

Matthew Kaplowitz

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Ms. Sheila Birnbaum, Chair and  
Members of the NY State Compensation Commission  
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**Re: Judicial compensation modification? Yes. Blank check? No.**

Dear Ms. Birnbaum and Members of the Compensation Commission:

Thank you for this opportunity to testify. I am an individual who serves pro bono on the Compensation Committee for an international, non-profit disability organization in the public sector. I have been invited to give testimony and commentary before the U.S. State Department's Commission on Disability, the Federal Communications Commission, the United States Access Board, the U.S. Department of Education, and the National Science Foundation. I advise and present to many institutions of higher learning and nonprofit organizations including the Disability Work Group of the Clinton Global Initiative. I have also been a litigant in New York State.

This testimony addresses the job performance component of judicial compensation as well as eligibility and fitness for judicial service.

**Job performance.** Compensation...in every field...is one of the primary drivers of job performance. Regardless of whether someone is a minimum-wage worker or a judge, when the conversation topic is compensation, people listen. Sometimes, it's the compensation discussion that opens the door to a meaningful dialog about job performance.

**Salary is not the entire picture.** What are the benchmarks for determining judicial compensation? Comparable judicial salaries and the consumer price index are significant components, but they are not the entire picture. Just as in every other profession, the criteria for determining judicial compensation must include job performance.

**Micro-aggression and soft abuse.** Our judges sit on the bench to serve the people of New York State. Using 21<sup>st</sup> century metrics and 21<sup>st</sup> century cultural values, how well are our judges serving the people of New York?

From my perspective, there are some alarming issues with New York State's judicial culture. These issues are: micro-aggression and soft abuse.

Let me explain. We have all recently witnessed through the media the demonstrations in communities, and on college campuses across the country. The roots of these protests have been the many years of ignored soft abuse, micro-aggression, and worse. Right here in the New York State court system, judicial soft abuse and micro-aggression are alive and well.

Here are a few of the red warning flags:

- The judge who rampantly holds ex parte, off the record conversations.
- The over-reaching judge who coerces settlements.
- The judge whose inappropriate judicial demeanor derails due process

These are symptoms of bigger issues.

**The need to study micro-aggression and soft abuse in our judiciary:**

I have written to five different senior judges (including Judge Marks) and expressed the urgent cultural need to create a work group to study soft abuse and micro aggression in our judiciary. I offered my time and my expertise. The response from these five senior judges was unanimous. Not even one judge extended the courtesy of a reply. This in itself *is* micro-aggression.

Consider what's happening *right now*: In communities where senior administrators or managers have turned their backs on reported micro-aggression, or soft abuse—or worse—look how this has played out... Baltimore. The University of Missouri. Princeton. Yale.

**21<sup>st</sup> century values** Times are changing right in front of us. Observe the parallel with women's rights in the workplace. People are no longer quietly accepting micro-aggression and soft abuse. The New York Court system is not immune to this culture shift. What passed for acceptable judicial demeanor in the 20<sup>th</sup> century does not align with 21<sup>st</sup> century values.

When senior judges perpetuate soft abuse and micro-aggression, it engenders a snowball effect. Lower court judges also feel entitled to act out micro-aggression and soft abuse.

**The compensation connection:** What is the compensation connection? It's fundamental. When a judge's compensation is impacted by how respectfully that judge serves the people of New York, the tendency towards judicial soft abuse and micro-aggression can be reversed.

Here are three more non-salary benchmarks for judicial compensation: eligibility and fitness for judicial service.

**Eligibility for judicial service re: appointment term and retirement age:**

The Compensation Commission's rules must require that receiving judicial compensation (other than retirement benefits) is contingent on the judge's appointment being in good standing. No judge should receive compensation when serving beyond her/his appointment term, nor beyond the mandatory retirement age.<sup>1</sup>

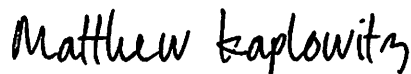
**Fitness for judicial service:** Physical and psychological fitness are just as crucial for judges as they are for airplane pilots and railroad train engineers. Every judge should be required to undergo an annual physical exam and psych evaluation. Not permitting judges to serve beyond the expiration of their appointments will ensure that annual judicial medical testing/psych evaluation does not overlook these judges; and they are "in the system."

**No blank checks.** New York State judges *absolutely* should be paid commensurately with their peers in other parts of the county. But this Commission must not issue blank checks. All across corporate America, job performance is a component of compensation metrics. New York State—a \$142 billion dollar a year corporation—must provide a judicial compensation formula that follows suit.

**The power to make things right:** In his 11/30/15 testimony, Judge Lebovits referred to this Compensation Commission's "power to make things right." I urge this Commission to do exactly that. This Commission must (1) award the long overdue judicial compensation modifications and (2) carefully formulate and implement job performance benchmarks that harmonize with the culture of the 21<sup>st</sup> century.

I wish the Compensation Commission all the best in your objectives and goals.

Sincerely yours,



Matthew Kaplowitz

Copies to:

Ms. Debra Raskin

Mr. Bret Parker

<sup>1</sup> (This footnote is revised from v1 of this written testimony) According to all online records I found re: the judge who heard my recent Civil Court case, he received his B.A. in 1964.