

1 STATE OF NEW YORK

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

4

via Zoom
5 New York, New York
December 4, 2023

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B E F O R E:

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EUGENE M. FAHEY, Chair

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JEREMY S. WEINSTEIN, Commissioner

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VICTOR A. KOVNER, Commissioner

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R. NADINE FONTAINE, Commissioner

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THERESA EGAN, Commissioner

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HELENE BLANK, Commissioner

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ROBERT L. MEGNA, Commissioner

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Reported by:
Daisy Perez, SCR

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Proceeding

1 JUDGE FAHEY: This is the meeting of the Commission
2 on Legislative, Judicial and Executive Compensation. Today
3 is December 4, 2023, it's Monday, approximately 10:38 a.m.
4 The purpose of this meeting is to have a vote on the final
5 report on the judicial compensation part of our
6 responsibilities.

7 We have already made some recommendations and all
8 the commissioners have received a draft final report. The
9 purpose of this meeting is to vote on that final report
10 today and then tomorrow reset publicly on the site and out
11 to press. What I would like to do is ask the commissioners,
12 and I'll call your names, in order to identify themselves
13 for the court reporter and for the record since we are on
14 Zoom.

15 I am the chair, my name is Eugene Fahey, I'm a
16 retired court of appeals judge. Next is Helene Blank.

17 MS. BLANK: Hi, I'm Helene Blank, practicing
18 attorney, and I was appointed by the chief judge.

19 JUDGE FAHEY: Theresa Egan.

20 MS. EGAN: Good morning. It's Theresa Egan
21 appointed as speaker.

22 JUDGE FAHEY: Nadine Fontaine.

23 MS. FONTAINE: Good morning. It's Nadine Fontaine,
24 general counsel with the Dormitory Authority and appointed
25 by Governor Hochul.

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1 JUDGE FAHEY: Victor Kovner.

2 MR. KOVNER: Victor Kovner, I'm senior counsel of
3 Davis Wright Tremaine and I was appointed by Governor
4 Hochul.

5 JUDGE FAHEY: Bob Megna.

6 MR. MEGNA: Yes, Bob Megna president of Rockefeller
7 Institute.

8 JUDGE FAHEY: Honorable Jeremy Weinstein, retired.

9 MR. WEINSTEIN: Yes. Good morning. Jeremy
10 Weinstein appointed by the senate majority leader.

11 JUDGE FAHEY: I've indicated the purpose of the
12 meeting is to approve the final report. A brief summary of
13 the report has already been approved and in essence the
14 report recommends -- is approximately a 10.3 percent of
15 raises for judges to take effect on April 1, 2024, with a
16 two percent raise subsequently on April 1st of 2026. No
17 other raises during the four-year period that the commission
18 operates.

19 Upon approval the court report today will go to
20 Governor Hochul, to Chief Judge Rowan Wilson, to the
21 President and Majority Leader of the Senate, Andrea
22 Stewart-Cousins, and to the Speaker Carl Heastie, and will
23 also be posted tomorrow on the site and with the press.

24 Can we have a motion to approve the final report?

25 MR. KOVNER: So moved.

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1 MS. BLANK: I second.

2 JUDGE FAHEY: There's a second. I didn't hear who
3 moved.

4 MR. KOVNER: I did.

5 JUDGE FAHEY: Victor, thank you. And who second
6 it?

7 MS. BLANK: I did. Helene Blank, your Honor.

8 THE COURT: Thank you. Let's go in order, Helene
9 Blank first.

10 MS. BLANK: I approve the report. And I just want
11 to thank Judge Fahey and my fellow commission members
12 publically for all the hard work and hours we spent in
13 getting this done. And it was a great honor to be a
14 commissioner and I look forward with working with all of you
15 in the rest of our task.

16 JUDGE FAHEY: Theresa Egan, commissioner.

17 MS. EGAN: Good morning, again. I echo Helen's
18 comments. It has been a pleasure and an honor to serve with
19 all of you as well as on behalf of the speaker. I approve
20 the report as outlined by Judge Fahey.

21 JUDGE FAHEY: Commissioner Fontaine.

22 MS. FONTAINE: Yes. I also approve the report. I
23 echo Commissioner Egan and Commissioner Blank's sentiments
24 regarding our time here and I'm happy to serve. It's been a
25 pleasure to serve and an honor to serve. So, again, I vote

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1 yes.

2 THE COURT: Thank you. Commissioner Kovner.

3 MR. KOVNER: Yes. I approve this report. And I
4 think pleasure and honor are good terms to reflect my
5 feelings as well.

6 JUDGE FAHEY: Commissioner Megna.

7 MR. MEGNA: I. And, again, support the comments
8 that have already been made.

9 JUDGE FAHEY: Commissioner Weinstein.

10 MR. WEINSTEIN: Yes. First of all, Commissioner
11 Fahey, Judge Fahey, I couldn't think of a finer individual
12 to have been the chair of this committee. I want to thank
13 you for the way you've led us through this process and I
14 want to thank the other commissioner for their intelligent
15 and open-minded approach and to listening to all of the
16 witnesses and all of us coming to a consensus. I vote yes.

17 JUDGE FAHEY: I also vote yes. And I want to say
18 to all of the commissioners, looking over and preparing from
19 duties as the chair, I'm struck by how fortunate I was
20 working with all of you. This is the only thing the
21 commission board with a unanimous recommendation every
22 single time -- and I don't blame the prior commissions, but
23 every single time they met before they haven't been able to
24 achieve this degree of unanimity.

25 Sometimes you're just lucky, you hit the right

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1 moment, I think, when there's a broad consensus on what
2 needs to be done on bigger and smaller issues and you're
3 able to achieve something. So I think we've achieved
4 something here and hopefully all of us working together
5 we're able to, for future commissions, the path that should
6 be followed, how this issue should be approached, and that's
7 really because of the intelligence and I would call the way
8 with which commission members approached these issues.

9 You've approached them responsibly but without any
10 hidden agendas. You've been all very good public servants,
11 it's been an honor to serve with all of you. I would like
12 to discuss the next phase when we have to address the
13 legislative and executive salaries.

14 Commissioner Megna had mentioned before that
15 February may be too early to offer any meat on this issue
16 and he might be right about that. What is everyone else's
17 opinion? The more I think about it, he may be right and we
18 may have to look until after the state vote. I want to hear
19 from all of you and see what you all think. Who would like
20 to speak on it?

21 MR. WEINSTEIN: I would. I want to agree with
22 Commissioner Megna and he's absolutely right. This is a
23 process that will take some time and can wait until after
24 the budget is determined, hopefully by April 1st, and then
25 we can have another discussion as to what will be the

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1 appropriate time to start the process again.

2 I have a couple of questions. The RR commission
3 ends on a date certain, just for the record, what is that
4 again?

5 JUDGE FAHEY: It's November 15, 2024. Our duties
6 as to the judiciary end on December 23, 2023, and as to the
7 legislative and executive compensation, it's November 15th
8 of 2024.

9 MR. WEINSTEIN: The other question -- I guess I'm
10 asking the question, I guess I'm being lazy, I can look it
11 up, in terms of the executive compensation, does anybody
12 know offhand how many individuals fall into that category?

13 JUDGE FAHEY: I don't know the number but the best
14 source to go through it was the 2018 commission that wasn't
15 set up under this statute but had set up salary increases, I
16 would recommend that you look at that report in preparation
17 of that issue. I thought that that was helpful to me.

18 I was going to reach out with Bob's help to the
19 budget director after the first of the year and get a list
20 of who the employees are -- try to get some sense of what
21 the executive is thinking. And then after that point
22 forward that information to you because I think that's going
23 to take a little more research. That issue has never been
24 even addressed by the commission or its present legislative
25 form.

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1 The only time that it was addressed and I could
2 find was in the 2018 commission report and you can get it
3 online.

4 MS. BLANK: Eugene, may I suggest, especially with
5 the former judges here, that the picked tentative date after
6 April 1st with the hope and prayer that the budget will have
7 been passed because at least we'll have a control date, and
8 if the budget isn't passed by then, we can then adjourn. If
9 we don't have it in our calendars, I know that everyone on
10 this commission is a busy person and so dates get filled up,
11 and I think it might behoove of us, at least to have a full
12 date after April 1st we might start our work.

13 JUDGE FAHEY: That's a good idea actually. The
14 week of April 15th is two weeks after budget time.

15 MS. BLANK: I would just check Easter and Passover
16 dates. Easter will have been over March 31st and Passover
17 starts the night of April 21st -- April 22nd, excuse me. So
18 the 15th doesn't conflict with either Easter or Passover.

19 JUDGE FAHEY: Why don't we set a date, the 17th,
20 whether we meet in person or we meet on Zoom, we'll
21 tentatively set a date of April 17th in the morning and the
22 format will have to be decided and where. The other thing
23 about -- let's talk a little bit about where too.

24 MR. WEINSTEIN: Can I get one clarification? We're
25 talking about that date as organizational meeting, much in

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1 the same nature as first meeting prior to the judicial
2 hearings to be held.

3 JUDGE FAHEY: Yes.

4 MR. WEINSTEIN: Okay.

5 JUDGE FAHEY: 4/17/24 as an organizational meeting,
6 details to be worked out. That, hopefully, will give me
7 sometime to meet with someone from budget to educate myself
8 and put together material for the commissioner in the
9 compensation issue. The legislator is more of a policy
10 question than a question of numbers.

11 MR. KOVNER: Judge, can I ask, is anything in the
12 legislation other than the end date of November 24th that
13 obligates us to complete tasks with respect to the exempt
14 executive employees in the legislator or is the legislation
15 silent on that?

16 JUDGE FAHEY: It's silent -- my understanding,
17 Victor, is that it's silent. All it says is the two dates,
18 the beginning date of January 1st and then 11/15 is the end
19 date.

20 MR. KOVNER: I think that April 17th date shouldn't
21 be a problem.

22 JUDGE FAHEY: Is that all right with everybody,
23 April 17th, we'll worry about the details later?

24 MS. BLANK: Yes, your Honor.

25 JUDGE FAHEY: I don't want to say whether we meet

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1 in Albany or not, but I think this phase, the public
2 hearings, may have to be held in Albany given the need to
3 have someone from the majority leader, it's the majority
4 leader and the speaker, hopefully, to testify. And, of
5 course, they may have different ideas about when they want
6 to do it because there has to be something that's worked
7 out, but the hearing, itself, may have to be in Albany.

8 I've reached out to their office already just to
9 ask them to think about that and then they can let us know,
10 but they have to work with them to do what they want on
11 that. So let's just plan on the organizational meeting and
12 not take it any further than that.

13 MR. WEINSTEIN: I have another question but just
14 out of interest and probably very premature, but do you know
15 offhand how many witnesses testified in the prior commission
16 regarding the legislature and executive compensation?

17 JUDGE FAHEY: No. 2016 we did take testimony and
18 -- but I don't know how many people testified. In 2019 they
19 never got to testimony, that I know of. And I found in the
20 record, I might be wrong but I'm not a 100 sure, but in 2016
21 they did and then they deadlocked. The deadlock really
22 didn't come under the question in both as in outside income
23 versus state legislators, and that's going to be the policy
24 dispute between the parties.

25 MR. MEGNA: My recollection from that period was

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1 not an overwhelming number of folks testified. I think some
2 of the electives testified and a small group of outside
3 folks testified.

4 JUDGE FAHEY: Did they have testimony for
5 legislative and executive compensation in 2016 and 2019?

6 MR. MEGNA: I can't really recall. I just remember
7 the legislative ones just a little bit. Again, it was a
8 little -- yeah, I don't want to say because I really don't
9 remember. But I don't remember there were, you know,
10 hundreds of people testifying. I think it was relatively
11 small.

12 JUDGE FAHEY: I need to get an answer for you. I
13 think it's an important question.

14 MS. EGAN: Just a question too, Bob, wouldn't it be
15 mostly from the executive staff now separate from the
16 legislative salaries, would it be somebody from the
17 governor's office? I'm just trying to figure out who would
18 even speak for the executive salary considering they all
19 serve at the -- it would be --

20 MR. MEGNA: Executive salaries I think will be
21 discussed, the ones that are outlined in statute already. I
22 think I'll defer to the Judge. I think they're already
23 enumerated in statute. I think, quite honestly, could have
24 come, it could be anyone. It could be the budget director.
25 It could be the governor's chief of staff. It could be

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1 almost anyone. I think it would be someone from the
2 governor's office with an opinion, governor's opinion about
3 what agency salary should be. But I don't know. I don't
4 know.

5 JUDGE FAHEY: One of the things I had suggested
6 was, look at 2018 because that version of the salary
7 commission did take some testimony on that issue. But so
8 far I haven't seen the testimony, only the report. It's my
9 understanding that the testimony was never kept and
10 downloaded online for that commission, but I'm not sure
11 about that, Terry, but that's the way I understood it,
12 that's why we couldn't find it.

13 MR. KOVNER: I would imagine it would be a lot
14 fewer witnesses than the judicial compensation because each
15 level of the judiciaries association of judges felt they had
16 an obligation to present, as did many bar associations. I
17 think neither -- certainly not as to the executive exempt
18 deploys would that be the case and I don't think that would
19 be the case as to the legislature either.

20 MR. MEGNA: Only exception -- Victor, I think
21 you're right, but I do think legislative salaries, even more
22 than judicial salaries, tend to interest the public at large
23 a little bit more. And so I think there's always the
24 potential for more outside related groups to want to testify
25 which was really not the case for the judges. But, again --

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1 MR. KOVNER: That's a fair point.

2 MR. MEGNA: Again, I don't think it's an
3 overwhelming number.

4 JUDGE FAHEY: I -- my instincts from when I was a
5 politician tell me that if I'm running against someone and
6 they're asking for a pay raise, I'm probably going to
7 testify on it. And so it's a kind of issue that I -- I
8 don't know, Victor, I just don't know.

9 I think it could go either way, that's why I was
10 looking to 2018 for guidance, but they never downloaded the
11 testimony from them, but I would think that we would get
12 some of that, and how much I don't know. I think we're
13 going to have to play it by ear on that. I think the best
14 way to do it is just to schedule the hearing earlier and
15 keep the day open and plan on it being longer than we
16 expect. I guess that will be the best way and we'll just
17 work around your schedules or whatever you need.

18 Okay. Is there anything else that we need to talk
19 about? If we're in agreement on our next meeting date,
20 we'll make it this 4/17/24. If we can do it on Zoom or in
21 Albany partially or in the city, I'm really amenable to
22 whatever the commission wants. So we can give that some
23 thought, we don't need to decide it now.

24 All right. Okay. If there is no objection then, I
25 would recommend that we adjourn. Is everyone in agreement

1 with that?

2 MR. KOVNER: Yes.

3 MS. BLANK: Yes. Second it.

4 JUDGE FAHEY: It's unanimous. We're adjourned.
5 I'll talk to everyone. I hope you have good holidays. It's
6 been a pleasure to work with you all, I hope to see you all
7 after the first of the year. Take care everyone.

8 MS. BLANK: Thank you all. Happy holidays.

9 MR. KOVNER: Thank you.

10 MS. EGAN: Thank you. Happy Holidays.

11 (Proceedings concluded.)

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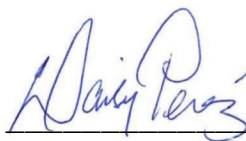
15 Court Reporter's Certification

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17 I hereby certify that the foregoing transcript is a true
18 and accurate record of the proceedings.

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Daisy Perez DeCicco
Official Court Reporter

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