

**COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE
COMPENSATION**

**FINAL REPORT ON LEGISLATIVE, JUDICIAL AND EXECUTIVE
COMPENSATION**

November 11, 2020

TABLE OF CONTENTS

| | <u>Page</u> |
|--|--------------------|
| MEMBERS OF THE COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION | 1 |
| COMMISSION REPORT | 4 |
| I. Introduction..... | 4 |
| II. The 2018 Report on Executive and Legislative Compensation | 7 |
| III. The 2019 Report on Judicial Compensation | 8 |
| IV. The COVID-19 Pandemic | 10 |
| V. CONCLUSION..... | 13 |

MEMBERS OF THE COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

Michael A. Cardozo is a partner in Proskauer's Litigation Department and the former Corporation Counsel of the City of New York. As the City's 77th and longest serving Corporation Counsel, he was the City's chief legal officer, headed the city's Law Department of more than 700 lawyers, and served from 2002 through 2013 as legal counsel to Mayor Michael Bloomberg, elected officials, the city and its agencies. Michael represents a wide range of clients on general commercial litigation and arbitration matters. Prior to becoming Corporation Counsel Michael served as co-chair of Proskauer's Sports Law Practice and handled numerous litigations representing the National Basketball Association, the National Hockey League, and Major League Soccer. He was also Co-Chair of the Proskauer Litigation Department and served three terms on the firm's Executive Committee. Long active in the public sector, Michael presently serves as a member of the Boards of Citizen's Union the Fund for Modern Courts, and the Advisory Board of Legal Outreach. He previously served as president of the 22,000-member New York City Bar Association, chair of both the Fund for Modern Courts and the Columbia Law School Board of Visitors and head of two court system task forces. He is an appointee of the Chief Judge.

Justice Randall T. Eng (Ret.) is Of Counsel to Meyer, Suozzi, English & Klein, P.C., and a member of the Litigation Department, including the Appellate Practice and Criminal Defense groups. Immediately prior to joining Meyer Suozzi, Justice Eng served as the Presiding Justice of the Appellate Division, Second Department from 2012 - 2017. Born in Guangzhou, China, Justice Eng was raised in New York City. He earned his undergraduate degree from State University of New York at Buffalo and his juris doctor degree from St. John's University School of Law in 1972. Following law school, Justice Eng began his legal career in public service as an assistant district attorney in Queens County. At the time, he became the first Asian American appointed as an assistant prosecutor in New York State history, and then served as the Deputy Inspector General of the New York City Correction Department and later Inspector General. In 1983, Justice Eng became the first Asian American to become a judge in New York State, when he was appointed to the Criminal Court of the City of New York. In 1990 and 2004, Justice Eng was elected and reelected to terms on the New York State Supreme Court. In 2008 he was designated as an associate justice of the Appellate Division, Second Department. Justice Eng served as President of the Association of Supreme Court Justices of the City of New York and as a member of the Advisory Committee on Judicial Ethics. He is currently a member of the New York State Judicial Institute on Professionalism in the Law. He has also served as an adjunct professor at St. John's University

School of Law. Justice Eng proudly served his country as a member of the New York Army National Guard and retired as State Judge Advocate holding the rank of Colonel. He is an appointee of the Chief Judge.

Mitra Hormozi served as Executive Vice President and General Counsel for Revlon, Inc., from April 2015 to July 2019, responsible for overseeing the Company's worldwide legal affairs. Ms. Hormozi also acted as the Company's Interim Chief Human Resources Officer from October 2018 to February 2019. Prior to joining Revlon, Ms. Hormozi was a partner at Zuckerman Spaeder and Kirkland and Ellis, respectively. Previously, Ms. Hormozi served as Deputy Chief of Staff to then New York State Attorney General, Andrew Cuomo. Ms. Hormozi also served as an Assistant United States Attorney for the Eastern District of New York, where she became Chief of the Organized Crime and Racketeering section. Since December 2018, Ms. Hormozi has served as a director of Athene Holding Ltd. which is a NYSE-listed company that offers and reinsures retirement savings products. With her background, Ms. Hormozi has extensive experience in both the public and private sectors of the legal field, as well as senior executive and business experience. Ms. Hormozi also currently sits on the Board of New York University School of Law's Program on Corporate Compliance and Enforcement. Ms. Hormozi received a Bachelor of Arts in history from the University of Michigan and a Juris Doctor from New York University School of Law. She is an appointee of the Governor.

Seymour Lachman is the Dean Emeritus of the Hugh L. Carey Institute for Government Reform at Wagner College, where he is also a Distinguished University Professor Emeritus of Government. Prior to his election to the New York State Senate in 1996, where he served for five terms representing a diverse district that included parts of Brooklyn and Staten Island, Dean Lachman's professional efforts were concentrated in the fields of education, government, and university administration. At the time of his election, he served as University Dean at the City University of New York and Professor of Educational Administration and Government at the Baruch College School of Public Administration. While teaching at the City University, Dean Lachman was selected to serve on the New York City Board of Education. He was subsequently elected President of the Board, and his significant policy accomplishments included restructuring the Board of Education; codifying rights and responsibilities of high school students; establishing confidentiality of student records; creating high school consultative councils of administrators, faculty, parents, and students; and creating an appeals process for the central Board of Education. He is the author of several books focusing on government, including: *Three Men in a Room: The Inside Story of Power and Betrayal in an American Statehouse*; *The Man Who Saved New York: Hugh Carey*

and the Great Fiscal Crisis of 1975 (co-authored with Robert Polner); *Mr. New York: Lew Rudin and His Love of the City*; and *Failed State: Dysfunction and Corruption in an American State House*. He is an appointee of the Temporary President and Majority Leader of the New York State Senate.

Peter Madonia serves as the Chairman of the Belmont Business Improvement District (BID), whose mission is to promote and expand the economic wellbeing of the business community and the community at large, by promoting the “Little Italy in the Bronx” brand, their strong ethnic heritage and leadership in the culinary marketplace. In addition to the Belmont BID, Peter has a legacy of public service. For the past 17 years, Peter spent 12 years as the Chief Operating Officer of the Rockefeller Foundation and helped that institution celebrate its Centennial in 2013. As COO, he provided leadership and strategic direction for financial and operational functions, overseeing various areas including human and financial resources, information technology, facilities and office services, records management and library services. He also managed the Foundation’s regional office operations in Nairobi, Kenya; Bangkok, Thailand; and the Rockefeller Foundation Bellagio Center in Bellagio, Italy. Prior to the Rockefeller Foundation, Peter was Chief of Staff to Mayor Michael Bloomberg from 2002-2006, when he was responsible for overseeing day-to-day operations and a position he was appointed to after serving as senior advisor to the Bloomberg for Mayor campaign. Peter’s previous experience in New York City government included serving as first deputy commissioner of the Fire Department, deputy commission for budget and operations at the Department of Buildings, and chief of staff to the deputy mayor for operations. Peter received a bachelor’s degree from Fordham University, where he has taught urban studies as an adjunct professor. He also has a master’s degree in Urban Studies from the University of Chicago. He is an appointee of the Speaker of the New York State Assembly.

Jim Malatras is the 14th Chancellor of the State University of New York, the largest comprehensive system of public higher education in the country with 64 campuses and more than 415,000 students. Prior to that he was the 5th president of SUNY Empire State College, a college with more than 30 locations in New York and internationally. SUNY Empire State offers online or face to face education, or a combination of both. Prior to joining SUNY Empire, he served as president of the Rockefeller Institute of Government, offering policymakers evidence-based policy analysis and recommendations on timely topics. Dr. Malatras has held several high-ranking positions in New York State government, including as director of state operations and deputy secretary for policy management to Governor Andrew M. Cuomo. He most recently was a member of Governor Cuomo’s COVID-19

Taskforce. He has his BA, MA, and Ph.D. in political science from the University at Albany. He is an appointee of the Governor.

Robert Megna was appointed Senior Vice Chancellor and Chief Operating Officer of SUNY System Administration November 2017. In this role, he oversees the operations of Chief Information Officer, the State University of New York (SUNY) Plaza business functions, capital facilities, campus energy management, and the Charter School Institute. He joined SUNY System Administration from Stony Brook University where he served as Senior Vice President for Finance and Administration. Prior to joining Stony Brook, he served as Executive Director of the NYS Thruway Authority and NYS Canal Corporation. Bob served as Budget Director for NYS Division of the Budget, during which time the state achieved its highest financial rating in 40 years from three major credit rating agencies and passed four on-time budgets for the first time since the 1970s. He also chaired multiple governmental boards including the Financial Restructuring Board, the New York Racing Association, and the Public Authorities Control Board. Mr. Megna has also served as Commissioner for NYS Taxation and Finance, Director of the Revenue and Economics Unit at the NYS Division of Budget, Assistant Commissioner of the Office of Tax Policy at the Virginia Department of Taxation, Director of Tax Studies at the NYS Department of Taxation and Finance, and Deputy Director of Fiscal Studies on the Assembly Ways and Means Committee. Mr. Megna earned an M.S. in Economics from the London School of Economic and Political Science at the University of London, and received both his B.A. in Economics and M.P.A. from Fordham University. He is an appointee of the Governor.

COMMISSION REPORT

I. Introduction

Every four years commencing in June 2015, a Commission is established “to examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits” for judges, members of the Legislature, and certain Statewide elected officials and Executive Branch officers named in

Executive Law § 169.¹ The Commission is composed of three members appointed by the Governor; two (including the Chair) by the Chief Judge; and one each by the Temporary President of the Senate and the Speaker of the Assembly. A recommendation for any salary increase must be supported by a majority of the Commission and by at least one member from each appointing authority, and the Chair may not vote on legislative and executive compensation.²

In making its recommendations, the Commission is to consider: “the overall economic climate in New York; rates of inflation; changes in public-sector spending; levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state’s ability to fund increases in compensation.”³ Based on this review the Commission is “to determine” whether the salaries and compensation of the judges, legislative and elected officials and certain state officers “warrant an increase.”⁴

Historically, the Commission’s work has proceeded in two steps: in its first year it makes a recommendation whether salaries for the judges of the New York

¹ Chapter 55 of the Laws of 2020 Part WW § 2(1)(a).

² Chapter 59 of the Laws of 2019 added that for a recommendation for an increase in judicial compensation to be effective at least one member from each appointing authority must support the recommendation, a requirement that had previously applied only to recommendations for legislative and executive salary increases.

³ Chapter 55 of the Laws of 2020 Part WW § 3.

⁴ *Id.* § 2(2)(b)(1)-(2).

state courts should be increased over the next four years, and in its second year it recommends whether the salaries for New York state legislators and defined members of the Executive branch should be increased for the next four years. In December of 2019, the first year of the current Commission, the Commission voted not to recommend an increase in judicial salaries during the next four years.⁵ However, on April 3, 2020 the Governor signed into law an amendment authorizing the Commission to consider again judicial salaries in conjunction with its 2020 review of legislative and executive compensation.⁶ That law also provided that this year’s recommendations should be made by November 15, and will have the force of law “unless overruled by statute by December 31.”⁷

In accordance with its statutory mission, the Commission held two public meetings on October 14 and October 28, 2020. For the reasons set forth below, the Commission has determined it will not recommend any compensation increases for the next four years for New York’s judges, legislators, or executive branch officials.

⁵ See 2019 Report of the Commission on Legislative, Judicial and Executive Compensation.

⁶ Chapter 55 of the Laws of 2020 Part WW § 2(1)(b).

⁷ *Id.* § 7.

II. The 2018 Report on Executive and Legislative Compensation

In 2018 the Legislature created a one-time Commission to address legislative and executive compensation after the 2015 Commission had failed, in 2016, to reach agreement as to whether legislative or executive salaries should be increased.⁸ The 2018 Commission recommended that legislators should receive a series of raises through the year beginning in January, 2021. However, the Commission also recommended that beginning in January of 2020, there would be a cap of 15% of the legislative base salary on “outside income from employment where the legislative member has a fiduciary relationship to the employer or client analogous to the Congressional Model.”⁹ The Commission also recommended a series of raises for the statutorily defined executive branch officials.¹⁰

The legislative salary recommendations were partially invalidated by a 2019 New York state Supreme Court decision, which held that the Commission did not have the power to limit legislators’ outside income.¹¹ The effect of this decision was to invalidate the pay raises for legislators in 2020 and 2021 (leaving in place

⁸ Chapter 59 of the Laws of 2018 Part HHH. See also Transcript of November 15, 2016 Meeting of the New York State Commission on Legislative, Judicial, & Executive Compensation, available at <http://nyscommissiononcompensation.org/2015/meetings-legislative.shtml>.

⁹ See 2018 Report of the Commission on Legislative, Judicial and Executive Compensation at 5.

¹⁰ *Id.* at 6.

¹¹ See *Delgado v. State of New York*, No. 907537-18 (Sup. Ct. 2019). See also *Barclay v. New York State Committee on Legislative and Executive Compensation*, No. 901837-19 (Sup. Ct. 2019).

their 2019 salary raise, which was not accompanied by the cap on outside income). The court ruling on legislative salaries did not affect raises for the executive branch, which extend through the end of 2021. Accordingly, because this Commission may only recommend whether salaries warrant an “increase,”¹² the current Commission may not recommend any reductions to the executive pay increases recommended by the 2018 Commission.

III. The 2019 Report on Judicial Compensation

The December 26, 2019 Commission Report included the Controlling Opinion signed by Commissioners Madonia (appointed by the Speaker), Lachman (appointed by the Temporary President of the Senate) and Megna (appointed by the Governor), who voted against increasing salaries for New York state judges. Since the statute requires that to be effective any recommendation of the Commission must be supported by at least one member of each appointing authority, and the appointees of the Speaker and the Temporary President of the Senate did not support an increase, no judicial salary increase was effected.

In recommending against a salary increase the controlling opinion cited in particular the Division of Budget’s midyear Financial Report, which detailed a more than \$6 billion gap expected between the receipts and spending in that fiscal year

¹² Chapter 55 of the Laws of 2020 Part WW § 2(2)(b)(1)-(2).

alone.¹³ Because it was not yet known what actions the Governor and Legislature would take to improve the projected deficit, the controlling opinion concluded that it would “by definition ... be imprudent” to raise judicial salaries. The controlling opinion noted that, if the state addressed those fiscal problems, the Legislature (or a reconstituted Commission) could then address the question of judicial pay raises.

A dissenting statement signed by Chair Cardozo and Commissioner Eng would have given New York state judges a Cost of Living Adjustment (“COLA”).¹⁴ Citing the decades during which New York state judges were chronically underpaid relative to their colleagues in other states and on the federal bench, the dissenting commissioners felt that it was important not to let state judges’ salaries backslide once again. Further, because granting judges COLA’s through the end of 2023 would amount to only \$3.5 million dollars a year, or .115% of the judiciary budget of \$2.4 billion, these dissenting commissioners found that, even with the state’s uncertain fiscal future, the raises they proposed were small enough that they could be enacted without harming New York’s budget.

In a separate opinion Commissioners Malatras and Hormozi concurred with the dissent that limited COLA’s could be an appropriate way of dealing with the salary increase issue, but noted their disagreement with the reasoning and general

¹³ See 2019 Report at 7.

¹⁴ *Id.* at 10.

characterizations made by Chair Cardozo and Commissioner Eng.¹⁵ The concurrence first noted its concern that the judiciary would be able to keep its promise of enacting the raises in a cost-neutral fashion. Next, the concurring commissioners disagreed that it was necessary to link federal and state judicial salaries, as had been done in the past, suggesting instead that aligning to state contracts could be a more prudent model for judicial compensation. Third, the concurrence, disagreeing with the reasoning of Commissioners Cardozo and Eng, noted that it was not fundamentally unfair that the members of several state unions were receiving raises, while judges were not, as there had been times in the past where judges received raises but unions did not, and so it was not appropriate to compare the two. The concurring commissioners believed that there was no harm in pausing raises other than a COLA as it would give policy makers additional time to assess the state's finances.

IV. The COVID-19 Pandemic

Since the issuance of the 2019 Report New York's financial condition has substantially deteriorated, due to the unprecedented challenges of the COVID-19 pandemic, to a far greater degree than any commissioner could have predicted. The Financial Year 2021 Enacted Budget Financial Plan states in no uncertain terms that

¹⁵ See 2019 Report at 24.

New York state’s “economic outlook for FY 2021 is bleak.”¹⁶ The Department of Budget has predicted that the COVID-19 pandemic is likely to cause a \$60.5 billion loss through FY 2024.¹⁷ And in the short term, the State’s unemployment rate is expected to average 11.4 percent, which is “a level higher than any record since the current methodology for calculating the rate was introduced.”¹⁸ These findings were reinforced by an analysis, prepared by the Boston Consulting Group at the request of the Department of Budget, which concluded that the COVID-19 recession is likely to be deeper and longer than any in recent memory.¹⁹

New York state’s governmental budgets have not been immune to the extreme economic shock created by the COVID-19 pandemic. To take but one well-publicized example, the MTA has announced that it is currently facing a staggering \$16.2 billion deficit through 2024, and will require \$12 billion in federal aid if it is to cover its operating losses through 2021.²⁰ With respect to the judiciary, Chief Administrative Judge Lawrence Marks has announced that the current judiciary budget could be reduced by 10% in response to the economic hardship caused by the

¹⁶ Financial Year 2021 Enacted Budget Financial Plan at 8.

¹⁷ *Id.*

¹⁸ *Id.* at 11.

¹⁹ See *NY COVID-19 Preliminary Economic Impact Assessment*, The Boston Consulting Group, April 2020. Available at <https://www.budget.ny.gov/pubs/press/2020/fy21-enacted-fp-released.html>.

²⁰ See Christina Goldbaum, *M.T.A. Warns of Doomsday Subway cuts Without \$12 Billion in Federal Aid*, The New York Times, August 26, 2020.

COVID-19 pandemic.²¹ Judge Marks stated that as a result of the potential action, emergency actions would need to be taken, including declining to certify for continued judicial service a large number of judges eligible to be certified, implementing a hiring freeze and deferring substantial payments owed until the next fiscal year.

We understand the potential for significant budget cuts may be necessary at the state executive level as well if the federal government does not enact additional funding to address the economic hardship caused by COVID-19. In addition, substantial additional state monies will be needed to deal with the pandemic, including providing face masks, virus tracking, contact tracing, enforcement efforts, and distribution of the hoped for new pandemic vaccine.

Simply put the commissioners' worst fears as articulated in the 2019 Report – a downturn in the state's finances coupled with an inability to cover increased salary obligations – has unfortunately come to stark reality in the worst possible way. Granting raises to public servants, no matter how much they might otherwise deserve them, is simply not possible at this time.

²¹ *See Courts Bracing for Cut of About \$300 Million From Judiciary Budget, Judge Marks Says in Memo*, New York Law Journal, September 29, 2020.

V. CONCLUSION

Given the state's extremely precarious fiscal condition the Commission is constrained from recommending salary increases for the next four year for judges, legislators, and executive branch officials.

New York, New York
November 11, 2020