

Supreme Court
of the
State of New York



HON. GERALD LBOVITS

60 CENTRE STREET
NEW YORK, NY 10007-1474

November 14, 2019

New York State Commission on
Legislative, Judicial & Executive Compensation

Dear Commissioners:

I write on behalf of the New York State Association of Acting Supreme Court Justices, an association of nearly 300 judges representing more than 20% of the state's judiciary, to support in full the Office of Court Administration's submission to continue the federal benchmark. This letter supplements my New York City testimony of November 4, 2019.

Together with many of my colleagues, I was a judge for most of the 13 years in which New York's judges received no pay increase, not even a cost-of-living increase.

Our salaries, like those of all federal judges and many judges from other states, were frozen, held hostage to executive and legislative infighting having nothing to do with judges or their pay.

For more than 10 years I served in New York City courts (Housing, Civil, and Criminal) in which my colleagues and I by cost of living were America's lowest-paid judges. Other New York judges fared little better: For many years the State's best-paid judges ranked a miserly 47th nationally.

This treatment of New York's judges provoked a constitutional crisis and much litigation. This treatment put many of our judges into near penury. And this treatment caused the administration of justice in our great State to suffer badly.

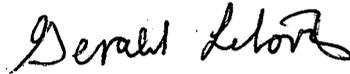
We urge the Commission to continue the federal benchmark for four reasons:

- It is the right thing to do for the public, which needs a capable judiciary to protect our rights and resolve our disputes. A quality judiciary — which the public deserves and demands — cannot rest on inadequate compensation.
- This Commission was created to end the judicial-salary crisis, not to return us to another crisis. Declining to continue the fair-and-easy-to-apply federal benchmark would return New York to its troubled past on judicial compensation.

- The State has promised to re-establish the federal benchmark since 2011. At page 8 of its Report, the 2011 Commission explained why it unanimously recommended that New York pay its judges according to that benchmark. The Governor, Assembly, and Senate has had eight opportunities — once each year since 2011 — to veto the 2011 and 2015 Commissions' decisions to match the federal benchmark. It has never done so. The 2019 Commission should not undue the years of effort getting us to where we are today.
- Our request is modest:
 - Seeking the federal benchmark merely would leave New York State ranked 27th in terms of judicial pay.
 - We seek no pay increase; no location pay for different costs of living statewide; no seniority pay; no merit pay; no overtime; and no change to the current rules, which dictate residency requirements for most of our judges and forbid judges from having another job except part-time teaching for not-for-profit institutions.
 - The federal benchmark itself is not federal parity, for the many reasons I gave on November 4. For example, our appellate judges have no parity. Our Chief Judge earns \$240,000 a year, while her counterpart on the U.S. Supreme Court earns \$270,700. And although federal judges (including retired judges) received retroactive pay with interest after the decision in *Beer v United States*, we did not.
 - All we seek is a modified federal cost-of-living increase that comes with the federal benchmark. It is modified because it is based on the national average rate of inflation, not New York's higher rate; and because federal employee COLA increases go into effect on January 1, whereas under New York law our COLA increases do not go into effect until April 1. Chief Administrative Judge Lawrence Marks testified on November 4 that prior COLA increases have averaged 1.2%; continuing the federal benchmark means $\frac{3}{4}$ of 1.2%. Thus, the judges ask only that if the federal judges get a 1.2% annual COLA increase, we should get a 0.9% annual increase.
 - The requested $\frac{3}{4}$ of 1.2% will not result in added expense. According to Judge Marks, OCA will pay out of its budget the 0.9% COLA in full for four years. OCA will be able to pay that increase because the judges will continue to cut administrative costs and improve efficiency. In short, the public will pay not a penny if the Commission recommends that New York continue the federal benchmark.

The Association of Acting Justices thanks the Commission for its important service and hopes that all Commissioners will support our recommendation.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gerald Lebovits".

Gerald Lebovits
Acting Supreme Court Justice &
President, NYS Association of Acting Supreme
Court Justices