officer for Revlon. Ms. Hormozi has significant experience in corporate law, compliance and complex litigation. Prior to Revlon, she was a partner at Zuckerman Spaeder LLP. Ms. Hormozi is a former Assistant U.S. Attorney,

who worked on high profile cases in the Eastern District of New York, and who also worked as a Special Deputy Chief of Staff to Governor Andrew Cuomo when he served as New York State Attorney General. She has a bachelor's degree from the University of Michigan and a J.D. degree from New York University School of Law. Ms. Hormozi is an appointee of the Governor.

**Gary Johnson** serves as Executive Legal Counsel at Medgar Evers College in Brooklyn, New York. He was Director of the New York State Governor's Office of Employee Relations (GOER) from 2007 to 2013. Admitted to the practice of law in 1986, he also served as an assistant counsel at GOER, and as an associate counsel at the New York State Office of Court Administration and the New York State United Teachers. Mr. Johnson served for 10 years as director of litigation at the NYS Public Employment Relations Board. Mr. Johnson is an appointee of the Governor.

**James J. Lack** was elected 12 times to the New York State Senate, beginning in 1978. He served successively as Chair of the Senate Elections, Labor and Judiciary Committees, retiring in 2002. Subsequently, he was appointed a Judge of the New York Court of Claims, where he served from 2003 to 2011. While in the Senate, Mr. Lack was elected Vice-President, President-Elect and President of the National Conference of State Legislatures (NCSL), and thereafter, as President of the Foundation of State Legislatures. He currently serves as a member of the New York State Advisory Committee on Judicial Ethics. Mr. Lack is a graduate of the University of Pennsylvania and the Fordham University School of Law. Mr. Lack is the appointee of the Temporary President and Majority Leader of the New York State Senate.

**Fran Reiter** is a partner with The Reiter Giuliani Group. Ms. Reiter served as Executive Deputy Director for State Operations under Governor Andrew Cuomo, and as both the Deputy Mayor for Economic Development and Planning and the Deputy Mayor for Planning and Community Relations in the administration of Mayor Giuliani. She has held several positions in the not-for-profit community, including Executive Director of the New York Shakespeare Festival/Joseph Papp Public Theater, and the President and CEO of the NY Convention & Visitors Bureau. In addition, Ms. Reiter has taught at Baruch College and New York University, and has served on the boards of many organizations, including the New York Public Library and the Weissman Center for International Business at Baruch College. Ms. Reiter is an appointee of the Governor.

## **I. INTRODUCTION AND SUMMARY OF RECOMMENDATIONS**

New York State has long had one of the largest, busiest, and most distinguished court systems in the world. In 2014 alone, over 3.7 million new cases were filed in our state courts. These cases reflect every conceivable legal conflict arising in our complex society. New York State judges routinely face sophisticated commercial, banking and contract issues; cutting-edge constitutional questions of government powers and individual rights; high-stakes criminal prosecution and defense; difficult questions of family dissolution and violence; protection of vulnerable children and adults; issues involving tort injuries, and many more. Such cases, and such a court system, require judicial service of the highest quality and commitment. New York's Judiciary over the generations has produced many of the leaders of the American legal system, including John Jay, Benjamin N. Cardozo, Irving Lehman, Stanley Fuld, Charles Breitel and countless others who have contributed decisively to the State's stature as a world center of business, law, communications and culture. To sustain and enhance that stature, New York must maintain and strengthen its ability to attract the best and brightest legal minds to its Judiciary and retain them.

In recognition of this necessity, a Commission on Legislative, Judicial and Executive Compensation was established by statute in April 2015 with the charge of, *inter alia*, examining, evaluating and recommending appropriate levels of compensation for New York's judges over the next four fiscal years. Pursuant to its enabling act (L. 2015, c. 60), the Commission must issue its recommendations on judicial salaries by December 31, 2015; and each of these recommendations shall thereafter take effect and have the force of law on April 1 of the year to which it applies, unless sooner modified or abrogated by statute. In formulating its recommendations and fulfilling this mandate, the Commission has studied a broad range of pertinent data, held public meetings and a day-long public hearing, and engaged in extensive discussion and reflection. Its recommendations are as follows:

### Recommendations

This Commission has determined that the salary of a New York State Supreme Court Justice shall be adjusted as follows. Effective April 1, 2016, the salary of such a Supreme Court Justice shall be fixed at 95% of the salary of a Federal District Court Judge in effect at that time. Effective April 1, 2017, the salary of a Supreme Court Justice shall be adjusted to remain at 95% of the salary of a Federal District Court Judge in effect at that time. Effective April 1, 2018, the salary of a Supreme Court Justice shall be fixed at 100% of the salary of a Federal District Court Judge in effect at that time. Effective April 1, 2019, the salary of a Supreme Court Justice shall be adjusted to remain at 100% of the salary of a Federal District Court Judge in effect at that time. All other state judges shall receive proportionate adjustments, except that certain judges identified in section IV(B) of this Report shall receive adjustments intended to address longstanding inter- and intra-court pay disparities among judges of countywide and citywide courts.

Three members of the Commission dissented from the Commission's recommendation in section IV(A) relating to the benchmark salary of a New York State Supreme Court Justice.<sup>1</sup> The Commission voted unanimously in favor of the recommendation in section IV(B) relating to amelioration of pay disparities among judges of countywide and citywide courts.

This Commission believes that implementation of these recommendations will establish equitable, appropriate and competitive judicial salary levels that will attract well-qualified lawyers to the New York State bench, retain the skilled and experienced judges now serving, and ensure a strong and independent judicial system into the future.

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<sup>1</sup> Commission members Mitra Hormozi, Gary Johnson and Fran Reiter dissent from the recommendations set forth in Section IV(A). A Dissenting Statement is set forth in Section V of this Report.

## II. STATUTORY MANDATE

In March 2015, Part E of chapter 60 of the Laws of 2015 was enacted, providing for a quadrennial commission to “examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits” for judges, members of the Legislature, and certain Statewide elected officials and Executive Branch officers named in Executive Law § 169. The Commission is charged, first, with issuing “findings, conclusions, determinations and recommendations” to the Governor, the Legislature and the Chief Judge with regard to judicial compensation, by December 31, 2015. A separate report, relating to legislative and executive compensation, is due by November 15, 2016.

Chapter 60 sets forth a number of factors to guide the Commission’s work of determining appropriate judicial salary levels, including, but not limited to, the overall economic climate in New York; rates of inflation; changes in public-sector spending; levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state’s ability to fund increases in compensation.

The Commission is authorized to recommend adjustments in judicial salary levels during the four state fiscal years commencing on April 1, 2016.<sup>2</sup> Pursuant to chapter 60, each recommendation of the Commission for a salary adjustment carries the force of law as of April 1<sup>st</sup> of the year for which the adjustment has been recommended, unless sooner modified or abrogated by statute.

As prescribed in chapter 60, the Commission consists of seven members appointed by the leaders of all three branches of New York State government. Three members are appointed by

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<sup>2</sup> The Commission may recommend up to two adjustments in legislative and executive salary levels, each commencing on January 1 following a November general election of members of the Legislature (January 1, 2017 and January 1, 2019). The Commission is deemed dissolved following issuance of its report on November 15, 2016.

the Governor; two (including the Chair) by the Chief Judge; and one each by the Temporary President of the Senate and the Speaker of the Assembly. The Commission's findings and recommendations must be supported by majority vote.<sup>3</sup>

In furtherance of its statutory mission, the Commission held public meetings in New York City on November 2, December 7, and December 14. It also held a day-long public hearing in New York City on November 30, at which witnesses for 15 organizations and one individual testified. The public hearing and meetings were televised live on the Internet. In addition, the Commission invited written commentary and established post office and email addresses ([nyscompensation@gmail.com](mailto:nyscompensation@gmail.com)) through which it received 23 written submissions from judicial associations, bar associations, corporate and business groups, good government groups, institutional litigants and other interested individuals and organizations. The written submissions, totaling many hundreds of pages, contributed greatly to the Commission members' independent research. The witness lists, written submissions, and other information about the work of the Commission, including transcripts and videos of the Commission's public hearing and meetings, are all available on its website at:

[www.nyscommissiononcompensation.org/index.shtml](http://www.nyscommissiononcompensation.org/index.shtml).

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<sup>3</sup> The findings and recommendations concerning executive and legislative compensation likewise require a majority vote but they must also be supported "by at least one member appointed by each appointing authority." The Commission's Chair shall preside but not vote on matters relating to legislative and executive compensation.

### III. FINDINGS

Based upon the public testimony and extensive written submissions, and upon its own research and deliberations, the Commission's findings are as follows:

- (1) With brief exceptions, the compensation of New York's Judicial Branch has failed to keep pace with the rate of inflation since the 1970s. Since 1977, when the State assumed responsibility for paying judicial salaries, New York's judges have received seven pay adjustments, with the two most recent adjustments taking effect in 1999 and 2012. On January 1, 1999, pursuant to legislative enactment, the salaries of State Supreme Court Justices were equalized with the salaries of Federal District Judges, at \$136,700. No further adjustment in State judicial compensation was made for a 13-year period until April 1, 2012. In the interim, inflation, as measured by the Consumer Price Index, increased by over 40%.<sup>4</sup>
- (2) In December 2010, the Legislature enacted chapter 567 of the Laws of 2010, establishing a Commission on Judicial Compensation. That Commission's report and recommendations, issued in August 2011, following public meetings and a public hearing, recommended a judicial salary increase restoring pay parity between Supreme Court Justices and Federal District Court Judges at \$174,000 by April 2014. Noting that State judicial pay had been on par with the federal judiciary in the late 1990's and at various times throughout the history of the court system, the 2011 Commission determined that such parity was the proper norm for judicial compensation in New York: "The Federal judiciary sets a benchmark of both quality and compensation – New York State should seek to place its judiciary on par."<sup>5</sup> In response to the serious fiscal challenges then facing the state, the Commission determined that parity would be phased-in over a three-year period.
- (3) Before such parity could be achieved, the salary of a Federal District Court Judge was reset to \$197,100 in 2013, as a result of Beer v. United States, wherein the U.S. Court of Appeals for the Federal Circuit determined that Congress had improperly withheld six cost-of-living salary adjustments ("COLAs") authorized by the Ethics Reform Act of 1989.<sup>6</sup> With the COLAs

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<sup>4</sup> See Submission of the Chief Administrative Judge to the 2015 Commission on Legislative, Judicial and Executive Compensation, at 17.

<sup>5</sup> Final Report of the Special Commission on Judicial Compensation, August 29, 2011, at 8.

<sup>6</sup> 696 F.3d 1174, 1185-86 (Fed. Cir. 2012), cert. denied, 133 S. Ct. 1997. In December 2013, the

provided to the federal judiciary in January of 2014 and 2015, the salary of a Federal District Court Judge is now \$201,100, and is expected to be reset to \$203,100 on January 1, 2016, based on a scheduled 1.0% COLA for civilian federal employees.<sup>7</sup>

- (4) New York State is in a strong fiscal condition at the present time, as evidenced by recent statements of the Governor, the State Comptroller and the Division of the Budget declaring that the state is enjoying a period of sustained economic growth and has moved from a period of budget deficits to projected budget surpluses. By all indications, New York State expects to experience continued economic growth for the foreseeable future.<sup>8</sup> The projected additional cost to the state for the first phase of the Commission's recommendations is approximately \$26.5 million for the next fiscal year, representing 19 one-thousandths of one percent (0.019%) of the overall state budget.
- (5) Salary data for Legislators and high-ranking State government officials are not a reliable guide for judicial compensation, inasmuch as those public officers – whose salaries this Commission will address in 2016 – have not received pay adjustments since 1999. The Commission analyzed salary data for, among others, lawyers, including lawyers working in private practice and the public sector throughout New York State, executives in the non-profit sector, professionals in academia and public education, and government officials in New York City. New York State judges are underpaid relative to the compensation of the various categories of lawyers and professionals reviewed.
- (6) The salary of a New York State Supreme Court Justice ranks 47<sup>th</sup> nationally among trial courts of general jurisdiction when adjusted for cost of living.<sup>9</sup> In terms of actual salary, New York ranks behind other jurisdictions such as the District of Columbia (\$201,100), Hawaii (\$193,248), Illinois (\$190,758),

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holding in Beer was made applicable to all Article III federal judges by virtue of Barker v. United States, (No. 12-826 [Fed. Cl. Filed Nov. 30, 2012]).

<sup>7</sup> See Letter from the President – Alternative Pay Plan for Federal Civilian Employees, at <https://www.whitehouse.gov/the-press-office/2015/08/28/letter-president-alternative-pay-plan-federal-civilian-employees>. The expected Executive Order of the President giving effect to a COLA of 1.0% for 2016 has not yet been issued as of this writing.

<sup>8</sup> See Submission of the Associations of Justices of the Supreme Court of the State of New York and of the City of New York, at 31-34.

<sup>9</sup> Submission of the Chief Administrative Judge, at 19.

California (\$189,041) and Alaska (\$185,088). In terms of adjusted salary, New York ranks well behind every high-population state to which it is typically compared.<sup>10</sup>

- (7) There is a generally accepted connection between a strong, well-qualified judiciary and a healthy state economy. The New York business community relies on the state courts to resolve complex disputes, and the quality and efficiency of the state judiciary is a significant factor in deciding whether or not to do business in a particular state. Representatives of the business community urged the Commission to recommend competitive judicial salaries capable of attracting and retaining highly qualified and experienced judges on the state bench, and expressed support for federal judicial pay as a benchmark.
- (8) Competitive judicial salaries are essential to attracting well-qualified lawyers to the bench, retaining the skilled and experienced judges now serving, and maintaining a high quality judicial system commensurate with New York's status as a world leader. The New York State court system is among the busiest and most complex in the world, with over 3.7 million new cases filed in 2014 alone, more than two and a half times the number of filings for the entire Federal Judiciary.<sup>11</sup> Most New York State Judges come to the bench after practicing law for a minimum of 10 years.<sup>12</sup> Judges are highly trained and experienced lawyers who often must accept a pay cut in order to serve the public.<sup>13</sup> Upon joining the bench, judges generally are barred from engaging in any other occupation or from earning outside income, and must abide by a strict ethical code that limits the ambit of their professional and personal activities.
- (9) Current judicial salaries in New York reflect a number of anachronistic internal pay disparities. When the state assumed responsibility for paying the salaries of county- and city-level judges in 1977, it inherited a judicial salary

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<sup>10</sup> Id. at 18-19. For example, judicial compensation in Delaware (\$180,733), a state known for its sophisticated commercial courts, ranks third nationally when adjusted for cost of living.

<sup>11</sup> Id. at 9-10.

<sup>12</sup> Exceptions are Judges of the County Courts, District Courts on Long Island, City Courts outside New York City, and Housing Judges of the New York City Civil Court, who must be members of the bar for at least 5 years.

<sup>13</sup> In many instances, they come to the Judiciary only after having served in other high public office or in prominent legal or business positions in the private sector – service that is essential to their later effectiveness on the bench.

structure that lacked consistency or logic. As a result, there are presently seven different salary levels for County Court judges; four salary levels for Family Court Judges; six salary levels for Surrogates; and six salary levels for City Court Judges. The state's judicial salary structure is beset by various anomalies, including county-level judges who earn different salaries even within the same county.

#### IV. RECOMMENDATIONS

##### A. Restoring Salary Parity Between Supreme Court Justices and Federal District Court Judges

In light of these findings, the Commission has determined that the appropriate benchmark for the New York State Judiciary remains the salary of a Federal District Court Judge, and that pay parity between Supreme Court Justices and Federal District Court Judges shall be restored in two phases.

- **Effective April 1, 2016, the salary of a New York State Supreme Court Justice shall be fixed at 95% of the salary of a Federal District Court Judge in effect at that time. Effective April 1, 2017, the salary of a Supreme Court Justice shall be adjusted to remain at 95% of the salary of a Federal District Court Judge in effect at that time.**
- **Effective April 1, 2018, the salary of a Supreme Court Justice shall be fixed at 100% of the salary of a Federal District Court Judge in effect at that time. Effective April 1, 2019, the salary of a Supreme Court Justice shall be adjusted to remain at 100% of the salary of a Federal District Court Judge in effect at that time.**
- **The salaries of all other state judges (including appellate and administrative judges) shall be adjusted on April 1, 2016, and April 1, 2018, to reflect their present proportion to the salary of a Supreme Court Justice, except that:**
  - **No County Court Judge, Family Court Judge or Surrogate's Court Judge shall earn less than 95% of a Supreme Court Justice's salary. Any such judicial position now being paid a percentage of a Supreme Court Justice's salary that is greater than 95% shall continue to be paid at that same percentage;**
  - **Judges of the New York City Civil Court, the New York City Criminal Court, and the District Court, shall earn 93% of a Supreme Court Justice's salary;**
  - **Full-time City Court Judges of courts outside New York City shall earn 90% of a Supreme Court Justice's salary (part-time City Court Judges shall earn the same proportion of the salaries of full-time City Court Judges that they**

**now earn); and**

- **Housing Judges of the New York City Civil Court shall earn 90% of a Supreme Court Justice's salary.**

Equalizing the salary levels of State Supreme Court Justices and Federal District Court Judges is a reasonable, appropriate step well supported by historical precedent. As the prior Commission on Judicial Compensation stated four years ago:

The Commission recognizes the importance of the New York State Judiciary as a co-equal branch of government and recognizes the importance of establishing pay levels that make clear that the judiciary is valued and respected. The Federal Judiciary sets a benchmark of both quality and compensation – New York 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.

In 1999, the last time the Legislature adjusted state judicial compensation, it fixed the salary of a Supreme Court Justice at \$136,700 – identical to the pay of a Federal District Court Judge at that time. At other times, including in 1978 and for the period 1985-1990, Supreme Court Justices earned salaries that were in close proximity with, or even higher than, those of their federal counterparts.

Moreover, given that the salary of a Federal District Court Judge has been indexed to annual COLAs received by federal employees since enactment of the Ethics Reform Act of 1989, restoring parity with the federal judiciary has the added virtue of bringing state judicial compensation in line with historic changes in the cost of living. Put simply, reestablishing parity with the federal judiciary means that state judicial salary levels will finally catch up to inflation. Given the history of judicial pay stagnation in New York, the size of that catch-up increase is not insignificant, but it is a fair and appropriate one that restores the purchasing power of their salaries by April 2018. Between the judicial pay adjustment of January 1, 1999, and the next

raise that took effect on April 1, 2012, New York's judges did not receive a single COLA. It has been estimated that a sitting Supreme Court Justice lost over \$350,000 to inflation over that time period, while the same Justice serving from January 1999 through 2015 lost over \$460,000 in salary dollars.<sup>14</sup> Unlike New York's judges, the vast majority of lawyers, comparable professionals, state employees and judges of other jurisdictions continued to receive fairly regular pay adjustments throughout this long time period.

Restoring parity with the federal judiciary reflects the importance that New York State attaches to providing competitive judicial salaries designed to attract and retain the best possible judges. Representatives of the state's business and legal communities expressed strong support for this principle. New York is a world center of business and finance, and its judiciary regularly faces some of the most complex banking, contract and commercial real estate issues in the nation. New York is home to a large and sophisticated legal community that includes many of the world's leading law firms and legal practitioners. New York is a center of journalism, education, entertainment, art, culture and communications, and its judges address cutting edge constitutional questions of freedom of expression and protection of intellectual property rights. New Yorkers are extraordinarily diverse in terms of income, ethnicity, religion, language and culture, and its judges are challenged to provide justice to persons who are impoverished, vulnerable, victimized and often unrepresented. Competitive judicial salaries are critical to the state's ability to attract and retain highly qualified, diverse and experienced judges who are capable of handling these challenging caseloads.

What constitutes a competitive judicial salary in a state as large, diverse and unique as New York is a difficult, complex question. For example, the average salary of a large law firm partner in New York City in 2014 was \$1.1 million. Clearly, this is not an appropriate salary for a public servant. On the other hand, the mid-range salary level for lawyers in private practice with 10-plus years of experience (not necessarily partners) at mid-sized law firms (35-75 lawyers) in the Albany and Buffalo areas is approximately \$200,000. The Commission's

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<sup>14</sup> Submission of Chief Administrative Judge, at 17.

recommendation to implement pay parity with federal judges over three years, beginning at approximately \$193,000 in 2016 and rising to a projected salary of at least \$203,100 in 2018 (and possibly higher if the federal judiciary receives COLAs in 2017 and 2018), attempts to strike a reasonable balance between the financial sacrifices that rightly come with public service and the need to adequately compete for highly-qualified and experienced lawyers in New York's highly competitive marketplace for legal talent.<sup>15</sup>

Reestablishing pay parity between state and federal judges has the added benefit of ensuring that judicial salaries in New York do not fall too far behind those paid to judges of other states. At the present time, the \$174,000 salary of a Supreme Court Justice ranks 47<sup>th</sup> in the nation when adjusted for New York's high cost of living.<sup>16</sup> The first phase of this Commission's recommendations will fix the pay of Supreme Court Justices at 95% of the pay of a Federal District Judge – or \$193,000 – on April 1, 2016. As of this writing, this salary level would be among the highest nationally in terms of nominal dollars, but New York's judicial pay would still rank no higher than 36<sup>th</sup> nationally when appropriate adjustments are made for our state's high cost of living. On April 1, 2016, Supreme Court Justices are expected to earn less in nominal dollars than their counterparts in the District of Columbia (\$201,100) and Hawaii (\$193,248), and slightly more than those in Illinois (\$190,758) and California (\$189,041). However, even then, New York would lag well behind all those states when salaries are adjusted for cost of living.<sup>17</sup> These national rankings are not trivial statistics. They measure the extent of

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<sup>15</sup> On December 14, 2015, the New York City Quadrennial Advisory Commission recommended that District Attorneys in New York City receive a base salary increase of 12%, resulting in a raise of \$22,800, from \$190,000 to \$212,800, effective January 1, 2016. See <http://www1.nyc.gov/assets/quadrennial/downloads/pdf/2015-Quadrennial-Commission-Report.pdf>. The Advisory Commission's recommendations do not have the force of law.

<sup>16</sup> Submission of the Associations of Justices of the Supreme Court of the State of New York and of the City of New York, at 19-20.

<sup>17</sup> Judicial salaries in Illinois, Hawaii and California rank 2<sup>nd</sup>, 15<sup>th</sup> and 20<sup>th</sup>, respectively, when adjusted for cost of living. See Submission of Chief Administrative Judge, at 19.

New York's understanding, relative to that of other states, that attracting and retaining highly qualified judges is a necessity in a state that wishes to maintain its national and international prominence.

While the Judiciary and many bar and judicial associations have urged immediate restoration of parity with Federal District Court Judges on April 1, 2016, the Commission has determined that parity should be implemented in two stages. All available evidence suggests that the state is in a strong fiscal condition and could fund the entirety of the recommended increase in the next fiscal year. Nonetheless, the Commission understands that a commitment to conservative budgeting and spending has contributed greatly to the state's present economic health. The Commission therefore recommends that restoration of full parity with the federal judiciary take place in two phases in order to stagger the budgetary impact on the state and ease its ability to fund the recommended salary increases.

#### B. Redressing Pay Disparities Among Comparable Judges

In addition to the recommendation to reestablish pay parity between Supreme Court Justices and Federal District Judges, with proportionate increases for all other state judges, the Commission recommends adoption of the Judiciary's proposal to implement a revised judicial pay schedule that eliminates many longstanding, inappropriate pay anomalies among judges other than Supreme Court Justices. Accordingly, the Commission has determined that the following pay relationships shall be adopted for non-Supreme Court Justices, effective April 1, 2016.

- County, Family and Surrogate's Court Judges shall not be paid less than 95% of a Supreme Court Justice's salary. Any such judicial position now being paid a percentage of a Supreme Court Justice's salary that is greater than 95% thereof shall continue to be paid that same percentage.
- New York City Civil Court, New York City Criminal Court Judges, and District Court Judges shall be paid 93% of a Supreme Court Justice's salary.
- Full-time City Court Judges outside New York City and New York City Housing Court

Judges shall be paid 90% of a Supreme Court Justice's salary. Each part-time City Court Judge shall continue to maintain the same pay relationship with full-time City Court Judges as heretofore.

These salary relationships embody a far more equitable and rational judicial salary structure for New York State.

## V. DISSENTING STATEMENT

We dissent from that part of the Commission’s Final Report that fixes the salary of a New York State Supreme Court Justice at 95 percent of the salary of a federal District Court Judge, effective April 1, 2016, and 100 percent of that salary, effective April 1, 2018. By pegging the salary of a State Supreme Court Justice to a percentage of the salary of a federal District Court Judge, the Commission’s Final Report fails to satisfy its statutory charge to examine “the prevailing adequacy” of the pay levels of the judges and justices of the state-paid courts, taking into account the overall economic climate, rates of inflation, changes in public sector spending, levels of compensation received by professionals in government, academia and private and nonprofit enterprise, and the State’s ability to pay.

We agree that New York needs to “attract well-qualified lawyers to the New York State bench and ensure a strong and independent judicial system into the future,”<sup>18</sup> and we recognize “the need to adequately compete for highly-qualified and experienced lawyers in New York’s highly competitive marketplace for legal talent.”<sup>19</sup> But we dissent from finding that simply benchmarking state judicial salaries to federal judicial salaries discharges our duty to recommend adequate compensation based on the statutory criteria.

The Final Report recommends implementing pay parity with federal judges over three years, by raising a Supreme Court Justice’s salary from \$174,000 to \$193,000 in 2016, and raising it again to at least \$203,100 in 2018—“possibly higher if the federal judiciary receives

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<sup>18</sup> Final Report, p. 2

<sup>19</sup> Final Report, p. 12

[cost-of-living adjustments] in 2017 and 2018.”<sup>20</sup> This constitutes almost an 11 percent salary increase in 2016, followed by at least a five percent increase in 2018.

As to the overall economic climate, rates of inflation, and changes in public sector spending, increases of such proportions are far out of alignment with the fiscal restraint that has contributed to the State’s improved economic outlook. Five straight state budgets have held spending growth below two percent, and inflation for the past two years has been about one and a half percent.<sup>21</sup>

As to the duty to consider levels of compensation received by professionals in government, academia and private and nonprofit enterprise, the Final Report’s analysis focuses on state judicial salaries, adjusted for cost of living, in comparison to: lawyers in private practice and the public sector in New York; executives in the non-profit sector; professionals in academia and public education; government officials in New York City; and judges in courts of general jurisdiction in other high-population states, and finds that New York’s judicial salaries do not favorably compare. While the judiciary is an independent branch of state government, the Final Report fails to consider the appropriateness of judicial salaries in the totality of the State’s salary plan, and ignores the inflationary impact of the Commission’s recommendations on determining the salaries of other state employees in all three branches, by collective bargaining or otherwise. In addition, simply tying State judicial salaries to federal judicial salaries fails to recognize differences in fiscal resources, history, and statutory authority that should apply to determining pay for those two groups. Such benchmarking effectively defers the Commission’s statutory duty

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<sup>20</sup> Id.

<sup>21</sup> U.S. Department of Labor, Bureau of Labor Statistics, Nov. 6, 2015.

to recommend State judicial salaries to a remote federal process, and adds an unnecessary element of uncertainty to budgeting each year.

For these reasons, we dissent as stated here.