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2 IN THE MATTER OF THE NEW YORK STATE COMMISSION
3 ON LEGISLATIVE, JUDICIAL, & EXECUTIVE COMPENSATION
4 DECEMBER 18, 2019 MEETING

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6 42 West 44th Street
7 New York, New York
8 December 18, 2019

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10 A P P E A R A N C E S:

- 11 MICHEL CARDOZO, COMMISSIONER, CHAIR
- 12 HONORABLE RANDALL ENG (Ret.), COMMISSIONER
- 13 MITRA HORMOZI, COMMISSIONER
- 14 SEYMOUR LACHMAN, COMMISSIONER (ABSENT)
- 15 PETER MADONIA, COMMISSIONER (REMOTE APPEARANCE)
- 16 JIM MALATRAS, COMMISSIONER (REMOTE APPEARANCE)
- 17 ROBERT MEGNA, COMMISSIONER (REMOTE APPEARANCE)

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19 CHRISTOPHER DAY, SENIOR COURT REPORTER
20 KENDRA THIMBREL, SENIOR COURT REPORTER

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1 MR. CARDOZO: Well, welcome everybody. Mr. Lachman
2 had told me he would be a couple of minutes left late, but I
3 think we should start. And question is whether we can make
4 any progress. I had sent out an e-mail, I guess, a week or
5 so ago, making a suggestion that we have no salary increase
6 in year one, and then go back to federal parity in years 2,
7 3, and 4, but with a two percent COLA cap on any increase.
8 And so why don't we start with that? Anybody have any --

9 MR. MEGNA: Yeah. Yeah, I do. Thank you. And I
10 think it was great to put an alternative out there. But
11 again, my past fiscal life as budget director continues to
12 put me in a place where I feel real uncomfortable moving
13 forward with multiple-year salary increases in this kind of
14 fiscal environment. So while I appreciate the -- the -- you
15 know -- compromise attempt, I really don't think I could go
16 along with that right now.

17 I also think that there are other alternatives that
18 the legislature, in the future, can take with the governor
19 and other folks to reopen this issue if the fiscal situation
20 ends up being less complicated and less difficult than we
21 think it is now. Given the difficulty of the fiscal
22 situation we're in right now, I just don't feel I can -- I
23 can move forward on the salary increase.

24 MR. CARDOZO: And that's --

25 MR. MADONIA: I guess I have a question for Bob.

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1 And I tend to agree. I don't know how the out years are
2 going to be any less problematic, or if anybody has any more
3 clarity. But if they do, we should hear that now. I would
4 assume the out years are even less clear. And you know,
5 once you give, even if the legislature wanted to, down the
6 road, it's hard to take away. They're not going to take
7 away.

8 So making commitments now that go out four years in
9 an uncertain climate just doesn't feel right, especially
10 hearing it from a budget director.

11 MR. ENG: No, I understand.

12 MR. MEGNA: Peter, I think you raised one really
13 good point, which is if you look at the report that the
14 division released, it's not that they're saying there's a
15 one-year problem. They're saying there's a multiple-year
16 problem. They are saying it goes out for three years, not
17 for one year. So I think that's what makes -- if they had
18 said look, this is a one-time problem, what the governor
19 always does is fix those problems in his budget. But
20 they're not saying it -- they're saying there's a sustained
21 multiple year problem that needs to be fixed. We don't know
22 how they're going to propose to fix that.

23 MR. ENG: Well, I hear multiple -- I'm sorry.
24 You're not done yet.

25 MR. MEGNA: I'm done. No, thank you.

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1 MR. ENG: No, I heard multiple year several times.
2 And I can understand the concern for multiple years. It's a
3 big commitment. Now what about a single COLA for the coming
4 year, and nothing for the remaining three years? And that
5 would not, of course, result in multiples. It is a
6 relatively small sum. We've heard commitments by the
7 administration of the courts, of their ability to fund it
8 with what they have now. And -- and let's see what happens
9 in the next cycle for the next commission -- one -- one
10 COLA, I think, would not be unreasonable, and would go a
11 long way toward satisfying the concerns of the judiciary in
12 that regard. I'm just putting that out as an alternative to
13 multiple. A single without any further adjustments.

14 MR. MEGNA: Again, my -- my caution is that we don't
15 know what the proposed solutions to this problem are going
16 to be. I'm not saying that I don't think something like
17 that could work, if the people that are making the budget
18 this year decide at some point that they can figure out how
19 to do that. Me sitting here right now, I just find it
20 difficult to do anything.

21 MR. CARDOZO: Is that -- when the legislature
22 created the commission, and going back to 2011, and they
23 mandated that the commission decide for four years, weren't
24 they aware -- I mean, this is not the first time there's
25 economic uncertainties over the next four years. Aren't we

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1 acting inconsistently by saying "well, we can't predict
2 what's gonna happen?"

3 MR. MEGNA: Well, no. I don't -- in my opinion,
4 again, this is me, no. Because part of acting consistently
5 over the period of time is factoring in if you have a
6 problem. I -- I think it would be the opposite, in my view,
7 if I was willing to support increases without knowing, in a
8 difficult fiscal situation, where we would end up. I do
9 think there is room for decision makers, once we -- once
10 they see how the budget is gonna work itself out, what steps
11 are proposed by the governor and the legislature to fix the
12 problem, for them to address these issues.

13 I'm not saying they shouldn't be addressed. I'm
14 saying I can't comfortably address those right now.

15 MR. MALATRAS: Are you saying, like, for them to
16 even to come back then, make new laws, we can consider next
17 year or something?

18 (Audio interference.)

19 MR. CARDOZO: I couldn't quite hear that. Could you
20 repeat that?

21 MR. MADONIA: Yes. Say that again. I couldn't
22 understand.

23 MR. MEGNA: He was asking if -- I got your point,
24 Jim.

25 MR. MALATRAS: Yeah. And because we're on a
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1 four-year cycle. But I asked if Bob's solution -- that even
2 where the legislature, the governor could re-amend the
3 statute to a last -- reset cost, and figure out the
4 financial situation, we can consider it, so it remains in
5 that sort of non-political cabinet, or something like that
6 as well. That's what I was asking about.

7 MR. MEGNA: Absolutely. Absolutely.

8 MR. CARDOZO: But I think --

9 MR. MEGNA: And I think they put us in a difficult
10 spot in sequencing. Right? That's my problem here. And
11 I'm really uncomfortable, you know, taking any action at
12 this point.

13 MR. MADONIA: I guess I would tend to agree. You
14 know, again, the former budget director confirmed genuine
15 uncertainty and some big numbers here. So I just -- I don't
16 see -- I don't see why we have to rush to do this when there
17 will be more clarity as the next budget cycle comes around,
18 I'm assuming.

19 MR. CARDOZO: But when you say that, Peter, the
20 numbers that -- OCA has said that it can absorb the
21 increase, that it absorbed much, much higher increases in
22 less -- in unfavorable economic times. Why do you say this
23 is a big number, particularly, given the fact that OCA says
24 it can absorb it within its budget?

25 MR. MADONIA: I mean, six billion dollars, to me, is
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1 a big number in the context of the state budget, number one.
2 And number two, it can absorb what it thinks it can absorb
3 today. We don't know -- if the powers that be go back to
4 the agencies and say we want a ten percent cut from you,
5 that statement about absorption maybe isn't so sure six
6 months from now or eight months from now. And this is way
7 above my pay grade, but you know, I have been around big
8 budgets before, and big cuts before, so --

9 MR. ENG: Okay.

10 MR. MEGNA: My -- I would only caveat what Peter
11 said with one thing, because I think he makes the right
12 point, is I don't know that we know that within the next
13 month and a half, until the budget comes out. Because they
14 may ask for those kinds of cuts in the budget. In which
15 case, we don't know what OCA or anyone else will do to
16 respond to those cuts.

17 MR. ENG: In the recent --

18 MR. MADONIA: Well, we do --

19 MR. ENG: In the recent past, has there been a call
20 for reduction of as much as ten percent? In the recent
21 past.

22 MR. MEGNA: Well, again -- well, I can only tell you
23 from my experience --

24 MR. ENG: Yes.

25 MR. MEGNA: -- that there was -- and again, every

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1 situation is different.

2 MR. ENG: Understood.

3 MR. MEGNA: And I would not want to make too many
4 judgments until we actually see what the budget looks like.
5 That's part of my problem. But I -- I think in the past, if
6 we're talking about what prior fiscal crises have been like,
7 there have been significant asks of reductions from
8 agencies. And even if it's not ten percent, the agency
9 might want to rethink including the judges, by the way, but
10 I can't speak for them -- they may want to rethink what
11 their priorities are. I can't speak to that.

12 MR. CARDOZO: Me too. Mitra, we are potentially
13 excluding you.

14 MS. HORMOZI: No. That's fine. Look, everything I
15 have heard, I also, as a result, feel uncomfortable then
16 moving forward.

17 MR. CARDOZO: Well, I don't know that there is any
18 point in continuing this. I very, very, very strongly
19 disagree. I respect your opinions. And speaking
20 personally, I'm both disappointed -- I think this is a wrong
21 and irresponsible decision. And I'm going to issue some
22 version of the dissenting statement that I circulated a week
23 or two ago, and write others -- Seymour is not here. I
24 don't know where Randy stands. I just think this is a --
25 a -- a very, very wrong decision.

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1 MS. HORMOZI: I have a question. Could we, to Jim's
2 point, sort of kick this down the road to next year? Is
3 that possible? Could --

4 MR. CARDOZO: No. Not under the statute. The
5 statute requires -- I'm sorry to interrupt. The statute
6 requires that we make any recommendations for the next four
7 years by December 31st.

8 MS. HORMOZI: Could we recommend that we revisit
9 this in 2020? Is that --

10 MR. CARDOZO: You need new legislation.

11 MR. MADONIA: But the legislature can do it.

12 MR. CARDOZO: The legislature can do what it wants.
13 Right.

14 MS. HORMOZI: Could that be part of our report, to
15 say "look, this isn't based on anything other than the
16 sequencing, the fiscal situation, so we would recommend --
17 yeah."

18 MR. CARDOZO: Well, I don't know why next year -- at
19 this time, whatever commission is created by the
20 legislature --

21 MS. HORMOZI: It would be a new commission?

22 MR. CARDOZO: Yeah. It would be a new commission.
23 And I don't know why the facts would be any different than
24 what we're sitting on right now.

25 MR. ENG: And --

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1 MR. MEGNA: Because, Michael, they would -- because
2 it may be the case that the solutions that are incorporated
3 in the executive budget approved by the legislature solve
4 the problem. Am I confident that that will happen? No.
5 Which is why I'm taking the position I am taking. But that
6 doesn't prevent them from saying hey, we want to solve the
7 judge's problem at the same time we solve these other fiscal
8 problems.

9 MR. CARDOZO: And that's -- and in 2011 when the
10 state was certainly not in as good fiscal shape, this
11 legislature created the commission. But they -- and they
12 said do it for four years. And then they reenacted it for
13 2015. So I -- I -- you know -- of course they can create a
14 new commission. And they could set the salaries themselves.
15 But we've also seen that for 12 years before that, the
16 legislature couldn't agree on it, and the judges' salaries
17 dived because they had no inflation protection at all.

18 MR. ENG: Yes. And if I may, it wasn't 12 years,
19 Mr. Chairman, it was 13 years in the wilderness. A painful
20 13 years. The commission is a bright light, a ray of hope
21 here regarding a -- an intelligent, systematic solution
22 here. What we are doing is we are being regressive. This
23 is regressive in a climate of progressivism, in my view.
24 And as I say, I would join the dissent. We are simply going
25 backward, and we are abdicating, in my view, the

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1 responsibility that's been entrusted to us, and for small
2 sums. We are going back to the old, dark ages here, of
3 uncertainty, unpredictability, unreliability, and tremendous
4 losses here of -- in morale.

5 When I -- at the end of the 13 years -- at the end
6 of the 13 years, the judiciary was composed mainly of
7 persons -- not mainly -- but largely of persons who had
8 either independent means or spouses of high income. We were
9 losing people by the droves. We have made now, in light of
10 what the commission has done since 2011, significant
11 progress in stabilizing the judiciary, encouraging people to
12 serve in judicial office. Now we are going to go back to
13 discouraging them. And for a reason that -- I understand
14 the concerns here may not be as -- as persuasive as the
15 importance of keeping a -- a viable, strong, and independent
16 third branch of government.

17 MR. CARDOZO: And let me add, Jim, with respect to
18 your suggestion, "you'll know better next year," if we
19 recommended simply the COLA increase for the next three
20 years, the legislature has more than enough time to rescind
21 that. Because the -- the recommendation would not take
22 effect until April 1st, 2021. And so if you need more
23 certainty, the legislature's gonna have it. So the idea --

24 MR. MALATRAS: For the record, I wasn't recommending
25 anything. I -- was simply trying to clarify what

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1 Commissioner Megna's point was.

2 MR. CARDOZO: But I don't understand --

3 MR. MEGNA: I think that's a double -- you know --
4 look. I don't know what the right analogy is even. The
5 other side of the same coin? I mean, look, the legislature
6 can choose to act on either side of this issue.

7 MR. CARDOZO: But then why do we have a commission?
8 Why did they create a commission?

9 MR. MEGNA: Well, we have a commission not to get --
10 quite honestly, and I take a little offense at this -- we
11 have a commission to make a judgment about what is
12 appropriate over the next four years. What you're telling
13 me is the only thing that's appropriate is increases.

14 MR. CARDOZO: No.

15 MR. MEGNA: What I'm saying, from my point of view,
16 from a fiscal perspective, that's not the only answer.

17 MR. CARDOZO: And why did the MTA increase their
18 budget by 9.8 percent over four years?

19 MR. MEGNA: Well, I can't tell you about MTA issues.
20 And I don't think that's relevant to this conversation.

21 MR. MADONIA: Look, there's a difference between
22 exempt titles and contractual -- you know -- the MTA, the
23 Transit Authority, is a contractual relationship.

24 MR. CARDOZO: So the judges should unionize so they
25 can get that?

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1 MR. MADONIA: No. But you know the difference
2 Michael, come on.

3 MR. MEGNA: And by the way, we do not know the
4 details of the MTA's situation. My understanding is the MTA
5 employed significant revenue increases which were part of a
6 negotiated budget between the executive and the legislature,
7 and they came to the conclusion those were the things they
8 were gonna do to pay for those increases. We could do
9 this -- you know -- I'm not suggesting they can't do that in
10 this case.

11 MR. CARDOZO: Well, it sounds like we're going
12 around in circles. So I think --

13 MR. MALATRAS: I think we should wait for -- I mean,
14 is Seymour coming?

15 MR. CARDOZO: Well, he said he was going to be five
16 minutes late. It's now 4:25, so I --

17 MR. MALATRAS: I think we should maybe wait.

18 MR. MEGNA: We should try to hear from everybody.

19 MR. CARDOZO: Let me throw this out then. I don't
20 mind waiting. But I think that the die is cast. Do you --
21 those of you who is a majority, who don't think we should
22 recommend anything, do you want to write a statement in a
23 report that says that, or do you want to just have a
24 statement that says we recommend given the fiscal
25 uncertainties that there should be -- that the commission

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1 should not make any salary recommendations?

2 MR. MEGNA: I think, based on this conversation --
3 but again, I would not speak for the other members -- that
4 we should draft a statement. I would want to draft a
5 statement consistent with the latter point of view, which is
6 from my point of view. I have absolutely no -- nothing
7 against increasing judicial salaries, if I thought, in a
8 fiscal environment, we could accomplish that. And maybe it
9 is possible for the legislature to take that issue on once
10 the budget is adopted.

11 So I certainly don't want to say that salary
12 increases in the right fiscal environment are not warranted.
13 I want to say that, and encourage this. I personally don't
14 believe they are.

15 MR. CARDOZO: Well, can one of you -- I don't mean
16 to short-cut this if Seymour is going to come in. Can one
17 of you draft such a statement the next couple of days to
18 which I, and if Randy is going to join, and I don't know
19 about Seymour, would in effect annex a dissent so we can get
20 this done? Because I assume many people will not be around
21 Christmas week. So if we could get this out, you know, in
22 the next couple of days.

23 So can you either individually make -- individually
24 draft a statement, or collectively draft a statement?

25 MR. MADONIA: I mean, I'm comfortable, Bob, if you
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1 want to draft something and circulate it. If I have
2 something to say, I will add it. Otherwise, I'm comfortable
3 having you draft it.

4 MR. MEGNA: Yes, I will try to do that. Again, I
5 think it would be good if we heard -- if we waited for him.
6 I understand the issue of people not being here yet, but --

7 MR. MALATRAS: Yes.

8 MR. MEGNA: -- I always think it's good to hear from
9 everybody.

10 MR. CARDOZO: Well, no point in rehashing things.
11 My associate is trying to call Lachman now to see what is
12 going on. Let's just wait a minute. And if you could just
13 then send that statement to me in the next couple of days, I
14 really -- if you can get it done by Friday. But certainly
15 no later than Monday. Just the mechanics of getting it all
16 out.

17 MR. MEGNA: I am -- I am around. So I will work on
18 getting a statement drafted. I am here, I am available to
19 work on the statement, and I will make sure it gets
20 complete.

21 MR. CARDOZO: No. I just -- mechanically, we got to
22 get this -- you know -- a practical matter, I would like to
23 get it out no later than Monday. I'm not going to be around
24 the very last week. And I think it would be very good just
25 to get this done. So --

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1 MR. MEGNA: I -- I absolutely will try to do that.

2 MR. CARDOZO: Okay. So all we need is Mr. Lachman.

3 MR. ENG: Yes. He's working to find him now.

4 MR. MEGNA: Do we know where Seymour is or is he on
5 the way?

6 MR. CARDOZO: He said he had a doctor's appointment
7 and he might get caught in traffic, maybe five minutes late.
8 But you know, we're trying -- trying to call him on his cell
9 now.

10 MR. MADONIA: I do -- I also want to thank everybody
11 for indulging me last week to deal with personal stuff.

12 (Whereupon, there was a pause in commission
13 business. Commission business resumed as follows.)

14 MR. CARDOZO: All right. I think -- we can't get a
15 hold of Lachman on the phone, so I'm not sure there's any
16 point in --

17 MR. ENG: Yes. Another five minutes, perhaps. Big
18 investment.

19 MR. MALATRAS: Five minutes would be fine with us.

20 MR. ENG: Why don't we make it five minutes then?

21 MR. CARDOZO: We will wait five minutes.

22 MR. MEGNA: Guys, I am going to put you on mute.
23 But five minutes sounds good.

24 MR. CARDOZO: Did you try both his numbers? Yes.

25 MR. MEGNA: Listen I -- I am happy to sit here and
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1 wait for a long time for Seymour, because I would love to
2 hear what he has to say. But I am wondering, if he was at a
3 doctor's appointment -- you know, who knows?

4 MR. CARDOZO: I -- I agree with you. He told me --
5 he called me yesterday and said he would be about five
6 minutes late. We can't reach him on either of his telephone
7 lines. We sent him an e-mail. I think this is sort of
8 silly.

9 We are trying him one more time.

10 MR. ENG: Try it one more time.

11 MR. MEGNA: So I will try to write something up. I
12 will try to get it around to people. If anyone has anything
13 to add to it, you know, as was suggested, I will circulate
14 it, and we will certainly circulate it to Seymour, and he
15 may have a view that he can express in written form.

16 MR. CARDOZO: Right. Okay. Wait, is he on the
17 phone? Wait. He -- hold on a sec. Maybe we can get him.

18 MR. ENG: Yes. Yes. Maybe he is coming up the
19 stairs.

20 MR. CARDOZO: No, his wife -- we reached -- we
21 reached Seymour's wife, and she doesn't know where he is
22 either. I think this is a little silly to just --

23 MR. MALATRAS: No. I texted and said yeah, he's
24 coming supposedly. Sometime. Everybody -- must be a lot of
25 people looking --

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1 MR. MEGNA: All lines full today.

2 (Whereupon, there was a pause in commission
3 business. Business resumed as follows.)

4 MR. CARDOZO: I am deferring to you. I think this
5 is a little silly.

6 MR. MADONIA: All right, Michael.

7 MR. CARDOZO: All right?

8 MR. MADONIA: What do you think?

9 MR. CARDOZO: I think it's silly. I think we should
10 call it a day.

11 MR. MEGNA: Um --

12 MR. CARDOZO: I mean, he's 45 minutes late to a
13 meeting and hasn't even contacted us. I mean, in this day
14 and age, there are ways to avoid that problem.

15 MR. MEGNA: So can we contact him and have him tell
16 us what his views on this stuff are.

17 MR. CARDOZO: Oh, I --

18 MR. MEGNA: Is that something that would be open to
19 folks?

20 MR. CARDOZO: I will send him an e-mail and I will
21 leave him a message. And I think, you know, probably I will
22 summarize where I think we are, and ask him -- you know -- I
23 can write an e-mail, but I don't think he's an e-mail
24 writer, and ask him to call.

25 MR. MEGNA: That might be him.

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1 MR. CARDOZO: All right. I will do that. And while
2 I disagree with the rest of you very strongly, I do wish you
3 a very happy holiday, and good wishes.

4 MR. MADONIA: Thank you, Michael.

5 MR. MEGNA: Thank you, Michael. And Michael, none
6 of this is, in my view, anything other than my kind of
7 fiscal view of the world. So I -- I appreciate all of you
8 and what you've contributed.

9 MR. CARDOZO: Thank you. Meeting adjourned.

10 *Certified to be a true and accurate transcript.

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