

COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

December 4, 2023

The Honorable Kathy Hochul
Governor of the State of New York
State Capitol
Albany, New York 12224

The Honorable President Pro Tem
Majority Leader Andrea Stewart-Cousins
State Capitol Building
Room 330
Albany, New York 12247

The Honorable Carl E. Heastie
Speaker of the New York State Assembly
Legislative Office Building, Room 932
Albany, New York 12248

The Honorable Rowan D. Wilson
Chief Judge of the State of New York
20 Eagle Street
Albany, New York 12207

Dear Governor Hochul, President Pro Tem, Majority Leader Stewart-Cousins, Speaker Heastie and Chief Judge Wilson:

I am pleased to submit this report on behalf of the Commission on Legislative, Judicial and Executive Compensation. Pursuant to Chapter 60 of the Laws of 2015, amended in the Laws of 2019 Chapter 59, Part VVV, this report sets forth the Commission's recommendations with respect to the compensation levels of judges and justices of the State-paid courts of the Unified Court System, fiscal years 2024 to 2027.

The Commission considered a broad range of data, beginning with the factors delineated in Part E of Chapter 60. The Commission held two (2) days of public hearings. All public meetings and hearings were broadcast live over the Internet. The Commission carefully reviewed the public testimony and written submissions received.

The recommendations of the Commission are based on our understanding of what is fair compensation for the judges of New York State. We believe that our recommendations are supported by the factual record. Most importantly, the Commission relied upon the criteria set out in L. 2015, Ch. 60 Part E§3:

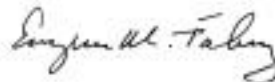
“[t]he Commission shall take into account all appropriate factors including, but not limited to: the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government; the 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 and non-salary benefits”

Further, the Commission reviewed the salary levels and systems of compensation for Federal Court Judges and other State Court Judges.

We believe our Judges are among the best in the nation. The recommended salary levels will help to attract and retain both the diversity and the excellence of the bench to ensure a strong and independent judiciary. This is what the people of New York deserve.

I would like to thank all the members of the Commission for their time, hard work, and dedication that they have given to our mission. As we move forward to the next phase of our responsibilities - determining appropriate levels of legislative and executive compensation - I look forward to working with them.

Respectfully,

A handwritten signature in cursive script, appearing to read "Eugene M. Fahey".

Eugene M. Fahey
Chair

COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

FINAL REPORT ON JUDICIAL COMPENSATION

December 4, 2023

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MEMBERS OF THE COMMISSION ON LEGISLATIVE, JUDICIAL AND EXECUTIVE COMPENSATION

Hon. Eugene M. Fahey (Ret.), Associate Judge of the Court of Appeals (Ret.), is from Buffalo, New York. He attended high school at St. Joseph's Collegiate Institute. Later, he graduated from the State University of New York with a B.A. in political science in 1974 (cum laude), a law degree in 1984 and an M.A. in European History in 1998. Judge Fahey was a member of the Buffalo Common Council from 1978 to 1983 and again from 1988 to 1994. He served as Law Clerk to Judge Edgar C. NeMoyer in the New York Court of Claims before entering private practice in 1985, serving as house counsel for Kemper Insurance Company until 1993. Judge Fahey was elected to Buffalo City Court in 1994.

He was elected to the Supreme Court in 1996, and was re-elected in 2010. As a Supreme Court Justice, Judge Fahey was assigned to handle a civil calendar as well as criminal Special Term and presided over a variety of cases in Erie County as well as the outlying counties in the Eighth Judicial District. He was assigned to the Commercial Division in Erie County in January 2005 until his appointment by Governor George E. Pataki to the Appellate Division, Fourth Department in December 2006. In January 2015, Judge Fahey was nominated to the Court of Appeals by Governor Andrew Cuomo. The New York State Senate unanimously confirmed that nomination on February 9, 2015. In 2021 Judge Fahey retired after reaching the mandatory age of 70. Presently he is an adjunct teacher at S.U.N.Y. at Buffalo School of Law. He and his wife, Colleen Maroney-Fahey live in Buffalo, New York. They are proud parents of Ann B.D. Fahey. Judge Fahey is an appointee of the Chief Judge as Chair of the Commission.

Helene E. Blank, graduated Magna Cum Laude from New York Law School in 1977. She was admitted to practice in New York in February 1978; admitted to practice in the Southern and Eastern Districts in 1980 and admitted to Practice before the Supreme Court of the United States in 1984.

She has been a litigator for most of her career. She has tried major personal injury lawsuits for both plaintiffs and defendants. Over the years, she has expanded her practice involving commercial and real estate matters as well as representing other attorneys in various matters affecting their practices. She has been appointed as a Receiver by Judges in both Kings County and New York.

She is presently a member of the OCA advisory panel on civil practice and has been on that panel for more than a decade. She has written and helped to write revisions of legislation and new legislation affecting civil practice in our Courts.

She was the President of the Brooklyn Women's Bar Association; member of the NYSBA civil practice committee; founding Member of the Brooklyn Women's Bar Foundation and helped establish a scholarship in the name of former associate justice of the appellate division and now corporation counsel Sylvia Hinds Radix; Board of Directors of New York State Trial Lawyers and a Dean of the New York State Trial Lawyers Institute, which oversees and directs its CLE programs. She was the President of the Kings County Inns of Court and one of its founding members; she has been the President of the Metropolitan Women's Bar Association; member of the New York State Bar Association, The New York State Women's Bar Association, The Jewish Lawyers Guild, the Brooklyn Bar Association, the Brooklyn Women's Bar Association, and The Brooklyn Chamber of

Commerce. As an attorney, she has been on numerous Office of Court Administration (OCA) committees. She has lectured for the New York State Supreme Court Judges Association, taught classes for Newly Elected Judges, lectured to Judges of the Civil Court of the City of New York and lectured for the following organizations; the State Bar, the Brooklyn Bar, New York County Lawyers, The Association of the Bar of the City of New York, the New York State Trial Lawyers Institute and the Columbian Lawyers. She has been appointed by various organizations to be their representative on Judicial Screening panels. She is the recipient of awards from the New York State Bar, the Brooklyn Women's Bar and the Civil Court Judges of Brooklyn. Ms. Blank is an appointee of the Chief Judge.

Theresa L. Egan, started her career as an attorney in 1987 with a small general practice law firm in Albany, and in November 1997 was elected the first woman Town Judge in town history. After 7 years on the bench, Terri was elected the first Democratic Town of Bethlehem Supervisor in over 130 years.

In April of 2007, she started her career with State government as a Deputy Commissioner for the Department of Motor Vehicles, and was promoted to Executive Deputy Commissioner and acting Commissioner of the DMV in 2015. While at DMV, she managed agency policy and oversaw all phases of operations of an agency which generated more than \$2 billion annually and had nearly 3,000 staff.

In October of 2020, she was asked to apply her operational abilities to assist the Department of Health during COVID managing all "people, places and money" and then retired from State service in October 2021.

Since her retirement, Terri has been serving as the President of Bethlehem Chamber of Commerce since July 2022, working with nearly 400 businesses to promote a robust business community within her home town and surrounding areas.

Terri has found that to be successful, throughout all of her endeavors, one must engage stakeholders to fully understand different perspectives, focusing on facts not rhetoric, and plainly communicate information, often and respectfully, through many channels. Ms. Egan is an appointee of the New York Assembly Speaker.

R. Nadine Fontaine, General Counsel to the Dormitory Authority of the State of New York, a statewide construction and financing public authority with a construction portfolio of over 1,000 projects valued at approximately \$9 billion, conduit debt bond issuer of approximately \$60 billion in bonds and notes, and other statutory program administration responsibilities. As DASNY's Chief Legal Officer, she is responsible for the management and oversight of all activities of the DASNY's Counsel's Office, which also includes oversight of the Office of Professional Integrity, Office of Diversity & Inclusion, and the FOIL, Ethics, and the Real Property Divisions.

Ms. Fontaine has over twenty-nine years of combined legal experience, including litigation of complex commercial disputes in both state and federal courts and extensive governmental experience. She most recently served as the First Assistant Counsel to the Governor overseeing a team of assistant counsels, agency/authority general counsels and other legal team members. Prior thereto, she served

as the Assistant Counsel to the Governor for Economic Development, Public Finance & Procurement and the Assistant Counsel for Human Services. She holds a Bachelor of Arts degree in Social Sciences/Health & Society from the State University of New York at Stony Brook University and a Juris Doctor degree from Pace University School of Law. Ms. Fontaine is an appointee of the Governor.

Victor A. Kovner, Senior Counsel to Davis Wright Tremaine, where he has practiced law since that firm merged with his prior firm Lankenau Kovner. In 1990-1, he was the Corporation Counsel of the City of New York under Mayor David N. Dinkins. He has served as Chair of the Committee on the Judiciary and as Secretary of the New York City Bar Association. Pursuant to appointments by Governors Hugh L. Carey and Mario M. Cuomo, he served on the New York State Commission on Judicial Conduct from 1976 to 1990, concluding as the Commission's Chair.

He has been a member of the Board of Trustees of the Fund for Modern Courts from 1970 to the present, and was the Fund's chair for four years roughly a decade ago. While Chair of the Fund, he helped draft and advocate for the legislation signed by Governor Paterson in 2010 creating the first Commission on Judicial Compensation.

He has specialized in First Amendment Law, and for two decades was on the faculty of the annual Communications Law Seminar of the Practising Law Institute. Pursuant to appointment of President William J. Clinton, he was for eight years on the President's Commission on White House Fellowships. In recent years, he has served as the Trustee of the Liz Claiborne and Art Ortenberg Foundation, which supports community based wildlife preservation in many parts of the world. Mr. Kovner is an appointee of the Governor.

Robert Megna, President of the Rockefeller Institute of Government. Mr. Megna previously served as senior vice chancellor and chief operating officer of SUNY System Administration. In that role, he oversaw the operations of the 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, serving as senior vice president for finance and administration. Prior to joining Stony Brook, he served as executive director of the New York State Thruway Authority and New York State Canal Corporation.

Mr. Megna served as budget director for New York State Division of the Budget (DOB), 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. Mr. Megna has also served as commissioner for New York State Department of Taxation and Finance, assistant commissioner of the office of tax policy at the Virginia Department of Taxation, and director of tax studies at the New York State Department of Taxation and Finance.

Mr. Megna earned an M.S. in economics from the London School of Economics and Political Science at the University of London and received his B.A. in Economics and M.P.A. from Fordham University. Mr. Megna is an appointee of the Governor.

Hon. Jeremy S. Weinstein (Ret.), he was born in New York City and is a graduate of Jamaica High School, York College of the City University of New York (where he was elected the first president of the school's student body), and Brooklyn Law School. He was admitted to the New York State Bar in March 1975.

Judge Weinstein served in 1975 and 1976 as a Deputy Assistant Attorney General of the State of New York. From 1976 until his election to the State Senate, he was an Associate Counsel to the Speaker of the New York State Assembly. He has been a member of his local community planning board in Queens and a member of many civic, fraternal and religious organizations. He has also served as an Adjunct Professor of Political Science at York College of the City University of New York.

In November 1978, he was elected a member of the New York State Senate. He served in the Senate from 1979 to 1992. In 1985, Senator Weinstein was appointed the Assistant Minority Whip, and in 1986 he was elevated to the position of Minority Whip. In 1991, he was further promoted to Assistant Minority Leader - Floor Operations. During his 14 years in the New York State Senate, then Senator Weinstein served on the Judiciary Committee, the Codes Committee, the Banking Committee, and the Crime and Corrections Committee. Senator Weinstein served as ranking member of the Crime and Corrections Committee and Chair of the Senate Democratic Task Force on Crime and sponsored numerous bills dealing with parole, probation, civil practice and the judiciary.

Judge Weinstein maintained a private practice of law until his election in 1993 as a Judge of the Civil Court of the City of New York. In January 1997, Judge Weinstein was appointed an Acting Supreme Court Justice, and the Supervising Judge of the Queens Civil Court. In November 1999, Judge Weinstein was elected a Justice of Queens Supreme Court.

In March 2007, Judge Weinstein was appointed as the Administrative Judge of Queens Supreme Court, Civil Term. From January 2008 through March 2009, he was also appointed Acting Administrative Judge of Queens Supreme Court, Criminal Term, along with his duties in Civil Term. In March 2009, he was appointed Administrative Judge for Civil Matters in the Eleventh Judicial District.

Judge Weinstein is currently a Neutral with National Arbitration and Mediation. Judge Weinstein is an appointee of the President Pro Tem of the Senate.

INTRODUCTION

The judiciary of New York State has a long and distinguished history. Our judges draw on the character and minds of jurists as varied as John Jay, Benjamin N. Cardozo, Irving Lehman, Stanley Fuld, and Charles Breitel. When Judge Cardozo passed, Judge Learned Hand stated “he was a great judge because he successfully reconciled the letter with the spirit of the law” (from the World of Benjamin Cardozo by Richard Pollenberg p. 240).

This spirit runs through to our current judges. We see it in our recent Chief Judges Judith Kaye and Jonathan Lippman through to our current Chief Judge Rowan D. Wilson. As New Yorkers, we expect the best from our legal system. It is one of the largest and the busiest in the world. In 2022, there were 2.1 million new cases filed in our courts (civil-criminal-family court). New York had more than twice the number of filings as the entire federal court system.¹

To fairly and efficiently provide justice to the people of the state, we need to ensure that our judges have the support and the resources they need to do the job. Part of that requires that they be properly compensated for the job we are asking them to do.

They have not seen any increase in pay for four and a half years. During this time the Federal Judiciary has seen a continuous rise in compensation. When compared to the judiciary of other states, New York is ranked ninth, behind Illinois, District of Columbia, California, Rhode Island, Washington, Hawaii, South Carolina and Pennsylvania. The buying power of a judge’s salary is now 20% less than it was in 2019. During this same time period, the other branches of New York government have received well-deserved pay raises. The same is true of employees whose pay is set by collective bargaining.

The Commission recognizes these realities. Our goal is to responsibly address these issues.

¹see uscourts.gov/federaljudicialcaseload 775,585 filings - statistics - 2022

STATUTORY MANDATE

In March of 2015, Part E of chapter 60 of the Laws of 2015 was enacted, providing for a quadrennial commission 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. The Commission is charged, first, with issuing “findings, conclusions, determinations and recommendations” to the Governor, the Legislature and the Chief Judge with regard to judicial compensation, by December 31, 2023. A separate report, relating to legislative and executive compensation, is due by November 15, 2024.

Chapter 60 sets forth a number of factors to guide the Commission’s work of determining appropriate judicial salary levels, including, but not limited to, 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.

The Commission is authorized to recommend adjustments in judicial salary levels during the four state fiscal years commencing on April 1, 2024. Pursuant to chapter 60, each recommendation of the Commission for a salary adjustment carries the force of law as of April 1st of the year for which the adjustment has been recommended, unless sooner modified or abrogated by statute.

As prescribed in chapter 60, the Commission consists of seven members appointed by the leaders of all three branches of New York State government. Three members are appointed by the Governor; two (including the Chair) by the Chief Judge; and one each by the President Pro Tem of the Senate and the Speaker of the Assembly. The findings and recommendations require a majority vote but they must also be supported “by at least one member appointed by each appointing authority.” The Commission’s Chair shall preside but not vote on matters relating to legislative and executive compensation.

The Commission may recommend up to two adjustments in legislative and executive salary levels, each commencing on January first, following a November general election of members of the Legislature. The Commission is deemed dissolved following issuance of the report due no later than November 15, 2024.

In furtherance of its statutory mission, the Commission held public meetings in New York City. It also held two days of public hearings; one on October 13, 2023 in New York City and one on October 31, 2023 in Albany. A total of 31 witnesses testified at the hearings. The public hearings and meetings were televised live on the Internet.

In addition, the Commission invited written commentary and established post office and email addresses (nyscompensation@gmail.com) through which it received 30 written submissions from judicial associations, bar associations, good government groups, and other interested individuals and organizations. The witness lists, written submissions and other information about the work of the Commission including transcripts and videos of the Commission's public hearings and meetings, are all available on the website at: www.nyscommissiononcompensation.org.

FINDINGS

- 1) Since 1977 the State has assumed the funding of all the courts of the Unified Court System. At that time the State took full responsibility for the costs of all courts, other than town and village courts. Judges were moved from local payrolls to the State payroll.

The adjustment of salaries over the past fifty-six years has a long, and sometimes tortured, history. Since consolidation under State government, pay raises have been addressed ten times. While the issue has come up regularly, there have been significant time periods during which no raises were granted. The longest period of no increase was from February 1999 to March 2012, covering thirteen years. Since 2012, there has been one approved pay increase, in 2015. This took effect in 2016 for a four year period.²

The arbitrary manner by which judicial pay raises were addressed led to the creation of a Commission system by the Legislature. While this process has not always resulted in pay adjustments, it has guaranteed that the issue will be consistently addressed.

- 2) The inflation rate since 2019 has significantly eroded the purchasing power of all salaries. One dollar (\$1.00) in 2019 is equivalent to about a \$1.20 today, an increase of .20 over four (4) years. During this period, the dollar had an average inflation rate of 4.74% per year between 2019 and today. This has produced a cumulative price increase of 20.34% since the last time the Commission met.³

²see OCA Submission to 2023 Commission on Legislative Judicial & Executive Compensation - pp 8-9

³see Raw data comes from the Bureau of Labor Statistics, Consumer Price Index

- 3) The erosion of the value of the salaries of State employees not covered by negotiated contracts is one of the reasons that the Commission was created. Nonetheless, well-deserved raises have recently been approved. Collective bargaining agreements have resulted in pay increases for State employees that will amount to almost 14% through April 2025. New York’s Governor and Legislators have also received recent raises.
- 4) Further, the Commission specifically reviewed available data on current salaries for federal and other state judges.

New York ranks 12th among state courts of general jurisdiction, when adjusted for the cost of living index. It ranks 9th unadjusted. The first eight states are as follows:⁴

1.	Illinois	\$234,380
2.	District of Columbia	\$232,600
3.	California	\$231,174
4.	Rhode Island	\$223,031
5.	Washington	\$217,391
6.	Hawaii	\$215,100
7.	South Carolina	\$212,987
8.	Pennsylvania	\$212,495
9.	New York	\$210,900

Federal District Court judges currently earn \$232,600 per year. Since (*Beer v. U.S.*, 696 F.3d 1174 [Fed. Cir. 2012] *cert. denied* 133 S. Ct. [1997]) held that denial of cost-of-living adjustments violated the Compensation Clause and negated subsequent actions that barred judges from receiving additional compensation. In *Barker v. US* No.12-826 this claim (Fed. Cl filed 11-30-2012) was applied to all Article III Judges. They have

⁴see National Center for State Courts (2023)

received cost-of-living adjustments provided to all federal government employees per Executive Order No. 13655.

- 5) Prior Commissions have drawn a connection between the ability to support a “strong well- qualified judiciary and a healthy state economy.”⁵ We endorse that prior finding.

The recognition of the reliance of New York’s business community on the state court’s ability to adjudicate complex commercial litigation is an important factor in deciding to do business here.

In order to maintain a judicial system worthy of New York’s status as one of the economic and cultural leaders in the world, we must attract lawyers to the bench that have the skill and experience to support that system.

- 6) The Commission Statute in its current form (L. 2019, Ch. 59, Part VVV and L. 2015, Ch. 60, Part E) provides the guidance necessary to fulfill our responsibilities by enumerating six factors to consider:

- the overall economic climate
- rates of inflation
- changes in public sector spending
- levels of compensation and non-salary benefits received by Executive Branch officials and legislators of other states and the Federal government
- levels of compensation and non-salary benefits received by professionals in government, academia, and private and non-profit enterprise
- the State’s ability to fund increases in compensation and non-salary benefits

⁵see Commission on Legislative, Judicial & Executive Report (December 2015 p. 7)

- 7) The Commission finds that:
- A) The overall economic climate is strong:
- Nationally - there has been 33 consecutive months of job growth; 13.9 million new jobs since January 2021; the unemployment rate is 3.8% , below 4% for 20 months; and the largest share of workers in the workforce in 20 years.⁶
 - New York - 93% of jobs lost in the early pandemic have been recovered; unemployment is at 4% - down from 6% two years ago; labor force participation increased to 61.6% in September 2023.⁷
- B) Inflation Rate - Previously Discussed (See No. 2)
- C) Public Sector spending has increased faster than inflation -All Funds spending increased 33.4% from 2019-2020 to 2023-2024, from \$172 billion to \$229.4 billion. While these facts are not dispositive, they do show consistent upward trend in State revenue.⁸
- D) Comparable Salaries of other state and federal judges - Previously Discussed (See No. 4)
- E) Salaries of Professionals in government, academia, private and non-profit sectors greatly exceed judicial salaries.

⁶see OCA submission p. 10; Footnote 37

⁷see OCA submission p. 10; Footnote 38

⁸see OCA submission p. 11; Footnotes 43, 44 and 45

- Below is a sampling from the hearing submission of the Office of Court Administration.⁹

New York City

Administrative Law Judge (Chief), Office of Administrative Trials and Hearings.....	\$227,786
Corporation Counsel.....	\$243,272
Director, Mayor’s Office of Criminal Justice.....	\$227,786
Counsel to the Mayor.....	\$251,982
Commissioner, Mayor’s Office to End Domestic and Gender-Based Violence.....	\$227,786
District Attorneys within New York City.....	\$212,800
New York City Commissioners.....	\$243,171
Chancellor, NYC Department of Education.....	\$363,346

Academia and Public Education

In New York, the salary range for a law school dean falls between \$326,811 and \$438,771, with the average salary equaling \$375,520.

The CUNY Chancellor’s salary is \$670,000 and CUNY’s General Counsel earns \$389, 075.

SUNY’s Chancellor’s salary is \$750,000.

Many public-school administrators across the State earn significantly more than judges.

According to a 2022 survey, the average compensation for large law firm partners in New York City was over \$1.8 million.

⁹see OCA submission pp. 12-13

Non-Profit Sector

The average salary for a CEO of a not-for-profit in New York State is around \$200,000.

- 8) Ability to Fund - The main point is that the expense is minimal. This request is just 1% of the Judiciary's total budget and .028% of the State's general fund budget.

CONCLUSIONS

The Commission on Legislative, Judicial and Executive Compensation on November 13, 2023 unanimously approved changes to judicial salaries as outlined below:

- 1) Effective April 1, 2024, New York State Supreme Court Justices shall receive an annual salary of \$232,600.
- 2) The salaries of all other state judges (including Appellate and Administrative judges) shall be adjusted to reflect their present proportion to the salary of State Supreme Court Justices effective April 1, 2024.
- 3) Except that no County Court Judge, Family Court Judge or Surrogate's Court Judge shall earn less than 95% of a Supreme Court Justice's salary. Any such judicial position now being paid a percentage of a Supreme Court Justice's salary that is greater than 95% shall continue to be paid at that same percentage.
- 4) Judges of the New York City Civil Court, the New York City Criminal Court, District Court, Housing Court of New York City Civil Court and full-time City Court Judges (outside of New York City), shall earn 93% of a Supreme Court Justice's salary. Part-time City Court Judges shall earn the same proportion of the salaries of the full-time City Court Judges that they now earn.
- 5) Effective April 1, 2026, all judges will receive a salary increase of 2% of their April 1, 2024 salary.