

Written Testimony of
Hon. Mary M. Farley, J.S.C.

On Behalf of The
Association of Justices of the Supreme Court of the State of New York

Before The
**New York State Commission on Legislative, Judicial & Executive
Compensation**

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My name is Mary Farley. I was elected from the 11-County Fourth Judicial District in November 2015, after serving as the Hon. David Demarest's Law Clerk for 22 years. I am President of the statewide association of elected New York State Supreme Court Justices, formed under New York Judiciary Law §217. I appreciate the opportunity to appear and provide testimony today on a matter of great importance and urgency to our membership.

As the Commission heard at the initial day of testimony, previous Commissions determined parity between Federal judicial salaries and New York State Supreme Court judicial salaries was appropriate given the similar nature of duties and functions performed. Both the 2011 Salary Commission and the 2015 Salary Commission recommended restoration of pay parity between New York State Supreme Court Justices and Federal District Court Judges. That resulted in the judiciary's last salary increase of 1.39% in April 2019. New York State Judges have not seen a pay increase in more than four years. We support OCA's request for the Commission to recommend a return of the State's judiciary to pay parity with that of a Federal District Court Judge, together with any attendant prospective cost of living adjustments. Currently, Federal District Court Judges are paid \$232,600 while New York State Supreme Court Justices continue to lag behind at the 2019 Federal District Judge payrate of \$210,900.

Without a salary adjustment recommendation by this Commission taking effect in April 2024, New York State Judges' pay will remain stagnant for 8 years. Our fear is real: the New York State judiciary will see significant attrition among our ranks. Losing the most experienced and efficient members of the bench will have a devastating impact on the millions of New Yorkers we serve.

At the same time that our salaries have stagnated, we have seen the U.S. Consumer Price Index at its highest levels in forty years, peaking at 9.1% in June of 2022, and earlier this month it was reported to remain at 3.7%. State legislation now ties minimum wage to the CPI. The Social Security COLA was 8.7% this year to keep pace with inflation and another 3.2% increase has been announced for December 2023 benefits. “Supercore inflation” is the Federal Reserve’s preferred inflation measure since it excludes housing, food and energy due to price volatility. Data¹ released this month reports the 3-month annualized Supercore Inflation to be at 240% of the Reserve’s 2% target rate. Presently, thirty-year mortgage rates hover around 8%. And, this past June, CNBC reported a \$250,000 salary is worth \$82,421 in New York City (“The 7 US Cities Where a \$250,000 Salary is Worth the Least—New York is No. 1” June 19, 2023). Extrapolated for purposes of our \$210,900 salary, that amount is worth less than \$70,000 in New York City. And, since our last 1.39% pay increase in 2019, judges pay almost 25% more for state-provided health benefits² “

While the 2020 Commission determined that our request for an immediate return to Federal Court parity was not possible based upon New York’s fiscal uncertainty as a result of the COVID-19 pandemic, the State has since weathered the COVID-19 storm with the financial assistance of Federal Unemployment benefits, CARES Act funding, and the America Rescue Plan. This year, the State’s unionized labor forces successfully negotiated new multi-year contracts inclusive of an additional look-back benefit that this Commission is unable to provide: retroactivity (ex. 5 year 13% CSEA labor agreement, with retroactivity; 4 year 11% UUP/SUNY labor agreement, with retroactivity).

¹ Source: Bureau of Labor Statistics; data current as of 10/12/2023, 4.8% annualized rate

² Source: NYS Office of Court Administration: Family coverage cost in 2019 \$225 bi-weekly; present cost: \$280 bi-weekly

Moreover, on January 1, 2023, after many years of stagnant pay, the New York State Legislature received a 29% raise, recognizing the importance of their work. We ask for similar treatment.

Public trust in the justice system is vital. For this reason, it is critically important to not only attract, but also to retain, great legal minds to serve on New York's courts. As public servants who typically work for much less pay than we would receive in the private sector, attorneys often come to the bench later in their careers --after having amassed vast legal experience -- with a desire to give back. New York's judges are dedicated, loyal, and hardworking. During the pandemic we handled emergency matters all while continuing to perform and discharge our usual duties throughout a critical time in our State's history, assuring the public that the Courts were open and the rule of law was being upheld. We learned remote technology overnight and rose to the unique daily challenges of numerous gubernatorial Executive Orders as well as the revised policies and protocols of the Courts. Along with our neighbors, we stood in line to receive vaccinations in order to return to in-person operations. We did this -- and so much more -- with pride and a heightened sense of civic responsibility.

Year over year, Supreme Court deals with stifling caseloads of increasing complexity. Supreme Court Judges are called upon to effectively manage caseloads and adjudicate cases of significant importance to millions of New York Court users. This work commands the brightest, most efficient, and dedicated Judges be called to service. To deny these individuals pay parity not only devalues their work, but disincentivizes capable, bright lawyers from pursuing a judicial career. On this point, I cite to Court of Appeals Associate Judge Shirley Troutman recalling that exact sacrifice: "...when she began her judicial career, she was a divorced mother of small children who struggled to

support her family on the salary she earned...[and] that Black men also feel a similar pressure...[as breadwinners]...[opting, instead,] ‘to go to the white shoe law firms’”. (ALM, Law.com Online, ‘The American Lawyer’, March 31, 2023).

I understand my colleague the Hon. Ellen Spodek, President of the Supreme Court Justices Association of New York City, testified earlier this month about the impact of stagnating wages for New York judges in the New York City area. For that reason, I offer you some metrics for Supreme Court outside New York City. Those civil filings, through Term 9 (ending September 10, 2023) are up 12% from last year; our dispositions are up 5% from last year; and our case management -- affected by the pandemic’s forced trial backlog in our pipeline and through no fault of individual judges -- has almost returned to 2018 levels. Foreclosures were significantly impacted in 2020 and 2021 by initial mandatory stays, and through the Court’s conferencing procedures significant progress continues to be made. This, of course, has a negative impact on case management statistics but that metric is a result of settlement efforts which benefit both the mortgagor and mortgagee. In my own Judicial District, the 4th Judicial District, comparing the year of 2019 (immediately preceding the pandemic) to this year, pending non-foreclosure civil matters have increased 4%, without significantly affecting case management.

New on the scene and of particular relevance to our Courts are the Red Flag Laws of 2019 which were then amended in 2022 to mandate police, health care providers and certain educators file Petitions seeking Extreme Risk Protection Orders (“ERPOs”) in Supreme Court. According to the online “dashboard” maintained by the Division of Technology and Court Research, Temporary Extreme Risk Protection Orders (“TERPOs”) and final ERPOs statewide have been seen to exceed 1,000 per month. This filing occurs 24-hours a day, 365 days a year, resulting

in the assigned judge being on-call year-round 24/7 to determine whether to issue a TERPO.

In addressing after-hours filings, Supreme Court Judges work remotely, drafting the TERPO at any time of night or very early morning hours, 7-days per week, every single day of the year. Thereafter, by statute, a live, in-person hearing before a Supreme Court Judge must be held within 3-6 days. While the statutory expediency of these matters is absolutely recognized, they can cause interruptions of the Court's calendar, requiring less urgent matters be adjourned.

Statewide from August 2019 to early October of this year, more than 14,000 TERPOs and final ERPOs were granted, with more than 8,000 of those having been issued in the first 9 ½ months of 2023. Since August 2019, a total of 1,145 TERPOs and final ERPOs were issued in the Fourth Judicial District, with one such county, alone, accounting for 291. The 190 after-hours TERPOs granted in my Judicial District during that time period accounted for 30% all such TERPOs.

This law imposes additional burdens on the judiciary, impacting case management. I bring this up only to highlight the absolute professional commitment our judges have shown to the people we serve and the amount of additional work we are routinely called upon to shoulder -- including drafting and filing orders at 1:40 a.m. Moreover, judges' after-hours work duties now include an additional 98 hours in a traditional election year and an additional 143 hours in a Presidential primary year as a result of the 2019 Early Voting Law. There is no additional remuneration for these additional after-hours work duties. Contrast this with the additional pay to judges or justices of city, town or village court temporarily assigned to and performing judicial functions during off-hours arraignment parts (*See* 22 NYCRR §126.3: current proposal to

increase amounts to \$400/day from current \$250 rate; and to \$200/half-day from current \$125 rate).

The judiciary is a co-equal, independent third branch of government, and its Judges must not be unfairly singled out for an eight-year wage stagnation. We have earned and are deserving of a pay increase, particularly given that the outlay of funds required to achieve pay parity is minuscule in the context of the \$229 billion dollars of expenditures in the State budget. Pay parity with Federal Courts was a major step in underscoring the respect this State showed the judicial branch. By any form of measure, justice dictates we restore parity to incentivize both our most experienced judges to remain on the bench and those who seek to serve.

On behalf of our Association's membership, I thank you for the opportunity to appear before you today.