

SUPPLEMENTAL SUBMISSION OF CHIEF ADMINISTRATIVE JUDGE  
LAWRENCE K. MARKS TO THE 2019  
COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

In its recent submission to the 2019 Judicial Salary Commission, the court system requested that the Commission recommend COLAs for New York's State-paid judges over the next four State fiscal years, beginning April 1, 2020. This recommendation could be implemented, it was noted, if Supreme Court Justices' salaries continued to be in complete parity with the salaries received by Federal District Court Judges, with the other State judges retaining the same pay relationships with Supreme Court Justices that they now enjoy. Addressing the matter of how these COLAs can be funded, I testified before the Commission on November 4, 2019 and it was noted in the written submission that if the Commission makes the requested recommendation, the court system, as was true for the pay adjustments recommended by the 2015 Salary Commission, will not ask for additional funding to pay for the COLAs but "will fully absorb the cost of [the] COLAs in our operating budget."

We are fully confident that we can live up to this commitment. First, as we pointed out in our submission to the Commission, the requested COLAs are almost certain to be modest in amount. During the 2016-2019 cycle, they averaged 1.28% per year – less than growth in the CPI over the same period. This was a tiny fraction of the Judiciary's overall Operating Budget and we were comfortably able to absorb such costs without asking for additional funds. There is no indication at this point that COLAs will be appreciably greater over the 2020-2023 cycle; nor is there any likelihood, if this indeed is the case, that the Judiciary will not once again be able to pay the associated cost out of existing budgetary resources.

The question has now arisen whether the court system can hold to this promise to absorb the cost of COLAs should there be an unanticipated budgetary freeze or should the Federal Judiciary – to which we have asked that the State Judiciary remain linked – receive unexpectedly high annual pay adjustments over the next four years. First, while theoretically the State could face a fiscal crisis in the years ahead requiring a freeze or even budget cuts, the likelihood at this juncture seems small. Moreover, because the Legislature, under the Commission statute, retains full authority to enact a statute that would modify or even abrogate altogether any pay adjustment recommended by the Commission up until the moment it is scheduled to take effect, there is an effective safeguard mechanism in place that could be applied to eliminate any unusually large and unforeseen pay obligation that, as the years go by, proves to be beyond the Judiciary's capacity to sustain.

Second, since inception of the Salary Commission system in 2011, the Judiciary has consistently absorbed the costs of *all* judicial pay adjustments recommended by a Commission without asking for any additional funding to pay those costs. We did this even during the years for which prior Commissions were making salary recommendations when, because those recommendations were geared to help State judges catch up after a 13-year pay freeze, the cost

of the increase, and therefore the impact of the Judiciary budget, was far greater. Those adjustments were much larger than even the largest salary adjustments that we might today imagine the Federal Judiciary will receive over the next several years. For example, during the 2012-2015 salary cycle, State Supreme Court Justices received a 17% pay increase for the 2012-13 fiscal year (with other State Judges receiving proportionate increases); a 4.3% increase for the 2013-14 fiscal year; and a 4.2% increase for the 2014-15 fiscal year. During the first fiscal year of the 2016-2019 salary cycle, the Justices received an 11% increase; and in 2018-19, another 6.7%.

We promised the prior commissions the Judiciary budget would absorb the costs of all of these increases without asking for additional funding and then proceeded to live up to that commitment, notwithstanding their size and the fiscal burden they presented. We believed that, no matter the difficulty for us in absorbing these costs, especially in the 2012-13 fiscal year as the State was just emerging from a debilitating fiscal crisis that required extraordinary austerity measures among all agencies of government, stability and fairness in the judicial salary structure (such as could only come about through implementation of the recommended pay adjustments) was vital to a healthy court system; and that the Judiciary could not endure any more uncertainty as to when and whether judges would be receiving necessary pay adjustments.

We adhere to this view today. This Commission's predecessors clearly recognized the virtue of establishing continuing pay parity between New York's judges and those of the Federal judges. Now that this parity is in place, any loss for lack of confidence in the State's ability to pay for it would seriously damage the Judiciary as an institution. For this reason, the court system is prepared to make the same kind of sacrifice it has made in the past. Whether or not the economy remains stable, and whether or not the Federal Judiciary continues to receive the very modest COLAs that they have received in the last several years, New York's Judiciary will continue to absorb the cost of maintaining pay parity between its judges and those of the Federal Courts.

Dated: November 22, 2019