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# *Public Hearing*

before

## PUBLIC OFFICERS SALARY REVIEW COMMISSION

*"Reviewing the salaries of specified public officers and submitting a report to the Governor and Legislature with proposed recommendations, if any, concerning changes in these salaries"*

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**LOCATION:** Committee Room 9  
State House Annex  
Trenton, New Jersey

**DATE:** November 14, 2007  
10:00 a.m.

### **MEMBERS OF COMMISSION PRESENT:**

Senator William L. Gormley, Chair  
James H. Coleman Jr.  
Michael Critchley  
Hazel Frank Gluck  
Robert Muir Jr.  
John M. Pellecchia  
M. Alan Vogelsson



### **ALSO PRESENT:**

Melissa Lieberman  
*Secretary*  
Clifford T. Rones  
*Counsel*

*Hearing Recorded and Transcribed by*  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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**SENATOR WILLIAM L. GORMLEY (Chair):** Good morning, everyone. I'd like to welcome you to the first public hearing of the Public Officers Salary Review Commission. There'll be a second hearing in Newark this coming Monday, and notices will be sent out on that hearing also.

I'd like to welcome all the members of the Commission. I've worked with many of you in the past, and I'm sure we will do a very thorough review of whatever information is presented to us and make our recommendations in a timely manner.

I'd like to call, as our first witness, Chief Justice Rabner.

**CHIEF JUSTICE STUART RABNER:** Thank you, Senator Gormley.

**SENATOR GORMLEY:** Go ahead.

Is the microphone on? (referring to PA microphone) Red light on?

**CHIEF JUSTICE RABNER:** It is now. Red light is on.

**SENATOR GORMLEY:** That's it. Go ahead.

**CHIEF JUSTICE RABNER:** Thank you, Senator.

Thank you, members of the Commission, for inviting me to speak today and for agreeing to serve on this very important Commission.

After I had the privilege of being sworn in a few months ago, I made it my business to go out and meet with judges, and staff, and leaders of the Bar throughout the state, traveling to each of our vicinages in the first few months. Not just to introduce myself, but to have an opportunity to listen to concerns that are on people's minds, and get suggestions and ideas for how we might do things differently and better. And one constant

that I heard from judges at all levels throughout the state was the great concern that they have as regards judicial salaries.

And there are two points that I think are important to make at the outset. First is that we are very grateful for the work of the Governor and for the Legislature in implementing the first step of what has been spoken about as an anticipated series of salary increases to bring us to parity with Federal judges.

In 2003, this Commission recommended a salary increase from \$141,000 to \$158,000, to bring our trial court judges up to parity with Federal judges. Last year and this year, the Governor and a number of legislators have spoken about a \$24,000 increase to bring us to parity at 165,000. And we are indeed grateful for the \$8,000 increase that went into effect on July 1, raising judicial salaries to their current level of \$149,000, from what had been a salary of \$141,000. I also appreciate the fact that we're in very difficult fiscal times where there are great demands placed on the public fisc, and many people -- most people who earn less than \$149,000 are certainly entitled to ask, "Why is it that judicial salaries should be addressed and should be increased at this time?" And there are a number of very powerful reasons.

For starters, our judges are dedicated public servants who perform excellent work and work hard. The filings per judge in New Jersey rank third highest in the nation. And since 1999, the backlog in our State has decreased more than 50 percent. And unlike other public servants who may come in and out of the private sector when they come to government, and work in senior positions of equivalent authority to our judges, when our judges come on the bench, we look to them to dedicate themselves as a

career, where they will lock in at the salary that they earn. As judges, as you know, they are barred from earning any outside income. That is a restriction placed in our Constitution. I don't for a moment suggest that there be a change to that. I think that it is a wise restriction, because it enhances the integrity and the independence of the Judiciary and enables us to avoid potential conflict situations that may arise. But it is important to note that New Jersey is one of a very small number of states with that restriction. I believe it is only two states in the nation that bar outside income as ours does.

The critical problem that we face with a system that depends on individual legislative acts for increases, as ours does, is that our salaries don't and have not kept pace with inflation. From 1970 until today, judges salaries -- their relative purchasing power has decreased 24 percent, and that includes the \$8,000 salary increase from this July 1. Meanwhile, it goes without saying that tuition, and gasoline prices, and living expenses that all of us incur in our everyday lives have been on the increase. Had judicial salaries kept pace with inflation, and only kept pace with inflation since 2000, it would currently be at \$164,500, which is roughly the level of parity with Federal judges. The best solution of course is, after achieving parity, to put in place a system where there are regularized, modest cost-of-living increases so that we don't find ourselves in this situation years from now.

What are some fair points of comparison in setting judicial salaries? I've mentioned the salaries of the our Federal judges, which has been the traditional benchmark, the traditional measure for parity because of the comparable duties and responsibilities that our judges and Federal judges have. In the 1970s and 1980s, judicial salaries for our State judges

kept pace with what Federal judges earn. Today, the gap has unfortunately widened. Federal judges now earn \$165,200, and there are annual cost-of-living increases that are built in that can be subject to a congressional vote to eliminate them. But absent that vote, I believe there are regularized increases that our Federal judges receive.

What about state judges -- salaries of other state court judges? The National Center for State Courts has done a study, adjusting for cost of living, of the different salaries throughout the nation. This does not in any way factor into the equation the fact that most other states allow for outside income. Today New Jersey ranks 37th among our states -- one step below Mississippi, one step above North Dakota. I don't believe that the private sector is an appropriate benchmark. Our judges willingly accept lower salaries when they choose to accept the honor of a position on the bench. But we want to get the best and the brightest, and to retain those people over the long haul so that experienced, capable judges can deal with the difficult questions that our State has raised on a regular basis.

There is something very wrong with the system where the law clerks for those judges, leaving their clerkships, are able to earn more than the trial and appellate court judges for whom they work the very first year out. We take great pride in New Jersey that we have, if not the finest, among the very finest judicial systems in the nation -- not 37th -- and we should treat our judges accordingly with salaries that have modest, regular increases so that people can plan for their futures with salaries that keep pace with counterparts in the state and Federal systems throughout the country.

I thank you for considering the materials that we've submitted to the Commission. They will be posted and disseminated today for the public at large. They contain some of the facts and figures that I was alluding to, but not all. And if there are any other details that we might be able to provide and be of assistance, we would welcome that opportunity.

I thank the Commission, I thank the Governor, and the Legislature for making this issue a priority one.

Thank you.

SENATOR GORMLEY: Outside income in other states -- what are the two other states that prohibit outside income?

CHIEF JUSTICE RABNER: Oklahoma and New Jersey are the two.

SENATOR GORMLEY: Oklahoma and New Jersey are the two.

CHIEF JUSTICE RABNER: The other states abide by the ABA Code of Judicial Conduct, which permits outside income of various types.

SENATOR GORMLEY: Such as?

CHIEF JUSTICE RABNER: Honoraria, speaking -- extrajudicial activities.

SENATOR GORMLEY: And obviously, those activities take away from time on the bench, and therefore could have the unintended consequence of increasing backlogs.

CHIEF JUSTICE RABNER: That's correct.

SENATOR GORMLEY: In terms of the Federal prohibitions-- So what we've had in the past is, we have tried to keep pace with the

Federal judiciary, which we haven't done; and they are allowed to have outside income at the same time?

CHIEF JUSTICE RABNER: That is correct, Senator.

SENATOR GORMLEY: I assume you don't have -- no, you wouldn't go there. But we'll -- I think what we want to do is look at individual circumstances and get a sense of what this outside income is in other states and, shall we say, circumstances where it has, shall we say, limited the system from being fully efficient.

CHIEF JUSTICE RABNER: That's fine. And if we can assist you by providing some data on that, we'd be glad to.

SENATOR GORMLEY: Because I think it's important-- You know, given the restraints in New Jersey, I think people should know that it's not just a story of inflation; it's a story of ethical limits that have been placed on the judiciary in New Jersey to make sure that it wouldn't fall victim to circumstances that might have arisen in other states, that have detracted either from the efficiency or the ethical standards in other states. And that's not customarily how you would do it, but I think the public would like to know those other circumstances in other states.

CHIEF JUSTICE RABNER: And for the reasons you allude to, I would not in any way suggest that we embark on a change to our constitutional prohibition on outside income in New Jersey.

SENATOR GORMLEY: If you think those first two ballot questions had a problem this year, that one would be spectacular. (laughter) That might not get 5 to 10 percent of the vote. I really don't think that would work.

Questions from members of the Commission?

MR. CRITCHLEY: In terms of filings, Chief, can you tell us the amount of filings or the type of volume that judges in this state have to deal with compared to the Federal system, if that's possible?

CHIEF JUSTICE RABNER: I know the number of filings are roughly 3,000 filings per judge, on average, per year in the State court system. I don't know the precise number for Federal filings, but they are significantly less than that, and we can get you that information.

MR. CRITCHLEY: So that would be about a million new filings a year?

CHIEF JUSTICE RABNER: Yes.

MR. CRITCHLEY: That's a tremendous amount of work. And as I understand from reading, that the judges in the state have been successful recently in that they've been trying to deal with filings as they come in. Meaning if a million filings are coming in, the judges in this state are doing and completing a million results from those filings.

CHIEF JUSTICE RABNER: I think that's correct. And taking into account the backlog reduction, they're actually going beyond in recent years to handle the numbers that are coming in; and then some, to clear up the backlog.

MR. CRITCHLEY: And you talked about a cost-of-living adjustment. On the Federal system, if not correct, they have -- what? -- a 2.2 percent COLA each year?

CHIEF JUSTICE RABNER: I don't know precisely how they set the number. It is probably keyed to some Federal number, but it works out to roughly that. And that's the type of increase that I'm suggesting as well.

MR. CRITCHLEY: And why do you feel that would be important?

CHIEF JUSTICE RABNER: Judges today look to the future and have no idea what they're going to make, as compared to the custodial staff, and the secretarial staff, and people with everyday jobs -- are entitled as a basic way of planning for their lives to know, "What's the future going to hold for me?" It comes down to a simple question of fairness and morale for employees, instead of having to feel anxious as years pass with absolutely no increase in salaries, wondering whether they're going to be able to meet the increases that they face from their own personal financial pressures.

MR. CRITCHLEY: Yes. What I found interesting and significant, we're talking potentially salary increase. But if we look statistically for the past eight or nine years, the judges effectively have received a decrease in salary in terms of their purchasing power, and I think that really is unfair. And I know I was on this Commission in '03, when your predecessor came before us, and we also talked about the disparity between the State judges and the Federal judges, and were talking about a lag then. And I said in 2003, if we don't correct it, that lag is going to be a chasm. And I know from my own personal experience, the judges in this State do a tremendous amount of work, in terms of their daily activities and how important and responsible it is. And I am concerned, as a lawyer, that most judges receive compensation commensurate with the responsibility. What you are seeking -- the best and the brightest -- will not be achieved, and I just hope that the recommendations that we make here will address

the issues you've raised. And I think the COLA component that you talked about is something that has to be looked at very, very seriously.

Thank you, Chief.

CHIEF JUSTICE RABNER: Thank you.

MS. GLUCK: Mr. Chairman?

Through you, Mr. Chairman. Chief Justice, I would assume that you would not be adverse to having a COLA added sooner rather than later? In other words, while the judiciary is waiting for parity, I would assume that adding a COLA now -- which I don't think would be terribly difficult, but I'm always optimistic -- would certainly set the stage for parity quicker and would also set the stage for the COLA becoming sort of the way we do business with the judiciary. So I'm assuming that that would not -- you would not be adverse to setting it now, or do you have any thoughts on that?

CHIEF JUSTICE RABNER: I would not be adverse to setting a COLA as soon as the Legislature would be willing to do so. I think it would be important and appropriate, given all the considerations we've talked about, to have a salary increase to bring us to parity and a COLA implemented at the same time. And then you might not see from the Judiciary at future Salary Review Commission meetings.

MS. GLUCK: Well, and the Commission could, when it's reorganized in -- whatever the date will be -- can look at it and see whether you're in sync or you're above the Federal, or whatever, and make those adjustments at that time. It just seems -- you know, it just makes common sense, actually.

Thank you.

SENATOR GORMLEY: Judge.

JUDGE VOGELSON: Chief Justice, you mentioned reference to some statistics. Can you tell me what the clearance rate is -- that is, the number of cases disposed of, as opposed to those filed in the most recent years?

CHIEF JUSTICE RABNER: I rely on the wisdom of Judge Carchman, which I frequently do, and what he had said, if you didn't hear it, was 98 percent, approximately.

JUDGE VOGELSON: All right.

And the decrease in backlog by 50 percent, that's as of -- beginning with what year?

CHIEF JUSTICE RABNER: 1999. It was a 54 percent reduction since 1999.

JUDGE VOGELSON: Since 1999.

Thank you.

MR. COLEMAN: Chief, the media has accurately been reporting that there are a number of judicial vacancies in the Superior Court currently. I'm wondering if you have any information on whether or not the current salary level is impacting what I'm going to refer to as a recruitment of excellent candidates for Superior Court judgeships?

CHIEF JUSTICE RABNER: I hear that information anecdotally; I can't give you hard and fast numbers. But obviously, potential candidates looking to see if they are able to make a career of it will look at our salaries and look at the salary growth that they can expect. I saw it when I was in Counsel's Office from a slightly different perspective as well, and that is: practitioners with extraordinary experience in private

practice, who have been fortunate to earn good salaries, look at the salaries that are currently being offered, and that are stagnant, and think long and hard before considering whether to put their hat in the ring for consideration. And that's unfortunate for us, because we need lawyers from the full range of experience, and I worry about that segment in particular.

SENATOR GORMLEY: So, consequently, the COLA would still be subject to legislative oversight every year, in effect?

CHIEF JUSTICE RABNER: It certainly could be structured that way.

SENATOR GORMLEY: And if anything, it almost completes the circle of taking the Judiciary out of the political process in the State, which I think is an important dichotomy with others. Not that this has a direct bearing, but I think it's important, just in terms of general information, if we could find out how many other states have elected judiciaries.

CHIEF JUSTICE RABNER: That's fine. We'll provide that for you.

SENATOR GORMLEY: Yes.

I'm not suggesting you go door to door. Don't worry about it, Chief. (laughter) He's taken aback there. No, I wasn't going in the opposite direction, Chief. The fliers -- they're a lot of fun.

MR. CRITCHLEY: Judge Carchman--

CHIEF JUSTICE RABNER: Judge Carchman is saying 43 other states.

SENATOR GORMLEY: Forty-three states have elected judiciaries.

CHIEF JUSTICE RABNER: Yes.

And I know you were not suggesting we be the 44th. I did not hear your question that way at all.

SENATOR GORMLEY: I would like to see that. I'd like to have a review of how they interact with campaign financing. I think that would be fascinating.

Okay. Any further questions? (no response)

Thank you, Chief.

CHIEF JUSTICE RABNER: Thank you, Senator.

Thank you, members of the panel.

SENATOR GORMLEY: Also, we'll add to the record a letter -- and she's also present here today -- Laura Sanders, Director and Chief Administrative Law Judge of the Office of the Administrative Law. And thank you for presenting that, and that will be added to the record.

Any other witnesses? (no response)

That concludes today's hearing.

Thank you.

**(HEARING CONCLUDED)**