

Public Statement of Chief Judge Jonathan Lippman

February 23, 2010

Chief Judge Jonathan Lippman delivered the following message to the Judges of the New York State Unified Court System via a web cast today at 1:00 p.m.

“The judicial compensation decision handed down by the New York Court of Appeals today represents a groundbreaking legal precedent. This is the first decision by a state court of last resort to find a violation of the separation of powers doctrine based on a legislature’s failure to address, on the merits, the issue of judicial compensation. Today’s decision vindicates our longstanding position that the judiciary is an independent, co-equal branch of government, and must be treated as such.

In essence, the decision says that the legislature, in its present and future deliberations, must consider the judicial salary issue independently of any unrelated issues.

I would make clear that while the decision has great force, it does not set a precise time frame for the legislature to act, and leaves to the legislature the ultimate decision of whether and to what extent it must increase judicial salaries. But make no mistake, the legislature is now obligated under the court’s declaration to consider judicial salaries on the merits. The court also makes clear – and this is critically important – that whether the Legislature has met its constitutional obligations in this regard is subject to the continued scrutiny of the court, and that the court “expect[s] appropriate and expeditious legislative consideration.” The legislature must now remedy the constitutional violation, and we expect them to do so in good faith and expeditiously.

I am calling upon the other branches, publicly and privately, to comply with the court’s decision and honor their constitutional obligations and the respective functions of the different branches of government. The court has shown sensitivity and respect for the very different roles of all three branches of government, and the legislature must do likewise. We are cognizant of the state’s fiscal situation, but that does not detract one iota from the fact that judges have not received so much as a single cost of living adjustment in more than 11 years.

If the other branches do not proceed in accordance with the court’s decision, I will not hesitate to act in a manner consistent with the constitutional duties and obligations imposed upon me as the head of an independent branch of government.

How exactly all of this develops remains to be seen. I would be less than forthright if I said to you that this decision represents all that we hoped for in terms of an immediate remedy. But our resolve is strengthened by the court's declaration. Our cause has been upheld, and the independence of the judiciary has been resoundingly affirmed on the issue of judicial compensation.

The result we have achieved today would never have been possible without the support and perseverance that you have shown during so many years of unfair and frustrating treatment. Your hard work and professionalism are the keystones of the judiciary. We above all remain faithful to our constitutional oaths while committing ourselves to seeing this journey through to finality. I also want to express our great appreciation to all the lawyers who labored tirelessly on our behalf.

After all that we have been through, we have every right to have our spirits lifted by this landmark decision of the highest court of our state. There is clearly still much work ahead, but today we have taken a significant and meaningful step forward toward just and equitable compensation for the judiciary.”

After his remarks, Chief Judge Lippman added that he had recused himself from consideration of any of the issues in the judicial compensation lawsuits because he is the plaintiff in one of the three lawsuits. The remaining judges of the Court of Appeals decided the cases pursuant to the Rule of Necessity, a legal doctrine dating back to the 15th century which provides that where no other judge can be found who is impartial with regard to a particular case, then the court assigned to the case is compelled to hear it. This doctrine has previously been invoked by the federal courts and other state courts in judicial compensation cases.

New York State judges have not received a cost of living increase since January 1, 1999. They have received only one pay adjustment in the last 15 years, and only two adjustments in the past 22 years. Of the 50 states, New York has gone the longest without a judicial pay increase. New York ranks last nationally when judicial pay is adjusted for statewide cost of living.