

1 STATE OF NEW YORK

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

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6 November 7, 2024
7 New York City Bar Association
8 42 W 44th
9 New York, New York 10036

10 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
- 17 ROBERT L. MEGNA, Commissioner

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22 Shanasia Ilgner
23 Senior Court Reporter

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1 CHAIRPERSON FAHEY: Good afternoon, everyone. I am
2 retired Court of Appeals judge Eugene M. Fahey. I'm the
3 chairperson of the New York State commission on
4 compensation. Today is a meeting to address the
5 legislative/executive portion of our responsibilities. I
6 want to begin by asking each commissioner to introduce
7 themselves. And we're going to start with Judge Weinstein
8 who is sitting directly across from me.

9 COMMISSIONER WEINSTEIN: Harvey Weinstein, retired
10 justice of supreme court.

11 COMMISSIONER KOVNER: Victor Kovner. I practice
12 law with Davis, Wright, Tremaine in New York City.

13 COMMISSIONER BLANK: My name is Helene Blank. I've
14 been appointed by the chief judge and I practice law at my
15 own law firm Blank and Star.

16 COMMISSIONER MEGNA: I'm Bob Megna and I am the
17 president of the Rockefeller Institute of Government.

18 COMMISSIONER FONTAINE: Nadine Fontaine, appointee
19 of Governor Hochul and I'm currently the general counsel at
20 the dormitory -- of the State of New York.

21 COMMISSIONER EGAN: Good afternoon, everybody;
22 Terri Egan. I'm the assembly appointee -- former DMV acting
23 commissioner and jack of all trades with a bunch of other
24 hats.

25 CHAIRPERSON FAHEY: For the record also, I was

1 appointed as Ms. Blank was by Chief Judge Rowan Wilson also.

2 COMMISSIONER WEINSTEIN: I should also add I was
3 appointed by the Senate.

4 CHAIRPERSON FAHEY: Thank you. So today we have
5 six items on our agenda. Today we're going to deal with the
6 three-part issue. The first is the question of pay raises
7 for statewide elected officials. And by that we mean the
8 governor, lieutenant governor attorney general and
9 comptroller.

10 The second issue is whether or not there will be
11 any pay raises recommended for legislators in the assembly
12 or the Senate.

13 The third issue is a question of executive
14 department employees what we refer to as Section 169
15 employees which covers approximately 40 executive department
16 employees.

17 The fourth is the effective dates of any actions.

18 The fifth issue is the question of the inclusion of
19 the justice center within Section 1 to 169 framework. And
20 finally briefly we'll discuss just the, the question was
21 brought up at the public hearing of whether or not any
22 action by this commission can be linked to a question of
23 outside income. And I just want to put the caselaw on the
24 record that limits our authority in this area. And then
25 finally we'll schedule an adoption of a final report which I

1 anticipate will be approximately a week from today. The
2 first question is the question of whether or not there
3 should be any consideration of a pay raise for statewide
4 elected officials.

5 Do any of the commissioners want to be heard at
6 this point?

7 COMMISSIONER KOVNER: I think we should put it on
8 the record that it's our understanding that this issue was
9 addressed by the legislator and the governor less than a
10 year ago. And which is, argues persuasively in my view that
11 we ought not oppose any change at this point.

12 CHAIRPERSON FAHEY: Hold on one second.

13 * * * *

14 COMMISSIONER EGAN: Victor, you jumped in before I
15 could. I think you very articulately expressed my same
16 thoughts and I would echo the sentiments that you have
17 already shared.

18 COMMISSIONER MEGNA: I'd agree.

19 COMMISSIONER BLANK: So do I.

20 COMMISSIONER FONTAINE: Same.

21 COMMISSIONER WEINSTEIN: Agree.

22 CHAIRPERSON FAHEY: I'm going to note for the
23 record that as chair I was able to vote on the question of
24 pay raises for judges but not on the executive and the
25 legislative. And so the vote is, if I understand correctly,

1 six zero against any pay raises for statewide elected
2 officials at this time. I want to note that we're not
3 making a comment on the quality of the work or any policy
4 questions but simply the recency of recent pay raises. If
5 it means that it isn't the right time for us to move forward
6 on this situation. Is that okay?

7 COMMISSIONER EGAN: Yes.

8 COMMISSIONER FONTAINE: Yes.

9 COMMISSIONER MEGNA: Yes.

10 CHAIRPERSON FAHEY: Okay. The second issue is the
11 same question, the question of pay raises for legislators in
12 both the assembly and the Senate. Let's hear from the
13 Senate first.

14 COMMISSIONER WEINSTEIN: Well, again, the
15 legislature made a determination after the previous
16 commission failed to consider a pay raise, and within their
17 authority they gave themselves a pay raise which would by
18 law I think measure what's appropriate. But, again, it's
19 recent and so maybe our actions today would be not to move
20 on pay raises at this point because those pay raises are
21 significant, appropriate, and relatively new.

22 I will add one editorial comment having been a
23 former member of the legislature, this business of referring
24 to New York as having part-time legislators there's no such
25 thing anymore as a part-time legislator. They go to Albany,

1 they go to committee meetings, they go to conferences, they
2 vote on bills. But then when they are back in their
3 districts they all have full-time district offices, they are
4 going to every conceivable kind of meeting so that they can
5 interact with their constituency, civic associations,
6 religious organizations, police precinct groups. It just
7 goes on and on. It's in the evenings, it's on weekends.

8 I always tell the story when I was a member of the
9 legislature I brought my daughter to some Sunday morning
10 breakfast of some association; she was five years old at the
11 time, and somebody asked her do you know what your daddy
12 does for a living and she said yes he goes to breakfast. So
13 it has become very much a full-time job. I don't envy their
14 responsibilities and the pressure they are under and I have
15 enormous respect for them and that the pay raise that they
16 felt appropriate and necessary to pass a couple years back I
17 think was a good one and we should move on from that.

18 CHAIRPERSON FAHEY: Okay. Terri, would you like to
19 speak on that?

20 COMMISSIONER EGAN: Sure. On behalf of the
21 assembly, very similar organizations so thank you, Jeremy,
22 for that. I would in addition to all of those great
23 comments is echo it is absolutely more than just breakfasts
24 and we all recognize that, certainly going forward. And I
25 would just note I wanted to do a shout out and thank you to

1 DOB because so much of the prep work that they gave us in
2 regard to comparison of salaries, you know, across the
3 country for all of these categories was very helpful for me
4 when we look at it in perspective. But, yeah, I have the
5 utmost respect for our legislators on both sides of the
6 house and what they do and what they are faced with year
7 long.

8 But I do think at this point in time based on last
9 time that there had been a pay raise and certainly
10 recognizing they can move forward as they did the last time
11 if need be during this period of time until this group meets
12 again. I think at this point in time we're good where we're
13 at.

14 CHAIRPERSON FAHEY: Thank you.

15 COMMISSIONER KOVNER: I agree and I agree with the
16 comments of the demands upon our legislators and the, and
17 the high quality of public service they provide on the
18 whole. I think we're at a good point and no action is
19 necessary.

20 CHAIRPERSON FAHEY: Thank you. Commissioner Blank.

21 COMMISSIONER BLANK: I echo what Commissioner Egan
22 and what Commissioner Weinstein said. I think that what
23 they said is correct and I feel the same way about our
24 legislators. I think working with them and lobbying them
25 they are always working.

1 CHAIRPERSON FAHEY: Thank you.

2 COMMISSIONER MEGNA: I agree with all the
3 commentary that has been made so far. And I think, you
4 know, maybe we should emphasize the fact as the members
5 already have that actions have been taken -- relatively
6 recent past last year. So I think it's appropriate for us
7 to move on at this point.

8 CHAIRPERSON FAHEY: Okay. Commissioner Fontaine.

9 COMMISSIONER FONTAINE: I also agree and I have no
10 action to tabling any consideration of --

11 CHAIRPERSON FAHEY: Okay, so the way I understand
12 it is that the vote is six zero for no pay raises at this
13 time.

14 We next come to a more complicated issued and that
15 is the question of pay raises for executive department
16 employees covered by Section 169. In previous
17 communications in our review of the materials as relates to
18 these employees I believe it covers about 40 employees and
19 the problems that we noted before were there were a number
20 of instances where the subordinates in the department are
21 making more than the commissioners of the department.

22 Secondly, that the negotiated union wage increases
23 that are given to deputy commissioners down are not given to
24 the commissioners of those departments, so there's neither a
25 cost of living increase or do they keep up with the pay

1 increases for the other employees within the department.

2 And the third point that comes out pretty
3 consistently in our research is when we compare the New York
4 City commissioner's salaries who are doing the same jobs
5 comparatively in terms of job description is the statewide
6 commissioners, consistently New York City commissioners are
7 being paid more than the statewide commissioners.

8 Those three points we had discussed before and I
9 point them out just to put them on the record at this point.
10 We received a proposal forwarded to us by Commissioner Megna
11 that outlined proposed increases for the four tiers,
12 essentially before new tiers and let me just put them on the
13 record. And we've also made the proposal part of the record
14 so it's available for the public.

15 The first section Section 169 A would go from a
16 salary of \$220,000 annually to \$245,000 annually. The
17 second new Section 169 B would go from a salary of \$205,000
18 annually to \$225,000 annually. Section C would go from a
19 current \$200,000 annually to a new section C which would go
20 to a salary of \$200,000 annually. And most of the people in
21 the new section C would be section D employees. So they
22 would be, they were being raised from a maximum of \$170,000
23 to \$200,000. And then a new section D which would include
24 employees from section D and an old section E to a maximum
25 of \$190,000 from a maximum of \$159,200 annually. These

1 changes under the proposal would take place effective on
2 January 1, 2025.

3 One question for clarification would be, and I
4 would propose to the commissioners that we include the
5 executive director of the justice departments center which
6 was included in the 2018 commission and I believe it's a
7 legal basis to do that under the authority of our
8 commission.

9 The legislative authorities -- says that we can
10 make changes in the law as we deem appropriate. And this
11 has been done before by the 2018 commission but I think that
12 after we finish this section we should clarify that so
13 there's no confusion about that, that we're taking a
14 separate action doing that so that the executive director
15 for the justice department center would be included in the
16 new section C.

17 So the report itself and the recommendations
18 summarizing the as-is salaries and the proposed plan is in,
19 is on the website and is before the commissioners today.
20 So, Commissioner Megna, is there anything you want to add to
21 this?

22 COMMISSIONER MEGNA: I think you've summarized it
23 very well. I think the main issues here are that, you know,
24 the time since the last salary adjustments actually
25 consolidate in categories to make them more consistent with

1 actual, with what people are actually doing and their
2 importance to state government. And the fact that we have
3 significant numbers of people in agencies that are being
4 paid more than the leadership in those agencies. It seems
5 to me appropriate to make these adjustments.

6 CHAIRPERSON FAHEY: Thank you. I do want to note
7 that in the final report which will be put on the website
8 hopefully by Wednesday but the day before our next meeting
9 next Thursday I'm going to layout the titles not just by
10 their initials but by their specific department titles so
11 the public can see them and clarify. So I'll break it down.

12 The new section A these are the titles that we're
13 talking about and these are what the salaries are and I'll
14 do it for each section so it will be clear to the public to
15 see it because I think it's hard to translate it just to
16 oral testimony. And the commissioners are going to review
17 that before our final vote next week. Commissioner
18 Weinstein start with you.

19 COMMISSIONER WEINSTEIN: I need clarification on
20 the current situation. We currently have these five
21 categories and consolidating them so that the -- I'm looking
22 at the number 159(2) as the bottom category, the original,
23 that currently exists. And that salary now will be --

24 CHAIRPERSON FAHEY: 190. And the same with the 170
25 salary that salary will be 190, except those that are

1 moved --

2 COMMISSIONER WEINSTEIN: I understand. So what
3 percentage increases over what period of time exactly are we
4 looking at?

5 CHAIRPERSON FAHEY: These would take effect, my
6 understanding of the proposal is these take affect
7 January 1, 2025, the pay increases. The second issue once
8 we finish this is whether or not in 2027 we should consider
9 a cost of living increase because there are union pay raises
10 going in to effect but I thought we might want to finish
11 this first before we address that.

12 COMMISSIONER WEINSTEIN: My question is, so when
13 was the last time --

14 CHAIRPERSON FAHEY: 2021.

15 COMMISSIONER WEINSTEIN: It was 2021?

16 CHAIRPERSON FAHEY: Yes.

17 COMMISSIONER WEINSTEIN: So over the four-year
18 period in some instances I guess we're looking at a maximum
19 of 20 percent but that's over a four-year period?

20 CHAIRPERSON FAHEY: Right. And there has been no
21 raises for the last four years.

22 COMMISSIONER WEINSTEIN: All right.

23 COMMISSIONER MEGNA: Can I add something to that?

24 CHAIRPERSON FAHEY: Yes, go ahead.

25 COMMISSIONER MEGNA: Because I think it's a great

1 question actually. I think a lot of this is also correcting
2 issues in the past where we, you know, going back 40 and
3 50 years or more when some of these agencies were not doing
4 what they are doing today. They were classified in these
5 lower rankings, for lack of a better terminology. And I
6 think part of the effort of the past two commissions has
7 been to kind of bring them up to some consistent standard
8 for what those commissioners are actually doing and their
9 importance within the government. So there's a little of
10 that in collapsing these categories too I think.

11 COMMISSIONER WEINSTEIN: Yeah, I certainly
12 understand that and I don't want it to be assumed that I
13 have any objection to that at all. I've always been
14 concerned where you have the, you know, the employees making
15 more money than the heads of the agency and we can't allow
16 that to continue to happen. I'm looking at the increases.
17 I think that they are modest and acceptable and I have no
18 objection whatsoever.

19 CHAIRPERSON FAHEY: Okay. You are comfortable with
20 it?

21 COMMISSIONER WEINSTEIN: Yes.

22 COMMISSIONER MEGNA: Just as an example I can speak
23 from experience when I was commissioner of taxation and
24 finance, the entire second floor executive suite of the
25 building made significantly more than I did. It's fine and

1 it was okay, the department ran very well. But I think as,
2 it just did not seem appropriate. And I think over the past
3 10 to 15 years we've been rectifying that situation, so I
4 think this is like the final stage in doing that actually.

5 CHAIRPERSON FAHEY: If we're able to move forward
6 on this I think it will bring some equity. Of all the pay
7 raise issues we've dealt with on this side of the
8 legislative and executive this seems one area that cries out
9 for an equitable solution. So what Commissioner Megna has
10 proposed I think it's based in some form of equity. Anyway,
11 if you're okay, Jerry, I'll go to Commissioner Kovner.

12 COMMISSIONER KOVNER: I'm in agreement -- in
13 addition a letter from Katherine Garcia, chief of operations
14 of the state, whose views are entitled to great weight in my
15 view and I support the proposed adjustments as proposed by
16 Bob and endorsed by Jeremy.

17 CHAIRPERSON FAHEY: Thank you. You know, I'm glad
18 you mentioned Katherine Garcia's letter. I forget to
19 mention that. It's important to know. Thank you.
20 Commissioner Blank.

21 COMMISSIONER BLANK: I just want to say I'm in
22 total agreement with my colleagues and I just want to put on
23 the record the great debt we owe to Commissioner Megna who
24 understands this better than most people do, his long
25 service in government and making sense of what we had at the

1 last meeting with all the different categories of the 169
2 employees and how they meshed together down to these
3 categories and how we got there was instructive on to how
4 important our work is and the impact we can make so that we
5 can have the best and the brightest commissioners in some
6 very important departments in the state government so thank
7 you, Bob.

8 CHAIRPERSON FAHEY: Thank you, Commissioner.
9 Commissioner Fontaine.

10 COMMISSIONER FONTAINE: I echo everything
11 everyone's indicated. But I also wanted to point out,
12 there's also the importance of the parity of having the same
13 or similar salaries to the New York City commissioners
14 because it's important to attract and retain talent, and I
15 think increasing the salaries would be important to increase
16 a number of the individuals for people who want to
17 participate in state employment rather than losing talent --

18 CHAIRPERSON FAHEY: Thank you, Commissioner.

19 COMMISSIONER FONTAINE: I did have one question.
20 Are all of the commissioners that are listed in the statutes
21 supposed to be reflected? Are there any entities that are
22 excluded? I did note that there was in the statute it might
23 have been covered already, but the executive director of the
24 Adirondack park agency.

25 COMMISSIONER MEGNA: I'd have to check, to tell you

1 the truth. I will do that.

2 COMMISSIONER FONTAINE: Okay.

3 CHAIRPERSON FAHEY: Let me know and I'll put it in
4 a draft so we make sure we include it. Thank you,
5 Commissioner.

6 COMMISSIONER FONTAINE: If we're voting, I just
7 want to make sure --

8 CHAIRPERSON FAHEY: Right. It's executive director
9 of the Adirondack's commission.

10 COMMISSIONER FONTAINE: I just didn't see it
11 reflected.

12 CHAIRPERSON FAHEY: Okay. And Commissioner Egan
13 has actually been in this position. She has real life
14 experience in this area.

15 COMMISSIONER EGAN: No, I mean again being last I'd
16 echo everything that everyone has said and 100 percent I
17 think this goes, gets us to where we should have been
18 probably before this. So we really appreciate the effort of
19 everybody involved particularly Commissioner Megna getting
20 it.

21 For transparency sake, Commissioner Fahey, I think
22 it's a great idea if we're very clear though what agencies
23 are in A as we list them out -- I mean, we get very -- with
24 throwing things out you're Part A, you're Part B, you're
25 Part C, it's really important I think for everybody to see

1 so when we put that either on the website or in the report I
2 think as long as we detail that out I think it would be
3 helpful to the public.

4 CHAIRPERSON FAHEY: I think you're right. I think
5 it would be impossible to discern what we are doing without
6 that. So thank you. So the vote is six zero on
7 Commissioner Megna's proposal on the immediate effect pay
8 raises to take place on January 1, 2025. The second
9 question which is DNR agenda is the effective dates. And I
10 guess my question is given the anticipated salary increases
11 should we just in the area of the commissioners include a
12 cost of living increase for 2027. And I don't have a strong
13 opinion on it.

14 I anticipate the union's salary increases are going
15 to be three percent. And I'd like to hear what the
16 commissioners think on that for a two percent increase which
17 is what we do with the judges, we gave them a pay raise to
18 get them up to where they should be and then we gave them
19 two percent two years later, a cost of living increase, and
20 I wanted to know what the commissioners thought about that.

21 COMMISSIONER WEINSTEIN: I think we should do the
22 same as we did with the judiciary. We gave them a very
23 justifiable pay raise, then we skipped a year, then we did
24 two percent, skipped a year and then the new commission, I'd
25 suggest we follow that for the commissioners.

1 CHAIRPERSON FAHEY: Commissioner Kovner.

2 COMMISSIONER KOVNER: I agree for the same reasons.

3 CHAIRPERSON FAHEY: Same reasons. Commissioner
4 Blank.

5 COMMISSIONER BLANK: Totally agree for the same
6 reasons.

7 CHAIRPERSON FAHEY: Commissioner Megna.

8 COMMISSIONER MEGNA: Fine.

9 COMMISSIONER FONTAINE: Same.

10 COMMISSIONER EGAN: Fine.

11 CHAIRPERSON FAHEY: So it's six zero for both the
12 raises to take effect immediately and then in 2027 two
13 percent reflecting the same thing we did with judges for the
14 169 employees.

15 The next issue is the inclusion of the justice
16 center within the 169 employee's framework. And I just want
17 to take a vote on this just so we're clear that we have
18 acted within our authority to do that and do make sure they
19 are included.

20 COMMISSIONER WEINSTEIN: Can you explain why it had
21 not been included?

22 CHAIRPERSON FAHEY: Yes. No, I can't. I think
23 because --

24 COMMISSIONER EGAN: It's probably new.

25 CHAIRPERSON FAHEY: I think historically that 169

1 was in affect long before the justice center was created.
2 In the 2018 commission, which was under slightly different
3 legislation but the same language as the legislation that
4 created this commission in 2015 said that they had the
5 authority to do it and they included the justice center.

6 And the language that they relied on is the same
7 language that I believe that we should rely on, and the
8 language is is that or the actions of the commissioners had
9 the, of the effective law unless overridden by the
10 legislature before the effective date. So if we include the
11 justice center and clarify that it has been included and it
12 should continue to be included within the Section 169
13 employees then unless the legislature overturns that by
14 January 1st of 2025 that's clarified for future commissions.

15 COMMISSIONER WEINSTEIN: What section are we --

16 COMMISSIONER EGAN: -- assuming we have jurisdiction
17 and can do it are we putting them as an A, B, C or D?

18 CHAIRPERSON FAHEY: A C.

19 COMMISSIONER EGAN: Okay.

20 CHAIRPERSON FAHEY: Let me just clarify, right now
21 they would be in the new section B, so they are in C right
22 now and we would put them in the new section B, the
23 executive director of the justice center. So that's 225
24 would be the salary for the executive director. And I'll
25 lay it out in the final report so you can review it. And if

1 there's any questions or concerns let me know and I'll try
2 and straighten it out before next Thursday. But they would
3 move from the old section C to the new section B which is as
4 you see in the report is common. All other current sections
5 169 C officials new section B. Does that make sense to
6 everyone?

7 COMMISSIONER KOVNER: Yes.

8 CHAIRPERSON FAHEY: Jeremy, you had questions. Are
9 you okay with that?

10 COMMISSIONER WEINSTEIN: I'm okay with it. The
11 only issue I do see is that in terms of percentage
12 increases.

13 CHAIRPERSON FAHEY: Yeah, I haven't dealt with the
14 -- percentage is a good question in terms of salaries, the
15 same way we did with judges. I didn't get in to that.

16 COMMISSIONER WEINSTEIN: There seems to be a
17 difference even among the agencies here.

18 CHAIRPERSON FAHEY: There is. There is. The only
19 other solution would be I think that's a reflection of the
20 responsibilities and it's more of a policy choice. I'm
21 reluctant to get in to really executive and legislative
22 policy choice.

23 COMMISSIONER WEINSTEIN: Also , just looking at it
24 at first glance some of the agency heads are kind of at
25 historically low salaries now. So I can justify putting

1 them in to categories where that's corrected.

2 CHAIRPERSON FAHEY: I see.

3 COMMISSIONER WEINSTEIN: That's why I don't have an
4 issue with it and if that's what we're doing here that makes
5 a lot of sense to me.

6 CHAIRPERSON FAHEY: Okay. I believe that's what
7 we're doing. And I'll lay it out by title for the new
8 sections and you can look at it and if you're comfortable
9 with that then we can go forward. Is that all right?

10 COMMISSIONER WEINSTEIN: Yeah, that's fine.

11 COMMISSIONER EGAN: I'd add, Bob, I'll look to you
12 to correct, I think the justice center is currently tier D
13 now and we would be proposing to move them to a tier C.

14 CHAIRPERSON FAHEY: No, tier B.

15 COMMISSIONER BLANK: B.

16 COMMISSIONER EGAN: Our cover letter is a little
17 bit different.

18 COMMISSIONER MEGNA: I'll go make sure.

19 COMMISSIONER EGAN: Yeah, can you just double check
20 that.

21 COMMISSIONER MEGNA: Absolutely. Absolutely.

22 CHAIRPERSON FAHEY: So the question before the
23 commission then is --

24 COMMISSIONER WEINSTEIN: I'm interrupting you, if
25 you don't mind.

1 CHAIRPERSON FAHEY: Go ahead.

2 COMMISSIONER WEINSTEIN: Because this issue had
3 been raised, again, we don't know are we going from D to C
4 or C to B? But if we're going from D to B that's a very
5 significant raise and much more than any other agency that
6 it's getting.

7 CHAIRPERSON FAHEY: They are an agency head. The
8 other ones are commissioners in Ds where they -- it's like a
9 PSC commission or workmen's comp commissioner. This is
10 actually a full-time employee who is working as a
11 commissioner in one of the departments that deals with --

12 COMMISSIONER WEINSTEIN: No, no, it's significant
13 what they do, as long as we understand that, that, you know,
14 we're putting them in the same category as commissioners --

15 CHAIRPERSON FAHEY: Right.

16 COMMISSIONER WEINSTEIN: -- then that's fine. But
17 it is just a significant change.

18 COMMISSIONER MEGNA: Yeah.

19 COMMISSIONER EGAN: Like I said, again, I'm just
20 looking at the cover, the cover e-mail that got sent and I
21 think Nadine has a hard copy. The justice center was
22 included among tier D under the 169 employees, as such under
23 the current proposal it would be included among the
24 recommendations for tier C if we adopt this proposal. So it
25 is just one jump, Jeremy.

1 COMMISSIONER WEINSTEIN: Okay.

2 COMMISSIONER EGAN: But what I'm reading is --

3 CHAIRPERSON FAHEY: What you're reading is correct,
4 and what you're reading is correct. So let me ask --

5 COMMISSIONER WEINSTEIN: If it's the one jump then
6 it's perfectly reasonable.

7 CHAIRPERSON FAHEY: Okay. So you want to stick
8 with the one jump, Commissioners?

9 COMMISSIONER EGAN: I mean --

10 COMMISSIONER MEGNA: I think that's what we're
11 doing, so I just wanted to check. I think what's
12 proposed --

13 CHAIRPERSON FAHEY: I think Terri is right and I
14 think Jeremy is right and I think that I'm incorrect.

15 COMMISSIONER EGAN: And I'm sorry, I didn't mean to
16 do that, but I just wanted to make sure that what we had
17 read was --

18 CHAIRPERSON FAHEY: No, this is more important to
19 get right. So I think that, and that is the memo that was
20 sent out. So let me go back, take a step back and re
21 articulate it. The proposal would be they are currently in
22 tier D, the justice center, move them to tier C and to make
23 them part of the 169 employees also so there's clarification
24 for the future.

25 COMMISSIONER EGAN: Yes.

1 CHAIRPERSON FAHEY: Let's start that again.

2 Jeremy, how are you with that?

3 COMMISSIONER WEINSTEIN: That's fine.

4 CHAIRPERSON FAHEY: Is it okay?

5 COMMISSIONER WEINSTEIN: Mm-hmm.

6 COMMISSIONER KOVNER: We agree.

7 COMMISSIONER BLANK: Agree.

8 COMMISSIONER MEGNA: Agree.

9 COMMISSIONER FONTAINE: Agree.

10 COMMISSIONER EGAN: Agree.

11 CHAIRPERSON FAHEY: So Fahey's error is corrected.

12 This is why we have these minds here to help me get this
13 right.

14 COMMISSIONER EGAN: Sorry.

15 CHAIRPERSON FAHEY: So the justice department then
16 for future purposes not the justice department, the justice
17 center is included with 169 employees by action of the
18 commissioner laws modified to do that and we'll include that
19 in the final report.

20 The last issue on the agenda is and I only include
21 this, I just wanted to put it on the record, the issue came
22 up during the public hearing of linking restrictions on
23 outside income for legislators to any action that we take by
24 the commissioner. And I want to note, for the record, that
25 the commission does not have the authority to do that. And

1 there are two cases that I want to put on the record. The
2 first is Barkley versus New York State, a legislative and
3 executive commission on compensation and there was a
4 challenge to the 2018 commission which made that a condition
5 of their pay raises.

6 The Court of Appeals as with the Appellate Division
7 and the state supreme court says that the commission's
8 recommendation in that area was advisory and it did not have
9 the force of law and while the pay raises were within the
10 authority of the commission linking it to another policy
11 question was beyond the authority of the commission. The
12 cite on Barkley I don't have in front of me right now.

13 But it's also we have Delgado versus the State of
14 New York which is a 2022 New York State Court of Appeals
15 case which dealt with pay raises. And this dealt with the
16 issue slightly differently. This challenged the question of
17 pay raises and the constitutionality of the commission's
18 2021 actions and said that the commission's actions were not
19 unconstitutional and that there was not a surrender of
20 legislative power by us taking particular actions because
21 the legislature reserved to itself the right to overturn any
22 of our actions. The cite on that is 39 NY 3d 242.

23 There is also a current case that's only gone to
24 state supreme court striking down the legislative limit on
25 outside income, but that's only been to state supreme court

1 so far and that has to wind its way through the Court. But
2 that does not deal with the authority of this commission,
3 only with the authority of the legislatures itself. So it
4 will not effect whatever the ultimate ruling is any action
5 by this commission.

6 So those I think are summarized where we are
7 legally and our restrictions on addressing the issue of
8 outside income, we simply don't have the authority to put
9 any policy conditions on our actions outside of the question
10 of pay raises itself. The final action is the scheduling of
11 the final report for 11 --

12 COMMISSIONER KOVNER: Can I just make a comment?

13 CHAIRPERSON FAHEY: Yes.

14 COMMISSIONER KOVNER: I agree that outside of our
15 jurisdiction we set forth the authority. I want to say
16 personally there is some merit to the notion of restrictions
17 on outside income particularly as to legislators and we're
18 not proposing it, but I wouldn't want our noting that we
19 don't have jurisdiction to imply any adverse, and I think it
20 has been expressed, view as to the merits of that, of
21 outside income restrictions as a policy matter not before
22 us.

23 CHAIRPERSON FAHEY: I think you're right about
24 that. I'm glad you noted that. Is there anything else
25 anyone else wants to add? No. Okay.

1 The final action necessary today is just to
2 schedule the adoption of the final report for one week from
3 today. Our deadline is November 15th. One week from today
4 would be November 14, 2024. I propose to have a draft of
5 the final report to you by next Tuesday. If that's
6 acceptable we're going to meet in areas open to the public
7 but through video conferencing.

8 There will be a meeting here at the state bar -- at
9 the city bar. I'm sorry. Commissioner Weinstein is going
10 to meet in a public courtroom in Queens. I'm going to do
11 the same thing in the City of Buffalo, and then Commissioner
12 Fontaine and Megna will meet in Albany in public setting and
13 all of those will be on the website. Do we have anything
14 else we need to do today? Do I have a motion to adjourn?

15 COMMISSIONER FONTAINE: So moved.

16 COMMISSIONER EGAN: Second.

17 CHAIRPERSON FAHEY: Thank you, everyone for coming
18 and doing the sitting and for all the work you've put in.
19 We'll put a big thanks on the record next week. You've all
20 been great. And this commission has gotten further along
21 than any of the other ones in terms of working its way
22 through the issues so you should be proud of the work that
23 you've done.

24

25

1 COMMISSIONER EGAN: Thank you for your leadership.

2 COMMISSIONER MEGNA: Thank you, Judge.

3 CHAIRPERSON FAHEY: Okay, thank you, everybody.

4 * * * *

5 Certified to be a true and accurate transcript of
6 the stenographic minutes taken within.

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Shanasia Ilgner

Shanasia Ilgner
Senior Court Reporter

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