
Public Hearing

before

PUBLIC OFFICERS SALARY REVIEW COMMISSION

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

LOCATION: Rutgers School of Law
Newark, New Jersey

DATE: November 19, 2007
10:00 a.m.

MEMBERS OF COMMISSION PRESENT:

Senator William L. Gormley, Chair
James H. Coleman Jr.
Michael Critchley
M. Allan Vogelson

ALSO PRESENT:

Melissa Lieberman
Secretary
Clifford T. Roncs
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): We're now on the record.

First of all, I want to thank everyone for their patience. I think everybody is uniquely aware of the weather predicament in New Jersey today and the backlog on the roads. As I'd like to point out, we all gained a unique -- greater familiarity of the Parkway today, if they were on the road. (laughter)

What we're going to do is-- We have, to be entered in the record, a correspondence from the Association of Compensation Judges. And we have correspondence from the New Jersey Advisory Council on Safety and Health. We're going to enter that in the record. And we have as a deadline for our report, by statute, December 1, although the last report was submitted on December 30 -- December 8.

But what I'd like to do is, if any members receive independent correspondence as to any requests that would come under the purview of what the Commission might -- may or may not recommend -- I'd appreciate those being entered into the record, also. And also, let's find some way that, as anything is entered into the record, we make sure it's available to the public in some form so they can see what's being entered into the record. I mean, if something were to come in after this hearing, people with an interest in it should know where it's available, or maybe it could be posted somewhere online so people could see it.

JUDGE VOGELSON: Mr. Chairman, I have received correspondence from the State Prosecutors Association. And I will forward that to all the members. I thought that it had gone to everybody, but--

SENATOR GORMLEY: I assume it will.

JUDGE VOGELSON: Okay.

SENATOR GORMLEY: Hopefully it wasn't being delivered by the Parkway. (laughter)

JUDGE VOGELSON: No.

SENATOR GORMLEY: Also, I've received correspondence, as I mentioned before, from the SCI. But it's important that we enter it into the record. But it's also important that people know we're receiving this correspondence and the public be made aware of it.

We'd like now to proceed with testimony. And I believe we have somebody who has registered to testify.

Come on up.

Which microphone should he go to? (referring to PA microphone)

HEARING REPORTER: Either one.

SENATOR GORMLEY: Either one is on. Okay, great.

Thank you.

Thank you for your patience. And we would appreciate you stating your name. And we'd very much like to hear your testimony at this time.

JOHN D. POLLOCK: Okay. First of all, I'd like to thank the members of the Commission for allowing me this opportunity to testify.

My name is John Pollock. I'm a retired steamfitter, out of Local 9, on disability pension.

I'm just going to really cut to the chase on this. The problem here is that -- not that-- I don't think the problem rests so much with

giving judges a raise in New Jersey. I mean, we know that everybody is in debt. The Federal government is in debt. We've all got bills. (laughter)

SENATOR GORMLEY: We've mastered debt in New Jersey though. We've taken it to a different level.

Go ahead.

MR. POLLOCK: To a different level.

And we're just talking about adding more debt.

I don't think that's the problem. The problem is the culture -- saying that they're the best and the brightest minds. The best and the brightest minds create laws, and there are other people who execute those laws.

My particular testimony today -- complaint -- was N.J.S.A. 3415-40. As a result of that law, in my personal injury case -- on the gross settlement on my personal injury case, 38.29 percent went to satisfy the lien of the workers' compensation insurance carriers; 27.64 percent went for the fees for the expert testimony of the liability witnesses, the medical witnesses, the reports, so on; 18.61 percent was for the legal fees for my personal injury lawyer. There were miscellaneous legal and medical fees, and a court penalty -- a sanction for getting the liability report not in on time -- and that came to 5.21 percent. It left me -- which I feel I'm a victimized plaintiff -- with a 10.25 percentage out of that gross settlement.

Later, when we got to the -- settled the workers' comp case -- I'm not going to name the attorney, because this is a public hearing -- they wanted to take all the money, because there was no money left from the award. It was completely wiped out. I got nothing for my permanent injury to my lower back. But there was prejudgment interest that was

awarded to me. So, of course, the workers' compensation insurance carrier wanted all of that money too.

Fortunately, we had a very decent, honorable workers' compensation judge. And she said she would take the prejudgment interest, and she would cut it in half, and then she would award the workers' compensation insurance carrier two-thirds of that.

The point I'm making here is that the judges approved the settlement -- two judges in Middlesex County. That doesn't show me -- not representing the brightest and the best minds that the State has to offer. That should have never been approved. I don't think any of you gentlemen on this committee would settle for just 10.25 percent. You would feel just as I do, that it's an absurd settlement, and not a sensible settlement, to receive from the court system of this State. It's not representative of the best and brightest legal minds in this state. And I don't think that -- the legislators who crafted this N.J.S.A. 3415-40 -- that was their intent: that an injured plaintiff -- that's all they would get out of a settlement, is 10.25 percent. And the rest would go for fees. And then even out of that -- when we say the 10 -- it involves not, again, the award from the jury. But all it is, is the prejudgment interest that the court awarded me.

I think that's terrible. I can't see any judges being proud of something like that. Even the Supreme Court justices, I don't think, would be proud of something like that.

SENATOR GORMLEY: If I may--

MR. POLLOCK: Sure.

SENATOR GORMLEY: First of all, thank you for your testimony.

MR. POLLOCK: Thank you.

SENATOR GORMLEY: There was a situation in your particular case-- You're saying there-- And by the way, I know you're trying to be very circumspect, which I appreciate, in terms of saying names. But with the press here, don't worry, they'll have the names. (laughter)

So you are saying that luckily, in the system -- in terms of your opinion -- there was somebody in the system who did step in and rectify the situation.

MR. POLLOCK: No, it hasn't been rectified.

SENATOR GORMLEY: It hasn't been rectified now?

MR. POLLOCK: In other words, to go through that time, trouble, and expense--

SENATOR GORMLEY: I understand.

MR. POLLOCK: --it makes the personal injury case system seem like it's a hoax, it's a farce. Everyone gets their money out of the settlement, and then the person that's injured becomes the victim, and they basically -- they get the crumbs of what's left. They get nothing out of it.

So what's-- The point I'm saying is, with the best and brightest legal minds in New Jersey, what is the purpose of a personal injury case -- to get crumbs?

JUSTICE COLEMAN: I, fortunately, served at all of the levels -- workers' compensation judge, Superior Court judge, and Appellate Division judge, and also in the State Supreme Court.

I'd just like to call your attention to one little fact. The personal injury case that you had was not one of those cases. And I'm saying this because you seem very competent as a person. That was not one

of those cases that required expressed approval by a Superior Court judge. That settlement did not require a court's approval.

The process there was, the lawyers made the settlement. And then once the settlement was completed, the lawyers filed the necessary papers with the court and the clerk's office to, essentially, dismiss the personal injury case. So that case did not require the court's approval.

And once the case got to the judge at workers' compensation, pursuant to the statutory provision-- And it has a legitimate purpose, too. The purpose is to try to encourage early provision for medical care and compensation to injured workers, and fight later about what is the amount that anybody should receive, by way of reimbursement. There are two statutes. And you said you were happy with the way the workers' compensation judge handled the matter.

So what happened, if I may respectfully suggest to you, is a matter that was almost exclusively in the hands of the lawyers and not the Superior Court judge.

MR. POLLOCK: I disagree with you. With all due respect, I disagree with you. The judge interrupted the summation of my personal injury lawyer. At the time, the jury as well as I were ignorant, because it was a secret sidebar discussion. He barred the time unit argument from being presented to the jury.

Now, at the end--

JUSTICE COLEMAN: That happened to be the right ruling.

JUDGE VOGELSON: That's right.

JUSTICE COLEMAN: That's the course -- that's the law.

MR. POLLOCK: I'm saying-- But at the end, the jury asked the judge if he could give them some guidance and a standard to help them convert those damages into a monetary award. The judge said there was no standard. That's not true. The standard is the time unit argument that he barred. It's in that document that I sent -- that I wrote to Chairman Gormley.

JUSTICE COLEMAN: I can understand how you feel that the system didn't serve you well.

MR. POLLOCK: That's correct.

JUSTICE COLEMAN: And I might add--

MR. POLLOCK: I'm a veteran.

JUSTICE COLEMAN: --that was one of the issues that--

SENATOR GORMLEY: Which branch?

MR. POLLOCK: Army.

JUSTICE COLEMAN: --I always looked at.

MR. POLLOCK: I have a certificate that's in there -- a recognition signed by the Secretary of Defense.

SENATOR GORMLEY: When did you serve?

MR. POLLOCK: During the Vietnam War, 1964 to 1966.

SENATOR GORMLEY: Were you in country?

MR. POLLOCK: Overseas.

SENATOR GORMLEY: Okay.

MR. POLLOCK: In the Arab world.

SENATOR GORMLEY: I'm sorry for interrupting, Justice. I apologize.

JUSTICE COLEMAN: I'm finished.

MR. POLLOCK: So what I'm saying is, I understand where these justices are coming from. But I'm going to say, unequivocally and categorically, that I feel like a victimized plaintiff, a forsaken veteran, a betrayed citizen, and a cheated taxpayer.

SENATOR GORMLEY: Okay.

Do I have any other comments from the members of the committee? (no response)

I want to thank you for your testimony. There can always be disagreements about a particular case. But your primary point is, without question, very telling and correct.

MR. POLLOCK: Thank you.

SENATOR GORMLEY: If we make a recommendation to raise these salaries, and we don't ensure that they are the best and the brightest-- I mean, we may disagree about a case, but where we have a common compact is, any increases in salaries, or whatever we might recommend, it's incumbent on the court and the system -- either through the county bar association, the State Bar Association, the new committee that was formed -- Justice Coleman is on it. It's an extra screening committee, in terms of the competence of names submitted. If we, shall we say, make a recommendation for any increase, it's incumbent upon those who administer the system that that promise of the best and the brightest be fulfilled, so that there will be people--

We might disagree on an individual case. And I think you could see the Justice was dealing in good faith with you, in terms of the law, although you might have a disagreement.

People deserve that, if we're saying, "This will be as politically free a system of influence as there is anywhere in the country, and the best."

So your point is a very good one. And I really do appreciate you waiting and taking the time. And you've been, I think, a very important witness.

And thank you for your time.

MR. POLLOCK: Thank you, Chairman and the rest of the committee. I also hope that you do--

The one note I will say here is, on the -- that you do-- All of you do have -- with this in mind -- on this Commission -- that you all have the prudence, fortitude, the moderation, and the wisdom to feel comfortable that you make a fair and just recommendation under the current economic conditions of this State, that will be fair to the truly brightest and best judges in this state, and also to the citizens, and common people, and veterans like myself that served this state and this country.

SENATOR GORMLEY: That's well-stated, and that should be the overall mission. You're correct.

Thank you.

MR. POLLOCK: Thank you very much.

JUSTICE COLEMAN: Thank you.

SENATOR GORMLEY: Any other witnesses?

RICHARD MARCOLUS, ESQ.: Good morning.

SENATOR GORMLEY: Again, thank you for your patience. We appreciate it.

MR. MARCOLUS: Things happen for a reason, Senator.

SENATOR GORMLEY: Okay.

And would you just please state your name?

MR. MARCOLUS: Sure. My name is Richard Marcolus, and I'm here to give testimony in support of the raises for the judiciary.

I, essentially, want to make my testimony brief. But I'm, essentially, wearing three hats. Number one: I am a workers' compensation lawyer. That's what I make a living on, that's what I've done for 25 years, and that's all I've done. Number two: I am the Chair of the New Jersey Advisory Council on Safety and Health, which is an organization made up of unions, physicians, attorneys, and civil organizations, whose goal and purpose is to ensure that the workers of the State of New Jersey are properly protected by the Workers' Compensation Act and its statutory purpose. The third reason why I'm here is-- Unfortunately, I wanted to bring my dad today but he is a little under the weather. And I'm actually glad he stayed home. But he is a member, and I am also a member, of Local 1342, which is a carpenters' union in Essex County. And my dad and Mr. Critchley's family go back a long way. And as a member of a union, I'm here in support of the raise for the compensation judges in this state.

In particular, I think it's important for the people of the State of New Jersey-- I said before I started that things happen for a reason. And that gentleman who just testified told you his experience. And like most New Jerseyans, your chances of appearing before a judge are most likely to be before a workers' compensation judge. And that's where a lot of people get their experience of what it's like to be within the judiciary of the State of New Jersey. And that's why we need the brightest and we need the best people. And that gentleman over there is an example.

We talked before, and his experience was through the workers' compensation system. And it's important for this Commission to understand that that system only functions if the judges do their job. It's very different than Superior Court. There's no jury trials. Appellate review of a compensation judge's decision is-- The scope of that review is limited. Judges are given great deference in their decisions, they're given great deference in how they handle their cases, how they manage their caseloads. And I don't want to repeat what's in the position paper from the New Jersey Advisory Council, but there are over a hundred thousand cases pending in the State of New Jersey, and that's not because it's extremely busy now. That's how it always is. And there's only -- less than 50 judges. They cover the whole state. They work hard. They're there in the morning. They don't have law clerks; they do their own opinions.

And I really have to say I think they deserve a raise. And as I've been here -- and I know, Judge Coleman, you were a workers' compensation judge before I was probably practicing. And the practice has changed because of decisions like yours, and in the cases that you've decided at the Supreme Court level. What we are expected to do in workers' compensation court is different than it was 25 years ago. It's not put in a report -- we put in a report, and a judge decides a case. It's expert testimony. It's labor intensive, and these judges are working.

The Federal government has now placed a burden on our workers' compensation system through placing the Medicare and Medicaid liens -- that we are now forced to deal with, and the judges are forced to deal with. These hold up petitioners' cases. It's a problem.

And I think if there is anything I can impress upon this Commission, it's that the judges of this state, whether they're Superior Court or workers' compensation judges -- it's time for a raise. It's been seven years. Recently, our workers' compensation judges -- not the ones who are sitting presently -- but any new judge does not get a pension. They were taken out of the pension system. So now if somebody -- whoever it may be -- decides, "Gees, I would like to be a workers' compensation judge," and wants to go through the process, they do not have a pension, which--

JUSTICE COLEMAN: None at all?

MR. MARCOLUS: They have a 401k, Judge, which is not a pension. If you were a judge before, or you're a judge now sitting, you get a pension. And that pension is gone. Okay?

JUDGE VOGELSON: In other words -- excuse me -- you're saying, prior--

MR. MARCOLUS: Prior to the recent amendment to the State budget--

JUDGE VOGELSON: So those judges sitting at that time would receive a pension. But from that point on, it's a 401k. Is that my understanding?

MR. MARCOLUS: Yes.

The last thing I would like to say is that, as a member of the carpenters' union, it's important for working-class people that this raise -- not only for the workers' compensation judges, but the Superior Court judges -- takes place, because if our state doesn't have the proper people in place, the system doesn't work. And it's hard-working judges that run and do the work that needs to be done for the public.

SENATOR GORMLEY: Thank you very much for your time. We appreciate your testimony.

MR. MARCOLUS: Thank you.

SENATOR GORMLEY: Justice Coleman, just for the record, you are a member of a panel that was set up about two years ago to do an additional screening of names that are nominated, which also has two non-members of the bar on it that were appointed. Could you briefly go over the additional screening process that's been added for members of the judiciary? I think this is important -- to go over this.

JUSTICE COLEMAN: Do we--

SENATOR GORMLEY: We're concluded.

MR. MARCOLUS: Thank you.

JUSTICE COLEMAN: Governor Corzine established a judicial screening panel, and I think we organized somewhere around January or February '07. And since that time, we have been reviewing the questionnaire that the Governor's Office has, historically, required each person under consideration for a Superior Court judgeship to submit. It is a lengthy questionnaire. And the Governor's Office sends, to the panel -- and this is a seven-person panel -- the questionnaires, to screen the candidate and make a recommendation to the Governor's Office.

Pursuant to the executive order that established the panel, our deliberations and report to the Governor are strictly confidential. And the Governor has intended, and plans to continue, to treat them as confidential, because it's designed to aide the Governor in the Governor's constitutional role as the person to nominate judges to the Superior Court. We do not look at prosecutor applicants for the county prosecutors' position.

The seven-person panel has six lawyers and one lay person, who is a Ph.D. person, I think in English, out of Kean University. And one of the members -- although is a licensed attorney in New Jersey -- is in practice to the limited extent, as he serves as general counsel to a corporation. And there are five retired judges and justices on the panel.

We have looked at a number of candidates, and we still have more work to do. We do not, pursuant to the executive order, look at the candidates that are under consideration for a workers' compensation judgeship. And I think one explanation might be -- nor do we look at, as I said before, prosecutors or administrative law judges. I think one reason might be -- is that that would make our work a bit too burdensome. If we overload, we will not be able to render the kind of quality service that the Governor is expecting and the State deserves.

It might be possible, somewhere along the line, for the record, for some information to be utilized, in connection with what we are seeing by way of the applicant pool, in terms of the salaries. But, again, that's all confidential now.

SENATOR GORMLEY: I wanted to bring this point out, because it's, shall we say, an additional screening process.

JUSTICE COLEMAN: Yes.

SENATOR GORMLEY: We can talk to the public and say it's the best and the brightest. But all they have to do -- whether they be right or wrong -- is experience one circumstance where they just didn't seem that bright. And that then taints the entire system.

I think one of the highlights for me this year, in terms of the judiciary-- I was at the swearing in of the Chief Justice. And he wanted to

single somebody out who paid attention to him when he was just prosecuting cases on the Federal level and sending crooks to jail. And he singled out Michael Critchley, of all people, saying, "Who was-- I was nobody. I couldn't go to political events or whatever. He just recommended me." And I think that no one questions that the Chief Justice is in that category that one of -- our first witness was talking about.

I guess my point is, whatever recommendation we make, whether it be enhancing the screening committee that was just mentioned by the Justice -- that you are going-- I can give all the examples in other states why we're better. I can tell the story of a justice in Pennsylvania who allegedly was going to run over another justice with a car. And we could tell all the examples in New York about elected judges. And we are superior.

But if we make any recommendations to take this to a different level, it's incumbent upon the review process to make it very clear this is the least political process in the country, if we claim it's the best. So that's why I very much appreciate the testimony of the first witness.

And I appreciate everybody taking the time to be here today. The record will be open for any more correspondence that we might have, which will be made available to the public as it comes in.

And I want to thank everybody for attending today.

Thank you very much.

JUSTICE COLEMAN: Just one little final comment, if I might.

SENATOR GORMLEY: Go ahead.

JUSTICE COLEMAN: Although our committee -- screening committee -- does not look at workers' compensation candidates, I can assure you that the process has been improved tremendously over the years,

over what it was like when I was appointed to that court in 1964. The salaries have been increased and tied in with the Superior Court judgeship. And the qualification of the candidate has been increased, the work experience has been increased, and the training has been increased so that, today, I think you have a high caliber of judges serving in the workers' compensation court.

Because of that, it is no surprise that in today's world, the workers' compensation judges have a much better chance of, as the jargon goes, being elevated from the workers' compensation court to the Superior Court. In my generation, it was rare. There were only like two or three of us, over a 25-year period, that were elevated from the workers' compensation to the Superior Court. Judge Ackerman was the first, and I was the second. But that has changed drastically. It is, in today's world, looked at as a -- almost a training ground for the preparation for the Superior Court, in many respects. And it's a wonderful place to look for good Superior Court candidates, too.

Thank you.

SENATOR GORMLEY: Okay.

Any other comments? (no response)

I want to thank everybody for their participation today.

Thank you very much.

(HEARING CONCLUDED)