

From: Hon. John M. Curran
Sent: Wednesday, December 09, 2015 10:34 AM
To: Sheila Birnbaum
Subject: Judicial Pay Commission

Dear Ms. Birnbaum,

You may recall that I am a fellow member of the ALI and I serve on the Regional Advisory Council which you chair. I am writing to urge the Commission to maintain compensation parity with U.S. District Court Judges and to do so effective April 1, 2016 with COLA's thereafter. Please forgive this very direct approach but, as a fellow member of the ALI, I know you must care about the law at least as deeply as I do. It is on this belief that I share the following with you and if need be it may become a part of the official record of the Commission.

It is an extraordinary privilege to serve on the bench. It has been more professionally rewarding than I could have ever expected. I love interacting with fellow lawyers in connection with their clients and the law, I love researching and writing about my cases, and I love researching, writing and publishing articles I hope are of service to the profession. Simply put, I love serving the public in this way and enjoy getting up for work every day.

In addition to my ALI membership, I am extremely happy to be a member of the NYS Supreme Court Association Civil Pattern Jury Instruction Committee (PJI). You may know that this is a group of approximately 15 justices who meet about 8 – 10 times per year to discuss what should be included in our book. We prepare extensively for every meeting and debate what should be put in the book and precisely how it should be phrased. What a blast! None of us seek or receive any additional compensation for this service and every one of us would agree that the work is reward enough.

I also have been privileged to serve on a Judicial Committee comprised of highly skilled practitioners and fellow judges to draft and update the Bench Book and Appendix of NYS cases regarding the Discovery of Electronically Stored Information. I am pleased to be allowed to refer to myself as the primary draftsman of the Bench Book. I have written four articles that have been published in the NYSBA Journal on such subjects as electronic medical records, evidence and the "loss of chance" theory in medical malpractice cases. Like many of my fellow judges, I frequently write and lecture for CLE programs.

None of these opportunities would have been available to me in private practice because I would have been too busy making a living. I fully understand the privilege of public service and have done everything in my power to give back.

I left private practice in 2004 after 20 years in commercial litigation. I knew the pay was significantly less and that was fine in exchange for the privilege of serving. But my fellow judges all expected a raise soon since it had been 6 years since the last raise and that was about as long as they ever had to wait before. It took another 7 years before anything happened and we just caught up to the benchmark 11 years after I got to the bench. It has been maddening at times to put three children through college, try to stay in the same house I purchased years before getting to the bench and try not to dwindle all prior retirement savings.

I apologize for the focus on my story but I do not want to presume to speak for any of my fellow judges all of whom I respect enormously for they work they do. But I am just one such story. The vast majority of my fellow judges serve on committees, write, speak at CLE's and otherwise do their best to give back in recognition of the privilege we enjoy.

None of us expect to become wealthy and none of us expect to earn the huge salaries some lawyers do in private practice. We do not have clients, time sheets, billable hours, accounts receivables or any of the other burdens of private practice. But neither do U.S. District Court Judges and we do the same trial court level work. While speedy trial rules force criminal cases to take precedence in federal court, most of our criminal court work is handled by County Court Judges and local judges.

Supreme Court Justices handle an incredibly wide range of types of cases. I never touched a matrimonial in private practice but I tried about a half dozen my first two years on the bench. I've done trials involving Labor Law, construction litigation (personal injury and breach of contract), slip and falls, dozens of motor vehicle accidents and a list I cannot recall right now. I've been in the Commercial Division for 4 years (my forte) and handled the medical malpractice part for 6 years (I never tried one of those either before getting to the bench). We do it all here and happily so. We also do it with significantly fewer resources than our federal counterparts (for example, most District Court Judges can hire 3 law clerks while we get one).

We just sincerely hope not to be viewed as lesser judges because we serve the state and not the federal government. That is the only difference between U.S. District Court Judges and NYS Supreme Court Justices because all of us do trial court work.

One more point on the benchmark. I have good friends who serve as U.S. Bankruptcy Court Judges and Magistrate Judges. They work very hard and earn every penny they are paid. But respectfully they are not Article III judges and therefore are not constitutional officers. In NYS, Justices of the Supreme Court are constitutional officers. It is therefore particularly insulting to have us at any time earn less or the same as non-constitutional officers.

The benchmark was set by the previous commission and that became law. Please just stick by it or it will seem punitive even if not an unconstitutional reduction in compensation. We should not always play catch up, particularly when the State is not in the fiscal conundrum it was when the pay raise finally came through. There is no way to undo the financial harm done to us from 1999 to 2013. All I ask is to be treated fairly and justly by maintaining the benchmark with COLA's.

Thank you for your kind attention in reading this through. I am grateful for your service on the Commission as I'm sure it's a sacrifice to what you do for your clients and partners.

Respectfully submitted,
John M. Curran

Hon. John M. Curran, JSC