Pay Raises for PA Judges: A Top Ten Q&A for Citizens
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The Pennsylvania Bar Association (PBA) works to promote justice, professional excellence and respect of the law, and to improve public understanding of the legal system. As PBA president, I’ve been asked a number of very thoughtful questions about the recent Supreme Court decision on judicial pay raises. I’d like to share these questions – and my answers – with readers in the hope of increasing the public’s understanding of some of the legal and constitutional issues that were closely examined in this important decision.

• **If the pay raise was illegal for legislators, why wasn’t it illegal for judges?**

Our Pennsylvania Constitution dating back to 1790 explicitly prohibits a decrease in any compensation paid to judges during their terms of office. In fact, Section 16a of the Pennsylvania Constitution ensures that once the judiciary’s compensation is set at constitutionally adequate levels, it cannot be decreased unless dire economic circumstances require the reduction of compensation for all salaried officers in the Commonwealth. This concept was proposed by the Pennsylvania Bar Association during the 1967-1968 Pennsylvania Constitutional Convention. In reaching its decision in the recent case, the Pennsylvania Supreme Court did what it does – and should do – in every case; it weighed competing arguments on complex issues and, in a dispassionate and neutral manner, arrived at a comprehensive decision based on the law.

• **The justices’ were making a decision about their own salaries, so wasn’t it a conflict of interest for them to decide this case? Why didn’t they kick it over to federal court or ask the Supreme Court of another state to decide it?**

According to a legal principle known as “the rule of necessity,” the Pennsylvania Supreme Court is a “court of last resort.” It had to rule in the pay raise case even though the justices had a personal interest in the matter. According to law, the Supreme Court cannot arbitrarily move cases to other courts.

• **Why should control of judicial salaries be removed from the Pennsylvania legislature?**

A strong, competent and independent court is essential to the exercise of sound and impartial judgment under the law. The judiciary’s compensation should be determined not on whether the judiciary – or, for that matter, the government as a whole – is held in favor by its legislative branch. The facts of this case plainly demonstrate the need to shield judicial salaries from the state’s political process and to tie these salaries to the federal judicial system – as Act 44 originally provided.
• How did judges receive pay raises before this decision was made by the Supreme Court?

Frankly, the established procedure for obtaining judicial pay raises often promoted the perception that judges, who were beholden to the legislature for their pay, were subject to outside pressures in making their rulings. The former process required the unseemly ritual of judges lobbying for pay raises in the state Capitol. This “hat-in-hand” process was led by the Chief Justice of Pennsylvania, who is the steward of 1,000 judges representing all levels of the Pennsylvania judiciary. In the last ten years, requests for pay increases were rejected, and the Chief Justice had no way of appealing these decisions to a higher authority.

• Just how hard do judges really work for their money?

Judges have a variety of responsibilities, both in and out of the courtroom. In their courtrooms, judges hear complex cases and have the responsibility of rendering legally correct opinions. They render decisions that affect our families, our communities and our most cherished rights. They also spend many hours working outside the courtroom, researching cases, writing opinions and mediating, all of which requires special legal educational training and experience.

The proof of the judges’ work is in the number of cases they handle for the citizens of Pennsylvania. In 2005, Pennsylvania’s Superior Court was among one of the busiest intermediate appellate courts in the country: 7,946 cases were filed and the Superior Court issued 5,037 opinions. In 2004, more than 150,000 criminal cases and 125,000 civil actions were filed in the state’s common pleas courts. At the same time, Family Courts dealt with 349,542 support, custody and divorce actions, 13,877 juvenile dependency actions and over 50,000 juvenile delinquency cases. More than 40,000 Protection from Abuse orders were issued, and Orphan’s Courts handled over 18,000 cases. The magisterial court judges, formerly known as district justices, in 2004 handled 211,522 criminal cases and 102,160 private criminal complaints. They also processed 1.6 million traffic offenses, 395,545 non-traffic offenses, 143,496 civil actions and 74,253 landlord/tenant matters. The judges alone issued 888,861 arrest warrants. Clearly, these judges are working for their salaries.

• When compared to judges in other states, how do PA judges’ salaries stack up given this recent pay raise?

According to the National Center for State Courts, the pay raise places Pennsylvania judges fifth in salary levels behind California, Illinois, Delaware, and the District of Columbia.

• How will Pennsylvania judges get raises in the future?
Salaries of Pennsylvania judges will rise in step with the salaries of federal judges. Federal judges receive periodic cost of living raises, but they depend on Congress for increases in their base salary. Congress infrequently grants judicial raises. So, Pennsylvania judges are unlikely to receive frequent increases in base pay. However, the judges and our citizens will be assured that state-level politics will be removed from the equation.

- **Doesn’t the non-severability provision render the entire Act 44, including the judges’ pay raise, unconstitutional?**

No. Act 44 became the law of the commonwealth, and the judges received their increased pay under that Act. Once the judicial pay raise came into effect, it could not constitutionally have been reduced by any later enactment or a non-severability clause within the Act.

- **What’s the best source for more information on this decision?**

I encourage you to visit the PBA’s Web site at www.pabar.org for a copy of the decision. Another great resource is the “Asked & Answered” area at http://www.courts.state.pa.us/index/askedanswered/faq.asp, which addresses many of the issues being discussed currently about Pennsylvania’s judicial system.

- **Is it possible that this decision can be appealed like the legislative pay raise?**

No. At some point, there must be finality to the law. It is well-established that the final arbiter of the constitutionality of any state legislative enactment is the Pennsylvania Supreme Court. This rule of law is part and parcel of our democratic form of government, which is a government with three co-equal branches. The citizens of Pennsylvania should take comfort in that the Pennsylvania Supreme Court accepted its responsibility to hear the case, deliberated on an extremely complex issue and entered its final decision based on sound legal reasoning.

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