

Oral 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**

October 2023

Chairman, Commissioners thank you for inviting me to provide testimony before this august Commission.

My name is Mary Farley. I was elected to Supreme Court in 2015 from the 11-County Fourth Judicial District. I am President of the Association of Justices of the Supreme Court of the State of New York, a statewide association of elected Supreme Court Justices, formed under NY Judiciary Law §217.

I commend to your reading my submitted written testimony, prepared on October 9, 2023. Since reciting my written testimony would be duplicative of the salient points already made by my esteemed judicial colleagues, I offer only the following highlights:

**Pay parity with federal judges is appropriate:**

-Previous 2011 and 2015 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, and we agree.

**The unintended results of wage stagnation include:**

-Fears of attrition of our most experienced, talented, efficient judges are real.

-The inability to attract talent and diversity; and the “brain drain” as cited by Associate Justice Paul Wooten are real.

**Our request to return to pay parity is supported by:**

-Increased judicial workloads: Like NYC, the metrics outside NYC equally support increased compensation. Civil filings are up 12%; Dispositions are up 5%; and, case management has nearly returned to 2018 levels. Notably, New York’s Red Flag Law (NYCPLR Art 63-A) requires Supreme Court Justices be on-call 24/7/365 for the handling of Extreme Risk Protection Orders (“ERPOs”). Since 2019, combined filings exceed

14,000, with more than 8,000 having been filed in the first 10 months of 2023. In the 4<sup>th</sup> Judicial District 30% of all Temporary ERPOs are applied for outside working hours, 7-days a week. 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 remuneration for these additional after-hours work duties. Contrast this with the additional pay to City/Village/Town judges covering off-hours arraignment parts (Uniform Rule 126.3: current proposal to increase amounts to \$400/day, from current \$250 rate; and to \$200/half-day, from current \$125 rate).

-Financial metrics support our request: the Consumer Price Index hit a 40-year high of 9.1% in June 2022, and currently remains at 3.7%; State legislation now ties minimum wage to the CPI; 30-year mortgages hover at 8%; and, data released this month reports the annualized rate of "Supercore Inflation" -- the Federal Reserve's preferred inflation measure -- to be at 240% of the Reserve's 2% inflation target. Social security COLAs were 5.9% in 2022, 8.7% this year, with an announced increase of 3.2% next year, constituting the largest increases since the 1980's.

-Since 2019 -- when we received our last 1.39% pay increase -- judges now pay almost 25% more for state-provided health benefits (2019: \$225 bi-weekly; presently: \$280 bi-weekly, Family coverage).

-Similar to our plight of stagnant pay, the Governor and our Legislators received well-deserved pay increases through legislative action this year; and, the State's unionized labor forces successfully negotiated 2023 multi-year contracts, inclusive of retroactivity (5-year 13% CSEA and 4-year 11% UUP/SUNY contracts, both with retroactivity). These financial commitments have multi-year Budget implications.

Instead, I want to focus my testimony on the Division of Budget's presentation earlier this month:

In forecasting the State's anticipated 'income' and 'expenses' for FY 2024 for all 3 co-equal, independent branches of government, the Division of Budget -- after adjusting for Executive and Legislative pay -- operates under the assumption that judicial pay will remain stagnant for yet another 4 years.

While this prescient budget doesn't leave out the Executive or Legislative branches, no simple placeholder was provided for any PROSPECTIVE increase in judicial compensation. And, to that point, there's not even any complicated obtuse retroactive component to plan for. I say "simple placeholder" because the pay schedule for Federal District Court Judges is easily accessible online.

It appears the Division of Budget chose not to forecast a simple quantifiable fixed expense for a long-delayed, justified increase in judge compensation which, mathematically, is consistent with the 2% to 3% annual increases other state workers received. Despite having 4 years' notice of stagnant judge pay and the quadrennial formation of this year's Salary Commission, it is concerning that the Division of Budget failed to give any financial consideration that a salary increase recommendation would likely be made by this Commission. We are grateful that at this month's earlier hearing, Commissioner Kovner was quick to point out that an insincere metric results when comparing salary increases of the state's *"everyday" workforce* to judges between 2014-2024 because it failed to consider the 13-year absence of any raise in judicial pay. Notably, *"everyday" workforce* was not defined, and does it exclude the more than 900 Executive Branch employees earning more than the Governor?

A decision not to forecast and budget, every four years, for a return to pay parity with Federal Courts -- premised upon prior Commissions' recommendations -- or, for that matter, ANY increase in judicial compensation does not constitute evidence of an inability to pay but,

rather, evidences nothing more than the unwillingness of a minority group of Commission members to recommend a salary increase.

The 2019 Commission Report contains a suggestion which would align judicial compensation to “state contracts”. Extrapolated from the State’s most recent labor contract with CSEA, including retroactivity, I have calculated 2024 judicial salary would be on par with Federal District Judge pay. If, instead, “state contracts” was meant to allude to goods and services, on behalf of my judicial colleagues it’s important to note that while technology has allowed the New York State Thruway gantries to replace some State workers, until ChatGPT and AI are ready for primetime and until our sophisticated New York Court users are accepting of Robot Judges, competitive judicial compensation is a critical ‘need’ of this State to be budgeted for, not a luxury ‘want’ to be added only if funds remain.

I cite to Maron v. Silver, 14 N.Y.3d 230 (2010):

**“Judicial salaries need not be exorbitant, but they must be sufficient to attract well-qualified individuals to serve. Otherwise, only those with means will be financially able to assume a judicial post, negatively impacting the diversity of the Judiciary and discriminating against those who are well qualified and interested in serving, but nonetheless unable to aspire to a career in the Judiciary because of financial hardship that results from stagnant compensation over the years.”**

Earlier this year, in ‘The American Lawyer’ (March 31, 2023, ALM, Law.com Online), Court of Appeals Associate Judge Shirley Troutman relayed her own financial struggles to support her family on a judicial salary when she began her judicial career as a divorced mother with young children and she highlighted its dissuasive effect on minorities.

In closing, I note that our State’s Constitution at Art VI § 25 sets forth the compensation clause. Compensation shall be established by law and shall not be diminished during judge/justice’s term of office. The

word ‘diminished’ -- not the word ‘decreased’ -- was purposely chosen. The diminishment determination HAD BEEN left to the Legislature. It is, however, now left to you, as neutrals -- as members of the Commission -- to “independently and objectively” consider compensation increases based upon an objective assessment of the judiciary’s needs. Issues of inflation, inadequacy of judges’ compensation when compared to other legal positions in the public and private sectors, and the judiciary’s increased role -- as evidenced by increased workloads -- are within your purview, Commissioners.

Thank you for the opportunity to have appeared and provided testimony on a matter of great importance and urgency to our membership. On behalf of my colleagues, I urge this Commission to recommend a return of the State’s judiciary to pay parity with that of a Federal District Court Judge, together with attendant prospective cost of living adjustments.