

In The Matter Of:
NYSCommission v.

October 3, 2023

Monica Hahn

1 STATE OF NEW YORK

2 -----x

3 NEW YORK STATE COMMISSION on Legislative, Judicial and
4 Executive Compensation

5 -----x

New York City Bat Association
42 West 44th Street
New York, New York 10036
October 2, 2023

8
9 B E F O R E :

- 11 EUGENE M. FAHEY, Chair
- 12 JEREMY S. WEINSTEIN, Commissioner
- 13 VICTOR A. KOVNER, Commissioner
- 14 R. NADINE FONTAINE, Commissioner
- 15 THERESA EGAN, Commissioner
- 16 HELENE BLANK, Commissioner

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Tal R. Hahn,
Anne Brown,

1 CHAIRPERSON FAHEY: All right. Good morning,
 2 everyone. I am the Honorable Eugene M. Fahey. I am
 3 the Chair of the New York State Commission on
 4 Legislative, Judicial and Executive Compensation. This
 5 is the first meeting of this iteration of the
 6 Commission.

7 Our plan is to meet over a two-year period,
 8 but that remains to be seen. I am going to ask each
 9 member, starting with Helene Blank on my right, to
 10 introduce themselves and then we have a set agenda and
 11 there will be a brief discussion. I anticipate the
 12 meeting will last for about an hour. And everything
 13 that we're doing will be online and available to the
 14 public.

15 To my right. Helene?

16 COMMISSIONER BLANK: Good morning. My name
 17 is Helene Blank. I am an appointee of the Chief Judge.
 18 I know my bio is online, so I won't bore the Commission
 19 with what is already there. Thank you for having me
 20 and I look forward to doing good work with everybody
 21 here.

22 CHAIRPERSON FAHEY: Nadine, did you turn your
 23 mic on?

24 COMMISSIONER FONTAINE: Thank you. Nadine
 25 Fontaine, currently the general counsel for the

1 Dormitory Authority of the State of New York. I too am
2 an appointee of the Governor Hochul and I also look
3 forward to working with the rest of the Commissioners
4 on this important issue.

5 COMMISSIONER WEINSTEIN: My name is Jeremy
6 Weinstein. I am appointee of the Senate Majority
7 Leader, Andrea Stewart-Cousins, served in the
8 Legislature for fourteen years and on the bench for
9 twenty-five years and look forward to working with you,
10 Judge Fahey.

11 COMMISSIONER KOVNER: I am Victor Kovner, I
12 am Senior Counsel to the firm of Davis Wright Tremaine.
13 I am here as an appointee of Governor Hochul and I want
14 to say I am honored to serve with this distinguished
15 Commission.

16 COMMISSIONER EGAN: Good morning. I am
17 Theresa Egan. I am probably the newbie to the group
18 but I am appointee of the Speaker. Very privileged and
19 honored to be a part of what I think is a very
20 important Commission, having been able to serve in on
21 the Judicial and Executive side. So I am very much
22 looking forward to this opportunity.

23 CHAIRPERSON FAHEY: Thank you, everyone.
24 Just a brief statement on our Commission. And at the
25 beginning of this process the Commission will deal with

1 the question of whether there should be salary
2 increases for the judiciary. In the following year
3 then the Commission will address whether or not there
4 should be salary increases for legislators and
5 executive employees that fall under Chapter 169 of the
6 New York Legislative Acts. I am an appointee of Chief
7 Judge Rowan Wilson, as Helene is also. And I
8 understand our mission to be not simply pay raises, but
9 the pay raises represent an attempt by the governing
10 process to create an objective analysis of what is
11 required to have an appropriate salary for public
12 office holders throughout New York State. And the goal
13 in that, I always knew as a Judge, was to protect the
14 integrity of the system.

15 And we hope, I think all of us on the
16 Commission hope that whatever decisions we make will be
17 guided by that and our goal will be to preserve that
18 objectivity and integrity in the governing process. So
19 I consider it an honor, along with everyone serving
20 here today, to be able to participate in this
21 Commission.

22 The first issue -- we have an agenda before
23 us today. The first issue is the question of public
24 hearing dates and locations. We have had some
25 discussion among ourselves and our initial act will be

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1 to have a public hearing on the question of judicial
2 pay raises. And there's been some discussion of the
3 date of October 13th here where we will take testimony
4 from the public on the issue of pay raises for members
5 of the judiciary.

6 Would anyone like to speak on that?

7 COMMISSIONER BLANK: No.

8 COMMISSIONER FONTAINE: No.

9 CHAIRPERSON FAHEY: Everyone is all right
10 with the 13th?

11 COMMISSIONER KOVNER: Yes.

12 COMMISSIONER EGAN: Yes.

13 CHAIRPERSON FAHEY: Okay. So October 13th
14 will be the date of the public hearing for -- on
15 judicial pay raises. We will take testimony, and the
16 public will be invited to both participate and offer
17 testimony, or, testimony in writing. In looking at
18 past Commissions, it seemed that outside of OCA which
19 usually makes a long presentation on this issue, other
20 professional groups related to judges were limited to
21 approximately -- writings, and ten minutes, and then
22 the general public, I think we could limit them to the
23 same amount, other outside groups, if everyone is okay
24 with that?

25 COMMISSIONER BLANK: Yes.

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1 COMMISSIONER EGAN: Yes.

2 CHAIRPERSON FAHEY: That okay? Okay. So the
3 ground rules will be, then, ten minutes outside of OCA.
4 And in reviewing the prior hearings, the longest
5 hearing was in 2016 and it lasted almost three hours.
6 About two hours and forty minutes.

7 COMMISSIONER WEINSTEIN: I have a question.

8 CHAIRPERSON FAHEY: Sure.

9 COMMISSIONER WEINSTEIN: Are we requiring
10 submissions?

11 CHAIRPERSON FAHEY: No. Anyone in the public
12 can come and speak. This is an open hearing.

13 COMMISSIONER WEINSTEIN: No, I meant that
14 wouldn't restrict anyone from coming to speak, it's
15 just if we felt that they had to have some written
16 submission as well.

17 CHAIRPERSON FAHEY: No. I misstated, if I
18 said that. There is no requirement for a written
19 submission. Quite often professional groups associated
20 with judges submit a writing and also make a
21 presentation briefly based on the submission.

22 COMMISSIONER WEINSTEIN: Okay.

23 CHAIRPERSON FAHEY: Is that all right?

24 COMMISSIONER WEINSTEIN: Yes.

25 CHAIRPERSON FAHEY: Okay.

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1 COMMISSIONER FONTAINE: What is the time
2 period in which they have to submit the -- provide the
3 written submissions by?

4 CHAIRPERSON FAHEY: I would take them right
5 up until the hearing date itself. I think we should
6 aim to make it as accessible as possible. There
7 usually isn't an overwhelming crowd. Our goal is to
8 measure the public temperature and the professional
9 temperature and to see what people think. Just make
10 their case.

11 COMMISSIONER BLANK: May I ask, Judge, how
12 are we advertising to the public about the October 13th
13 meeting?

14 CHAIRPERSON FAHEY: In the same way that we
15 set out the press advisory for this meeting, my
16 understanding is that there's been over one hundred
17 outlets that were notified. Also, all professional
18 associations will be notified. And that's the only way
19 I know how to do it. But I would take anyone's advice
20 from counsel.

21 Why don't I introduce also briefly OCA's
22 representative who really has been a great assistance
23 to the Commission in putting together this meeting and
24 worked so hard; Mindy Jeng, who is with us today.
25 Mindy could give us more details on notifications,

1 Helene, but I wondered that myself, to be honest. How
2 did that happen? And normal press advisory probably.

3 MS. JENG: Yes, it's done through our press
4 office and we could also send notifications to other
5 people that testified in the past. If the
6 Commissioners have other suggestions, we are open to
7 it.

8 COMMISSIONER EGAN: It's not my gig, social
9 media. I know we end up doing notices back home often
10 times on social media as well, just as a quick shout
11 out so people are aware it's there. I don't know if
12 OCA does that.

13 COMMISSIONER BLANK: They do have a social
14 media account, OCA.

15 MS. JENG: Right, if the Commission wants OCA
16 to do that, we could. The Commission doesn't have its
17 own social media account. Or you could ask your own
18 nominating authorities to post something.

19 CHAIRPERSON FAHEY: Let's take a step back.
20 I think Commissioner Egan makes a good point. In this
21 day and age there has to be some form of social media
22 notification. And the website that is established for
23 the Commission I don't think has any traffic that
24 really would constitute much public notification. So I
25 think we should do that. I am not sure how. But let's

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1 do that.

2 MS. JENG: Okay.

3 CHAIRPERSON FAHEY: Okay.

4 COMMISSIONER WEINSTEIN: Does that include
5 the press in terms of notification?

6 MS. JENG: Yes. There is, I believe, legal
7 press, so the Law Journal and some other legal, Law360,
8 I believe, they are automatically notified of the
9 public hearings and public meetings.

10 COMMISSIONER WEINSTEIN: And what about the
11 non-legal press, is there a -- they certainly should be
12 made aware.

13 MS. JENG: Yes, I will ask our press office
14 about their exact list of contacts that they send the
15 media advisory to.

16 COMMISSIONER WEINSTEIN: Okay.

17 CHAIRPERSON FAHEY: So let's do it this way.
18 Give Mindy some time to check into it and I will send a
19 note out to everyone. And I will send information out
20 to everyone on what the response is.

21 Okay? Is that all right?

22 COMMISSIONER BLANK: Yes.

23 CHAIRPERSON FAHEY: So the first public
24 hearing date that we're agreeing to is the 13th. I am
25 assuming 10 a.m. again? Same spot.

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1 COMMISSIONER BLANK: Yes.

2 CHAIRPERSON FAHEY: Okay.

3 COMMISSIONER KOVNER: I gather we will be
4 upstairs.

5 CHAIRPERSON FAHEY: Yes.

6 COMMISSIONER WEINSTEIN: This one was at
7 10:30.

8 CHAIRPERSON FAHEY: I was thinking 10:00.

9 COMMISSIONER WEINSTEIN: I knew you were.

10 COMMISSIONER BLANK: 10 o'clock I think is
11 better.

12 CHAIRPERSON FAHEY: We have about three
13 hours. And then we would be done by 1:00. And you
14 people have the rest of your day. It's more practical.
15 Is that all right? Coming in from Albany?

16 COMMISSIONER EGAN: Yes. That is fine.

17 COMMISSIONER FONTAINE: Yes. Okay.

18 CHAIRPERSON FAHEY: Okay. Second question is
19 the -- second public hearing, informally I looked into
20 having the hearing -- the second public hearing at the
21 State Bar Association upstate. If the Commission
22 agrees, we would do it I think I said October 30th.

23 COMMISSIONER WEINSTEIN: 31st.

24 CHAIRPERSON FAHEY: 31st.

25 COMMISSIONER BLANK: Halloween.

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1 COMMISSIONER FONTAINE: Yes.

2 CHAIRPERSON FAHEY: The 31st -- is it a
3 Tuesday or Monday?

4 COMMISSIONER BLANK: Tuesday.

5 CHAIRPERSON FAHEY: Okay. All right. So it
6 would be Tuesday the 31st. The New York State Bar
7 Association in Albany, at noon. I am not sure of the
8 time just yet, but I am aiming for noon if that is all
9 right.

10 Does everyone agree with that?

11 COMMISSIONER FONTAINE: Yes.

12 COMMISSIONER BLANK: That is fine.

13 CHAIRPERSON FAHEY: Okay. Tuesday, 10/31,
14 Halloween. You know you are getting old when Halloween
15 has no joy for --

16 COMMISSIONER BLANK: I will bring candy.

17 CHAIRPERSON FAHEY: I know. All right. I do
18 like it.

19 (Brief pause.)

20 CHAIRPERSON FAHEY: All right. State Bar has
21 been great, by the way. They have been very helpful
22 and cooperative. All right.

23 The third -- now, the third question on the
24 agenda is -- oh, just one other thing on public
25 hearings and meetings. After that I anticipate we will

1 have two meetings for deliberations. And my goal is to
2 try and finish everything before any of the holidays
3 start. So we could talk about dates and times later.
4 But give it some thought on what is best for everyone.
5 The reason for that is the public meetings on
6 deliberations, I think if we have one meeting we will
7 discuss where we want to go and one -- unless we reach
8 some form of consensus, we might not need the second
9 meeting.

10 COMMISSIONER BLANK: May I ask, Judge, are we
11 talking before the Thanksgiving holiday or Christmas
12 holiday? I am trying to plan; if we do October 31st,
13 will we do both meetings? November?

14 CHAIRPERSON FAHEY: I think in November.

15 COMMISSIONER BLANK: Good.

16 CHAIRPERSON FAHEY: Is that all right with
17 everyone?

18 COMMISSIONER BLANK: Yes. I just wasn't sure
19 which holiday --

20 CHAIRPERSON FAHEY: I was thinking
21 Thanksgiving. Then everything starts and it's
22 difficult for people. For myself as well. So we'll
23 try and aim for both meetings if we need to. I don't
24 think we need to commit ourselves to that. For
25 deliberation meetings in November. Give some thought

1 to dates and we will talk.

2 The final action that we will have to take,
3 after deliberations, and this is known by the
4 Commissioners before the public is the Commission will
5 issue a report of our findings with recommendations,
6 which have the effect, importantly, of becoming law
7 unless they are overturned by legislative act, as
8 Mr. Kovner knows, who worked on this before and could
9 probably educate us on that.

10 So the final report we could have a draft and
11 then finalize it in a separate meeting. Or we could
12 finalize the draft at the one meeting if we have one.
13 It really depends on where the Commission members are
14 on the issues themselves. But, so, hearings,
15 deliberations, report. Those are the three steps. The
16 third point on the agenda is staffing.

17 COMMISSIONER KOVNER: I have a question.

18 CHAIRPERSON FAHEY: Yes.

19 COMMISSIONER KOVNER: Since I am not --
20 sorry. I have a question since I am not the master of
21 the Public Meeting Law. Are the deliberations also
22 public?

23 CHAIRPERSON FAHEY: Yes. I am sorry. Good
24 point, Commissioner Kovner. All deliberations are
25 public. All meetings are governed by the Open Meetings

1 Law. And that means that there has to be, importantly
2 for us, is at least four members present, three could
3 participate online if necessary. I want us to try to
4 be here, but if you can't, of course I understand. And
5 the Open Meeting Law itself, if anyone in the public
6 has a question on what -- how they will be governed,
7 they could go online under New York State Meetings Law,
8 and there is direct information on -- but that was item
9 number 5 on the agenda. I don't want you to think that
10 I forgot. Here it is.

11 COMMISSIONER KOVNER: There it is. Thank
12 you.

13 CHAIRPERSON FAHEY: Okay. So anyway,
14 staffing. Number three. Staffing is being done by
15 OCA.

16 Now, I say this, in prior Commissions, the
17 two prior Commissions, the chairperson were both
18 partners in large law firms and the staff in the law
19 firm worked with OCA. We don't have that since I am a
20 retired judge. So I do have a staff member in my
21 office whose been provided by OCA, Christine, and she
22 is available to anyone who has a question. You have
23 the telephone number and you could reach her there.
24 Also, Mindy Jeng has been working with OCA directly.
25 Those are our two primary staff OCA outreach members.

1 And you are invited to contact any of them directly.
2 Not the public, but the Commission members.

3 If we are okay on that, I will go to the
4 fourth point. I just want to announce what the website
5 is for the Commission. It's -- the website is
6 nyscommissioncompensation.org. O-R-G. And the notices
7 for the meeting, information about the prior hearings
8 of the Commissions, specifically 2016 and 2020 are
9 available in great detail. There is also some
10 information on a similar Commission that took place in
11 2018, which is helpful for anyone that wants to do some
12 research.

13 COMMISSIONER BLANK: Your Honor, excuse me.
14 You left one word out of the -- in case anybody is --
15 it's commissiononcompensation.

16 CHAIRPERSON FAHEY: Oh, is that on the
17 website? I thought --

18 COMMISSIONER BLANK: It is. I did that
19 initially. You missed the word on. And then it says
20 "no page." So commissiononcompensation.org.

21 CHAIRPERSON FAHEY: Let me spell it out.
22 N-Y-S-C-O-M-M-I-S-S-I-O-N-O-N-C-O-M-P-E-N-S-A-T-I-O-N,
23 dot, O-R-G. Thank you.

24 The next point on the agenda for today is
25 communications. I am not talking about

1 intercommunication, I am talking about communications
2 with the public. It's been said before that everything
3 will be live-streamed and there will also be a
4 reporter, as with any legislative or judicial
5 proceeding, and there will be a full written record and
6 full digital record of all Commission's deliberations.
7 I don't think we really need to say much more about
8 that. Is everyone okay with that?

9 Okay. The last issue is the work of the
10 prior Commissions. And I put that on the agenda
11 because we might want to have a brief discussion about
12 the Commission's deliberations on prior occasions. I
13 think our -- it represents some of the difficulties in
14 coming to a decision in this issue. This issue is
15 always a difficult, small p, political decision. And
16 our goal is to provide at least an objective analysis
17 of how we feel decisions should be made.

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1 CHAIRPERSON FAHEY: My understanding in reviewing
2 the history, and I've reviewed all the hearings, in 2016, a
3 judicial pay raise was passed and there was no pay raise for
4 legislators or for exempt employees. In 2020, no pay raises
5 at all were passed for the judiciary, the exempt employees,
6 or the legislators.

7 There is a longer history that looks back to a
8 Commission that was established in 2011, and a report that
9 came out around that time that discusses a 13-year period
10 where judges went without pay raises and -- so our
11 challenge, I think, is steep. And the history of the
12 Commission and the prior Commissions, I think, are a good
13 place for us to begin, as commissioners, in our research, is
14 to where we should go and how we can make a positive
15 decision that's best for New York State government and the
16 people in this state.

17 I don't know if we need -- does anybody else have
18 anything they want to say? A lot of you have a lot of
19 knowledge about the prior Commissions, and anything you want
20 to say would be helpful.

21 COMMISSIONER KOVNER: I have a question. It's my
22 understanding that the legislative compensation was raised
23 in December of 2022. Had the -- was there a Commission that
24 made recommendations with respect to that?

25 CHAIRPERSON FAHEY: No.

1 COMMISSIONER KOVNER: And is it required under the
2 law that the Commission make recommendations, or in the
3 absence of the recommendations, the Legislature can do as it
4 sees fit?

5 CHAIRPERSON FAHEY: The Legislature retains the
6 ultimate authority. The Commission can act and our
7 decisions become law, but in the absence of us acting,
8 Legislature retains ultimate authority.

9 And I think, Victor, that that's the pattern in
10 many of the Commissions that are set up by the Legislature
11 recently. And I know that Commissioner Weinstein has more
12 experience in the Legislature than I do, but it seems to be
13 that that's been the pattern of they reserve this right to
14 dissolve and I believe that's constitutionally required.
15 What do you think?

16 COMMISSIONER WEINSTEIN: Yeah. They -- ultimately,
17 the Legislature is the deciding factor. They can reject
18 anything we do if they want to. So -- or if we did nothing,
19 they then can proceed. So, ultimately, they have that
20 deciding factor.

21 CHAIRPERSON FAHEY: I think that -- my
22 understanding of the law is that it's -- the Legislature has
23 the specific constitutional power, and they can't abandon it
24 or delegate it to someone or someone else. That's why,
25 quite often, we saw this in the hospital Commissions where

1 the Commission was set up to make certain authority and the
2 Legislature retained the ultimate power to veto the decision
3 of that Commission. And the case law became out of that
4 established the precedent for how we're dealing with the
5 question of pay raises here.

6 Anything else on the prior Commissions? Any other
7 questions or concerns?

8 COMMISSIONER KOVNER: And my understanding, that
9 the reports of the prior Commissions are available.

10 CHAIRPERSON FAHEY: All available online, yes. The
11 website has them all, the reports. It also has video of the
12 hearings, and the transcripts of all the hearings that were
13 held and all the meetings that were held. So it's as
14 accessible, I think, as it can be, the prior history.

15 I think what was helpful, and Commissioner Kovner
16 pointed us to it, is looking at the history that's set out
17 in the 2011 Commission. I thought that -- I think that's a
18 good example for the kind of situation that we want to
19 avoid. And it's not that we have to make any decision, but
20 in the absence of decision-making, things can spiral out of
21 control. 2011's report, kind of, lays that out for us. So
22 it's a -- I guess it's a blessing for us.

23 So if we have nothing else --

24 COMMISSIONER WEINSTEIN: Just -- you mentioned the
25 post-hearing meeting dates for our deliberations. I don't

1 know if it would be too early to even talk about it, but
2 it's only six, seven weeks away. And for all of our
3 calendars, maybe we want to come to some consensus right now
4 on what dates might work for us. I know that would be
5 helpful to me.

6 CHAIRPERSON FAHEY: Sure. Of course. Maybe, at
7 least, the first date. We could do that. And then if we
8 needed a second one, would that be all right, too?

9 COMMISSIONER WEINSTEIN: Yes.

10 CHAIRPERSON FAHEY: Yeah? Is that all right with
11 everyone?

12 COMMISSIONER FONTAINE: Yes.

13 COMMISSIONER BLANK: Yes. May I ask you, I'm
14 getting text in that this live transmission, there's no
15 audio. Is that what we're supposed to be doing?

16 CHAIRPERSON FAHEY: There should be audio.

17 COMMISSIONER BLANK: I'm getting, from multiple
18 people --

19 CHAIRPERSON FAHEY: Are you pressing your --

20 COMMISSIONER BLANK: No. They're saying the
21 hearing's -- not that they're just not hearing me; they're
22 not hearing anyone.

23 CHAIRPERSON FAHEY: Okay. This happened in the
24 first meeting of the 2016 commission and what happened is
25 they put it all up on website after the meeting was over.

1 COMMISSIONER BLANK: Okay.

2 CHAIRPERSON FAHEY: So if that's the case, I want
3 you to repeat everything you've said before and we're going
4 to tape it.

5 COMMISSIONER EGAN: Well, the good news is it's all
6 being typed, as well.

7 CHAIRPERSON FAHEY: That's true.

8 COMMISSIONER EGAN: So, yeah, we'll get the
9 transcript, as well as the audio. That's why we have
10 backups.

11 CHAIRPERSON FAHEY: That's right. We're covered.

12 COMMISSIONER FONTAINE: I have a question regarding
13 the --

14 CHAIRPERSON FAHEY: Hold on. Mindy, did you ask --

15 MS. JENG: I went to ask them about it, yeah.

16 CHAIRPERSON FAHEY: Okay.

17 COMMISSIONER BLANK: Is there supposed to be audio,
18 live audio?

19 MS. JENG: Yes.

20 CHAIRPERSON FAHEY: Oh, yes. Yes.

21 I'm sorry, Nadine. You were --

22 COMMISSIONER FONTAINE: So I know the statute
23 allows us to obtain information from agencies for -- because
24 we had that, I guess, the subpoena power in a sense.

25 CHAIRPERSON FAHEY: You know, it's -- I'm not clear

1 about the subpoena power. It says we have the authority.

2 COMMISSIONER FONTAINE: Yes.

3 CHAIRPERSON FAHEY: I'm counting on you.

4 COMMISSIONER FONTAINE: The request for information
5 in our systems --

6 CHAIRPERSON FAHEY: Sure.

7 COMMISSIONER FONTAINE: -- agencies are in the
8 budget.

9 So as part of our deliberations, do we -- are we
10 able to request from -- and I guess from the Department of
11 the Divisional Budget, for instance, getting information on
12 where things stand currently with respect to -- and I asked
13 this question before -- to the current fisc and how we make
14 the determination of whether the increase of salaries will
15 impact the overall fisc. And do we take that into account
16 and get a report?

17 CHAIRPERSON FAHEY: What they did last time was
18 they asked OCA; just say how it will affect their budget.

19 COMMISSIONER FONTAINE: Okay.

20 CHAIRPERSON FAHEY: But I think, if you feel that
21 it's appropriate, I'd be happy to challenge you to try and
22 set up something. So give it some thought and let me know.

23 COMMISSIONER FONTAINE: Or if you have a budget
24 from OCA, did that mean that would be directly impacted?

25 CHAIRPERSON FAHEY: So for the judiciary portion of

1 the -- of our deliberations, they should be able to address
 2 any budgetary questions you have since they're direct --
 3 they're in charge of the state judicial budget.

4 But one of the things that came up -- for instance,
 5 recently the governor froze spending. And so one of the
 6 issues that came up in 2020 was that -- in asking for pay
 7 raises, I think it was Judge Marks, who was the Chief
 8 Administrative Judge, who said in the hearings that he was
 9 requesting pay raises and that all pay raises would be
 10 absorbed within the existing budget line and the budget line
 11 wasn't increased.

12 One of the questions that we may want to ask
 13 about -- if that is the case, would you oppose pay raises
 14 for judges? But that may be a question that we want to ask.
 15 Obviously, OCA won't, but the division of budget may have a
 16 different answer. And then if you do and the budget line is
 17 frozen, why; why would you do that?

18 MS. FONTAINE: Right.

19 CHAIRPERSON FAHEY: That's, I think, a good point
 20 that -- and maybe that can be done in Albany because it's
 21 easier for them.

22 COMMISSIONER WEINSTEIN: Regarding our technical
 23 difficulties, are you getting any followup on that because I
 24 just got something that said that on YouTube, it's working.

25 COMMISSIONER BLANK: And I'm having that I have

1 audio and I am 2 of 34 online. So it's -- some people have
2 audio and some people don't. I can't tell.

3 CHAIRPERSON FAHEY: Okay.

4 COMMISSIONER BLANK: This technology is --

5 CHAIRPERSON FAHEY: Beyond us.

6 COMMISSIONER BLANK: Beyond me.

7 CHAIRPERSON FAHEY: No, you guys are doing good. I
8 wasn't -- you're monitoring the live so -- okay.

9 COMMISSIONER BLANK: It's now coming through.

10 CHAIRPERSON FAHEY: Is it?

11 COMMISSIONER BLANK: Yes.

12 CHAIRPERSON FAHEY: All right. Good.

13 COMMISSIONER WEINSTEIN: So, anyway, we're going --
14 we were going --

15 CHAIRPERSON FAHEY: We were going to talk about a
16 November date.

17 COMMISSIONER WEINSTEIN: Yeah.

18 COMMISSIONER BLANK: Yes.

19 CHAIRPERSON FAHEY: So I'm going to work around
20 your schedules. And since I'm coming the longest way, I
21 don't want to hear any whining.

22 COMMISSIONER EGAN: Just remember, we have two
23 holidays in November.

24 CHAIRPERSON FAHEY: I know, yeah.

25 COMMISSIONER EGAN: I didn't get them. Just for

1 reference.

2 COMMISSIONER BLANK: The 10th is Veterans Day and
3 there's also Election Day, and, of course, Thanksgiving.

4 CHAIRPERSON FAHEY: So Thanksgiving, I'm assuming,
5 is the 26th, or no --

6 COMMISSIONER WEINSTEIN: The 23rd.

7 COMMISSIONER BLANK: The 23rd.

8 CHAIRPERSON FAHEY: -- the 23rd. All right.

9 COMMISSIONER WEINSTEIN: Can I -- if it's not a
10 problem for anyone, Mondays and Fridays do work best for
11 traveling. I know that's a minor issue, but it does -- if
12 that's not an inconvenience, that's what I would recommend.

13 COMMISSIONER FONTAINE: Are you suggesting the 13th
14 or the 20th?

15 COMMISSIONER WEINSTEIN: Well, any time after our
16 last hearing, which is going to be on the --

17 COMMISSIONER FONTAINE: 31st.

18 COMMISSIONER WEINSTEIN: -- on the 31st. So it
19 could be the 3rd, the 6th. The 10th is a holiday. The 13th
20 or the 17th -- if that meets with everyone else's schedule.

21 COMMISSIONER EGAN: I would just suggest not the
22 Friday after Thanksgiving.

23 COMMISSIONER WEINSTEIN: Of course. Right.
24 Nobody.

25 COMMISSIONER BLANK: And Mondays work better for

1 me, actually, than Friday, but I'll make myself available.

2 CHAIRPERSON FAHEY: I want to say the Bills are
3 going to the Superbowl this year and I'm missing these games
4 if I'm driving on a Sunday.

5 Okay. So what would -- what's best for the
6 members?

7 COMMISSIONER BLANK: Would the 6th be too soon
8 after the last meeting?

9 CHAIRPERSON FAHEY: I don't think so. It's really
10 what's best for all of you.

11 COMMISSIONER BLANK: It's a good date for me. And
12 I don't have a dot on that, at all.

13 CHAIRPERSON FAHEY: Right.

14 COMMISSIONER EGAN: And we should have a good
15 gauge, I think, of where everybody's feeling at that point
16 anyway so --

17 CHAIRPERSON FAHEY: You'll have heard everyone's
18 arguments. And best to make the decisions and move on.
19 That's the best for everyone.

20 How is the 6th for you?

21 COMMISSIONER KOVNER: That's was reassuring, to
22 hear a judge say that. The 6th is fine for me.

23 CHAIRPERSON FAHEY: The 6th is -- the 6th is what
24 it is? Is that all right?

25 COMMISSIONER WEINSTEIN: Yes.

Proceedings

27

1 COMMISSIONER BLANK: 10 a.m., here?

2 CHAIRPERSON FAHEY: Sure.

3 COMMISSIONER FONTAINE: One question about the, I
4 guess, the logistics of the report. So the first meeting,
5 the 6th, is just a deliberation. It's not --

6 CHAIRPERSON FAHEY: Yes. It's not an adopted
7 report.

8 COMMISSIONER FONTAINE: Okay.

9 CHAIRPERSON FAHEY: I think it would be
10 presumptuous to try and draft anything --

11 COMMISSIONER FONTAINE: Right and --

12 CHAIRPERSON FAHEY: -- until there's been an open
13 discussion.

14 So we're going to have to -- I was hoping we'd have
15 only one meeting and deliberation. But if we need the
16 second one, should we talk about that?

17 COMMISSIONER BLANK: Sure.

18 CHAIRPERSON FAHEY: Make it easier for you.

19 COMMISSIONER BLANK: I think it's better to block
20 that out on the calendar.

21 CHAIRPERSON FAHEY: The 13th is a Monday.

22 COMMISSIONER BLANK: Fine.

23 CHAIRPERSON FAHEY: Or I could do the 17th.

24 You wanted a Monday or Friday, right?

25 COMMISSIONER WEINSTEIN: The 13th would be --

ab

1 COMMISSIONER BLANK: The 13th is good.

2 COMMISSIONER WEINSTEIN: Since we're not holding
3 hearings on that date, I would point out again, that we
4 did -- we started this one at 10:30. Is there an issue
5 again with that time? Ten is preferable for those who are
6 coming from up north. I'm fine with it.

7 COMMISSIONER BLANK: Yeah, I'm fine.

8 COMMISSIONER EGAN: I can do either. It's just a
9 difference of the -- of train. Actually, I would take an
10 earlier train for a 10 o'clock, just to make sure we don't
11 miss, because this train gets in 9:30-ish. So 10:30 works.
12 I figure an hour -- an hour leeway is easy. I don't know if
13 -- Nadine, did you drive or -- train or --

14 COMMISSIONER FONTAINE: I took the train.

15 COMMISSIONER EGAN: So either way --

16 COMMISSIONER BLANK: I'm good either way.

17 COMMISSIONER KOVNER: Either way is fine. I would
18 lean to 10, but I don't have a problem for 10:30.

19 COMMISSIONER EGAN: For the deliberation.

20 CHAIRPERSON FAHEY: For the deliberation date
21 and --

22 COMMISSIONER WEINSTEIN: Both dates.

23 CHAIRPERSON FAHEY: Both deliberation dates. So
24 the 6th and the 13th would be the deliberation dates and --
25 10:30.

1 And, Mindy, we'll ask to set up the deliberations
2 here on the 6th and the 13th. And I think those are not
3 public hearing dates, so a modest room like this is fine.

4 MS. JENG: It depends on the availability of the --

5 CHAIRPERSON FAHEY: Right.

6 MS. JENG: -- but I'll check on that.

7 CHAIRPERSON FAHEY: So the decisions on the dates
8 are the -- the hearing dates are set. And the deliberation
9 dates are the 6th and the 13th. The goal would be to
10 finalize on the 13th on the first portion of our work, which
11 would be the judicial recommendations.

12 All right. Anything else? Well, good work. I'll
13 give Mr. Megna a call again and apologize for us having to
14 go forward. But I don't think there's anything else we need
15 do. Give some thought, maybe, to whether or not -- maybe
16 after the hearing with OCA, you can decide if you want to
17 try and bring this up for the -- budget in Albany.

18 COMMISSIONER FONTAINE: Okay.

19 COMMISSIONER EGAN: Yeah. Nadine, I would echo
20 that. I mean, one of the factors that we have is the
21 ability for the State to pay, so I think it's a legitimate
22 question.

23 And, actually, Commissioner Fahey, the follow-up
24 that you just had is OCA can say one thing, but it would be
25 good to know what DOB's response is, you know, if there's

1 any -- if they care at that point.

2 COMMISSIONER FONTAINE: Right.

3 COMMISSIONER KOVNER: Actually, it would be good to
4 have them earlier and not at the last hearing, but if that's
5 the only time they can make it, fine. But I'd like to hear
6 them the same day --

7 CHAIRPERSON FAHEY: OCA.

8 COMMISSIONER KOVNER: -- which I presume would be
9 the first.

10 CHAIRPERSON FAHEY: Yes.

11 COMMISSIONER BLANK: I think also it's important
12 that, if they have something to say that's different than
13 OCA, that OCA knows about it. So that when they present
14 their testimony, they have their full -- full knowledge
15 because, you know, I did read Judge Marks' testimony from
16 the last time and he said exactly what Judge Fahey said.
17 And so how that impacts the state budget -- I think it's
18 only -- it's the best thing for us to know OCA's feelings
19 about what the budget's directors have to say, and what --
20 you know, vice versa. Just like being on trial: we need
21 both sides at the same time.

22 COMMISSIONER FONTAINE: Agree.

23 COMMISSIONER BLANK: And so that way they get a
24 fair chance to present to us what they have to say about it.

25 CHAIRPERSON FAHEY: Should -- OCA is preparing a

1 report right, Mindy, that will be available for the
2 commissioners before the 13th?

3 MS. JENG: I don't know how much before the 13th,
4 but --

5 CHAIRPERSON FAHEY: Well, let's talk about that,
6 because if OCA comes in and they're going to testify, and
7 for the first time -- and they're hearing this for the very
8 first time without any -- and the budget comes in and
9 they're hearing OCA's opinion for the first time, they may
10 need some time to respond because this is an official. This
11 is more than an administrative determination. It's a
12 political determination and a policy determination.

13 So -- but we can ask that they come on the 13th,
14 and then if they want to come back again, they can.

15 COMMISSIONER BLANK: Yeah. I think that either
16 side is capable of coming back from Albany --

17 CHAIRPERSON FAHEY: Yeah, sure.

18 COMMISSIONER BLANK: -- and testifying again.

19 CHAIRPERSON FAHEY: All right.

20 COMMISSIONER FONTAINE: I noted that for the prior
21 hearing, Judge Marks also submitted -- there was a
22 supplemental submission?

23 COMMISSIONER BLANK: Yes.

24 COMMISSIONER FONTAINE: So that might be an
25 opportunity --

1 CHAIRPERSON FAHEY: For them to come in. Okay. So
2 let me just see -- let me work on the logistics with Mindy
3 and see what we can do. Okay?

4 COMMISSIONER FONTAINE: Okay.

5 CHAIRPERSON FAHEY: Let's do that. So -- and I
6 made it for the 13th.

7 COMMISSIONER KOVNER: Yes. It would be good to
8 have both on the 13th. And since they will have a different
9 perspective --

10 CHAIRPERSON FAHEY: I think we would --

11 COMMISSIONER KOVNER: -- they can rebut in writing
12 or come in again. We'll always hear them.

13 COMMISSIONER BLANK: Yes. That was an excellent
14 idea.

15 CHAIRPERSON FAHEY: Yeah. It's very good.

16 COMMISSIONER EGAN: It would be interesting to
17 hear, though -- they are very early in the budget, the
18 overall budget process, with the call letter just really
19 having come out. So it would be interesting to see how DOB
20 responds. But I think as you outlined is a great way to
21 proceed.

22 CHAIRPERSON FAHEY: Well, maybe you have more
23 experience with this than the rest of us.

24 COMMISSIONER EGAN: I don't know, because this is
25 how a sausage is made, right? So I'm just a little

1 concerned, there may be a response that says we really can't
2 -- can't give you an answer because we don't really know
3 what it is yet, but it certainly doesn't hurt to ask.
4 That's it. And they may want to have the opportunity to
5 come back at the later, you know -- and even two weeks
6 later, may not give them a whole lot of time, but it might
7 give them something -- DOB, something to think about at
8 least. But it certainly -- I don't think it changes what we
9 just talked about. I just wanted to throw out there -- I'm
10 not sure what we're going to get from DOB because of where
11 we are in the process.

12 CHAIRPERSON FAHEY: Okay. All right.

13 COMMISSIONER WEINSTEIN: Okay.

14 CHAIRPERSON FAHEY: All right. So is there a
15 motion to adjourn?

16 COMMISSIONER KOVNER: So moved.

17 COMMISSIONER EGAN: So moved. Second.

18 CHAIRPERSON FAHEY: There you go. There you go.
19 This is how decision-making should work.

20 Okay. Thank you, everybody.

21 COMMISSIONER WEINSTEIN: Hopefully, that's not the
22 last time.

23 CHAIRPERSON FAHEY: That's right.

24 (Whereupon, the meeting was concluded.)

25 * * *

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