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June 26, 2011

Mr. John McConnell
Counsel
NYS Office of Court Administration
25 Beaver Street (11th Floor)
New York, NY 10004

Dear Mr. McConnell:

This letter puts forth my independent opinion on the report that Chief Administrative Judge Ann Pfau is presenting to the New York Commission on Judicial Compensation.

As a professional with over forty years of compensation consulting experience, I have long been interested in problems of setting fair pay for government employees, including judges. Even recognizing that public service almost always involves some sacrifice and that employment in the private sector will almost always be more lucrative, the disparity between what federal and state judges have traditionally earned and the earnings of their private sector counterparts has seemed too large. The State of New York's failure to increase pay for its judges and justices since 1999 has severely exacerbated this problem, an issue that the Commission can now fix.

I have reviewed Judge Pfau's report in detail and agree fully with its recommendations. It is balanced; it gives full recognition to the difficult economic environment in which raising judicial salaries is being proposed; it documents clearly the economic losses New York judges have suffered and the inequities that have been created; and it provides solid proposals for correcting this problem going forward.

The report does not recommend specific salaries for the top level of justices or other judges. While this will appropriately be the decision of the Commission, my recommendation is that the Commission focus on the higher salary alternatives discussed in the report. The highest number mentioned in Ms. Pfau's report (a salary just over \$220,000 for New York Supreme Court Justices) would bring their salaries only to the midpoint of top justice compensation in the 50 states, on a cost-adjusted basis. Undoubtedly there will be some public criticism of such a large raise (roughly \$85,000 or 62% over the current level set in 1999), but *any* reasonable adjustment will seem large to some critics, and this is an opportunity to get it right.

Also left open in Ms. Pfau's report is the question of whether there should be some redress for the approximately \$330,000 the average New York judge has lost relative to the cost of living during the twelve-year salary freeze. It would not be unprecedented to provide some make-up compensation; other nonprofits have done so in the past, though not to my knowledge affecting such a large group. Further, I am not aware whether such payments would require special legislation. Nonetheless, I would recommend giving this serious consideration if New York judicial salaries are not brought to a fully competitive level.

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My final recommendation is that the Commission do everything that it can to support a process to ensure a regular periodic review of judicial compensation beyond 2014. It is vital to the state and the country that we have a strong judiciary system, and there is no reason to let New York judges' compensation continue to erode in the future.

For the benefit of the Commission, this opinion has been provided on a pro-bono basis; I have received no compensation in connection with this letter. Information on my background is attached.

Sincerely,

Pete Smith
President