

Statement of the Chief Judge of the State of New York  
April 9, 2007  
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Barely two months ago, I delivered my 2007 State of the Judiciary address here in this courthouse, beginning and ending with the subject that of necessity has become the top priority for the New York State Judiciary - our compensation, now solidly frozen for more than eight years despite an escalating economy. Last year, recognizing the merit and importance of our cause, State funds had been fully allocated for the long-overdue adjustments - but in the end, for reasons entirely unrelated to us, the measure was simply dropped. I was pleased to announce in my 2007 State of the Judiciary address continuing widespread support for the salary adjustment. Most especially, we were greatly heartened by the fact that, for the first time in State history, judicial pay increases, as well as full retroactivity, were included in the Governor's Budget.

Having been nominated by Governor Spitzer and confirmed by the Senate, precisely three weeks ago at this very hour here in this courthouse, I reaffirmed my constitutional oath of office for a new term as Chief Judge of the Court of Appeals and Chief Judge of the State of New York, again underscoring our top concern: judicial compensation. Ironically, I am still receiving

letters of congratulation alongside distinctly less felicitous messages.

Even that day we all understood that prospects were excellent for the now very long-overdue judicial pay increases, hopefully coupled with a commission system - a rational system - that would at long last end the need for our dedicated, hardworking judges year after year to go hat in hand, on bended knee, to the other branches, begging and pleading for even a cost-of-living adjustment. It's wrong for judges to have to do that. What's more, the giant flaw in the so-called system we currently have for determining judicial compensation is that the Judiciary has no seat at the bargaining table and nothing to give, nothing to barter in the budget negotiation, nothing but the merit of our cause. As we've learned, that's just not sufficient capital in our Capitol.

No society can expect its courts to function with the excellence the public deserves when the issue of judicial compensation reaches such a level of unfairness and disdain, when our Judiciary can no longer expect to attract and retain the very best lawyers at the pinnacle of their careers. No judiciary can maintain public confidence in its independence if the public can question whether decisions are influenced by efforts to encourage pay raises or retaliate for their denial.

Plainly, we urgently need the pay increases, and we need a better, independent system for fixing judicial compensation in the future.

These most recent days have been distressing and infuriating for me, and for all my colleagues on the bench, as we struggle to comprehend why, yet again, the measure has failed for no reason related to its merit, or to us, and then to determine what we must do.

As to the why, yesterday's newspapers offered some insight. For starters, as a column on State budget deliberations in the Gannett papers reminds us, nobody is saying that judges don't deserve the raise, and nobody is saying that the State can't afford it. A *New York Times* editorial explains that the legislative leaders are essentially holding the judges "hostage" for their own pay increase, while the Governor seeks greater reform in the way the Legislature operates. Do these and other similar commentaries make any sense to our beleaguered judges? Do they make any sense at all as a reason for denying judicial pay raises? Of course not! Linkage to reform measures in State government, and linkage to a legislative pay increase, are not of our making, and not remotely within our power to change.

The only thing we can do is to search for a course of action that will achieve our objective while avoiding a

constitutional crisis or unduly fracturing of relationships with our partners in government who, though continuing to voice support for our judicial pay proposal, consistently fail to make it happen.

The Chief Administrative Judge and I, along with many of our colleagues on the bench and in the legal community, have been conscientiously studying every option possibly available to remedy this systemic injustice.

A number of measures have been suggested for us to pursue at this critical juncture, beginning with self-help measures - in other words, using my powers as head of the Judicial branch in one fashion or another to order administrative implementation of a pay increase or an emergency stipend from our own funds without waiting for action by the Legislature and Governor. Such measures must be undertaken only with the strongest of legal support, or they will surely backfire on us, compromising our credibility as well as our public support.

It also has been suggested that I use my authority as Chief Judge to confer certain additional non-salary benefits on judges to make up for the long freeze. But benefits for judges, some of which are more than appropriate, have to stand or fall on their own merit, as with all other governmental employees. The public fisc is a valued trust, and we cannot and will not abuse

it. Enabling our judges to take supplementary jobs, or to engage in the private practice of law, another idea advanced by hard-pressed but well-meaning colleagues, I must reject. We need our judges to continue - and we very greatly appreciate - their more than full time, selfless, extraordinary commitment to their vital role.

Alternatively, I have been urged to lend support to those who would engage in work stoppages or slowdowns, or in closing their courtrooms to legislators or other litigants. Some have even gone so far as to suggest closing down the courts. Again, however much I share the frustration, I cannot and will not condone such conduct. Whatever response we make to this crisis must above all be in keeping with the dignity and responsibility of our institution and our profession. We cannot allow recent events to drive us from our charge and the solemn promise we make as judges to serve the public to the fullest and best of our ability. To do otherwise would be to forfeit the justice that lends the greatest strength to our cause.

Finally, there are those who urge me, as Chief Judge, immediately to bring a lawsuit against the Legislative and Executive branches. Such a step cannot be taken lightly. To my mind, bringing such a lawsuit at this moment would be ill-conceived and counterproductive, as it would impede necessary

inter-governmental dealings, paralyze and distract us in executing our constitutional mission, and expose us to extended adversarial proceedings, all of this with no guarantee of achieving our goal. I believe that my constitutional obligation to represent the Judiciary as an institution requires me to exhaust every possible option before taking this radical step, and to continue to focus on strategies that remain most likely to achieve our goal.

While bringing a lawsuit against the other branches is the last step that I would choose to take, I recognize that, if there is no action on judicial salaries before the Legislature adjourns in June, the only remaining course of action available to us may well be to institute litigation with the full weight of the State Judiciary behind it. That truly would be a sad day for us, for State government and for the people of New York.

To forestall such an unfortunate eventuality, and to foster concrete action on judicial salary reform before the Legislature adjourns in June, I am today taking the following five steps:

Step One. I am writing to Majority Leader Bruno, Speaker Silver, Minority Leader Smith and Minority Leader Tedisco asking to speak to their members either in a Joint Session or to the respective conferences in each House, as the subject of judicial

salaries once again comes before the Legislature. Basic fairness and respect for our status as a co-equal branch dictate that the vital question of judicial compensation not be considered - and certainly not rejected - without affording us even an opportunity to be heard.

Step Two. I hereby invite the Governor and Majority and Minority leaders to the Court of Appeals - or alternatively I will be pleased to go to the Capitol - in the very near future to discuss the crisis in the courts occasioned by the current impasse over judicial compensation reform. It is essential that the other branches understand that we in the Judiciary have reached a critical point in our history and that efforts must be directed at achieving a resolution while there is still time.

In addition, I urge that, for the remainder of this legislative session, discussions involving judicial compensation be conducted in a transparent manner, and that Chief Administrative Judge Lippman and I, as leaders not of a State agency but of a co-equal branch of government, be included in discussions affecting judicial pay, whether private or public. The Judicial branch must not be relegated to the sidelines while behind closed doors the other branches of government dictate our fate on this most critical issue. When it comes to something as important as judicial salaries, the head of an independent and

co-equal branch of government surely deserves a seat at the table.

Step Three. The national theme for Law Day 2007 is "Liberty Under Law: Empowering Youth, Assuring Democracy." On April 30, when we celebrate Law Day at the Court of Appeals, we will place the emphasis where it needs to be in New York State just now: assuring a vibrant democracy for future generations through judicial independence, a cornerstone of our great nation, with appropriate judicial compensation at its core. Surely our founders, in providing for lengthy judicial terms and prohibiting diminution in judicial compensation - both as a means to assure judicial independence - could not have envisioned the thicket into which we have been thrust. Accordingly, I am directing that the Law Day 2007 ceremonies, at the Court of Appeals and at courthouses throughout New York, be devoted to this critical issue.

I will invite delegations from the various bar associations, judicial associations and courts around the State to join us for Law Day ceremonies at Court of Appeals Hall, which will include Attorney General Cuomo and State Bar President Alcott. Every year, as Attorney General, Eliot Spitzer powerfully and eloquently reinforced the Law Day message, and we look forward again to his remarks, this time as Governor of the State

of New York. I will also invite Speaker Silver, Majority Leader Bruno, Minority Leader Smith and Minority Leader Tedisco to celebrate Law Day with us on April 30 at Court of Appeals Hall.

Step Four. Mary Campbell McQueen, President of the National Center for State Courts, will have that highly respected organization undertake an independent assessment of the consequences of New York's more-than-eight-year-long judicial pay freeze, both from a State and national perspective. The New York State Judiciary has, after all, achieved a distinction - not a proud one - of having gone longer than any other judges in the nation without any increase in our compensation. The Center has long been an important voice in campaigns for judicial pay reform nationally, and is the single most complete source of information on comparative judicial pay levels nationally. The Center's report will be received and made public by May 15, with ample time for consideration by State lawmakers and the public during the current legislative session.

Step Five. Finally, however uncomfortable I may be, personally or as the head of the Third Branch, with unilateral action to increase judicial salaries, I feel I must leave no stone unturned, and must further explore that unprecedented step. Therefore, I am directing Chief Administrative Judge Lippman to seek an advisory opinion from the State Attorney General and the

State Comptroller on the feasibility of unilateral action by the Judicial branch on this issue. This is entirely in keeping with the Judiciary's longstanding practice, within the context of our separation-of-powers framework, of asking New York's Chief Legal Officer and its Chief Fiscal Officer for their interpretation of key provisions of the law bearing upon extraordinary administrative action and the expenditure of monies in the public treasury. Judge Lippman will additionally direct officials at the Office of Court Administration to ready the necessary administrative orders and payroll processes so that we will be fully prepared to take action.

Even while pursuing this course, I want to be clear that my foremost objective, and my intention, is to work with the Governor and Legislature for comprehensive reform, including statutory adoption of our proposals for new judicial pay scales and a COLA-based quadrennial commission system for ongoing pay adjustments for government officials.

My comments today come after innumerable calls, visits and meetings Judge Lippman and I, and so many of our judges, have had with legislators and with the Governor and his office on this issue, after laying aside our own crushing disappointment and acute frustration, and after careful consideration of every conceivable option we might have. It is nothing short of

disgraceful that we have been brought to this point, that for more than eight years, longer than any other judges in America - likely longer than any workers in any field - New York State judges, for no reason other than Albany politics, have been denied even a cost-of-living adjustment to their salaries. We have fallen a full 23 percent behind the compensation of federal judges - whose compensation United States Supreme Court Chief Justice Roberts calls deplorably inadequate - and, despite increasingly demanding dockets, we have dropped to the bottom rung among comparable State judiciaries.

I assure my colleagues on the bench, our partners in New York State government and the public that I would never take any action that would harm the public we serve, foster disrespect for the Judiciary, or diminish trust and confidence in our work. But I also pledge, clearly and unequivocally, that we will not remain docile in the face of the shabby treatment the Judiciary of the State of New York has received.

I thank you for your attention and for your continued support throughout this trying time.