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Senior Judges Being Terminated Under Judiciary Budget Cut Said to Be Mulling Lawsuit

A retired state Supreme Court justice and a New York litigator with knowledge of the talks say that some of the 46 senior judges being cut by the state court system have been in discussions about the possibility of bringing a lawsuit against the court system that would be aimed at keeping their positions.

By Jason Grant | October 16, 2020



Judge Charles Ramos, recently retired from New York State Supreme Court. (Photo: David Handschuh/NYL)

A retired state Supreme Court justice and a New York litigator with knowledge of the talks say that some of the 46 senior judges being cut by the state court system due to a pandemic-fueled \$300 million budget slash have been in discussions about possibly bringing a lawsuit against the court system that would be aimed at keeping their positions.

The retired justice, who asked for anonymity because of the sensitivity of the situation, said that as part of the talks, numerous Supreme Court trial-level judges have expressed interest in bringing one lawsuit in conjunction with Appellate Division justices who are also losing their positions under the tough budget cut. But he said the Appellate Division justices believe they have an argument or arguments to make in a legal action that are not available to the Supreme Court justices, and so at this point, if they lodge a lawsuit, they would do so separately.

More specifically, the retired justice said that the Appellate Division justices are designated into their positions when they take the appellate bench, as opposed to the Supreme Court judges who are elected into their posts, and that because of that the Appellate Division justices believe they have constitution-based arguments that are unique to them. The retired judge with knowledge of the talks said that all of the judges involved, whether from the Supreme Court or the Appellate Division, are still in a discussion stage and that a possible lawsuit does not appear to be coming very soon.

The behind-the-scenes discussions about potential suits that are reportedly happening come as the public pushback against the forced early retirement of the 46 older judges grows louder—from dozens of state lawmakers (<https://www.law.com/newyorklawjournal/2020/10/15/two-dozen-new-york-lawmakers-oppose-cutting-older-judges/>) to judges associations (<https://www.law.com/newyorklawjournal/2020/10/13/ny-judges-associations-slam-decision-to-cut-older-judges-saying-it-puts-court-system-into-chaos/>) to the New York City Bar Association Council (<https://www.law.com/newyorklawjournal/2020/10/09/nyc-bar-association-council-tells-court-officials-it-opposes-cutting-older-judges/>).

The controversial cutting of the judges, all of whom are near age 70 or between 70 and 74, comes after Gov. Andrew Cuomo announced that he would be slicing the judiciary budget by 10%, or by about \$300 million, in an effort to create savings (<https://www.law.com/newyorklawjournal/2020/10/02/two-manhattan-commercial-division-justices-to-retire-as-judicial-budget-cut-takes-hold/>) in a state budget that is being hammered by economic fallout from the coronavirus pandemic. On Sept. 29, state Chief Administrative Judge Lawrence Marks announced that the court system's Administrative Board had decided "to disapprove all but a small handful of pending judicial applications for certification or recertification that would take effect on January 1, 2021." The certification or recertification of judges has long been used to keep on the bench judges who reach age 70 and who want to continue to preside over cases for more years up until age 76. The decision not to certify or recertify a group of 46 such justices appears to effectively force their unplanned retirement, or at least put on hold any plans they had to keep judging actively.

The retired Supreme Court justice and the New York litigator who spoke with the Law Journal this week also both said that the decision to not certify or recertify the 46 judges was a tough one for the court system Administrative Board. The effective termination of the 46 judges will save about \$55 million for the court system, according to Marks. The retired judge and the litigator said that certain members of the Administrative Board, which is composed of state Chief Judge Janet DiFiore and the presiding judges from the state's four Appellate Divisions, pointed to the fact that most older judges across the state have vested pensions waiting for them. The alternative to cutting the older judges would have been to furlough or lay off court staff who do not have such pensions to fall back on, and that played into the thinking of at least some Board members, according to the retired judge and the litigator.

Meanwhile, from some quarters, the criticisms of the court system's choice to let go of the 46 judges have become very pointed.

In an interview Wednesday with the New York Law Journal, an active, veteran state judge, who also chose not to use his name because of the sensitivity of watching his colleagues have to depart the bench, said that those being forced out are the "low-lying fruit who are ripe and easily picked." He said it is short-sighted for the court system to have targeted them.

They are “the most seasoned and wise” in the state “by dint of many years of experience” and “in any other context, the people with the most seniority are the last ones to go,” the judge said.

“They’re easy ones to lop off, that’s what they did,” he also said, as he expressed anger with the court system’s decision to not certify or recertify them.

The judge also complained that Cuomo has chosen to take away \$300 million from the judiciary budget while he has yet to slash state agencies during the tough economic times. He believes Cuomo is waiting to see whether the Democrats take the White House and U.S. Senate via the Nov. 3 national election, because that could lead to more federal aid and money coming to New York next year.

“The governor decided not to cut any agencies because he is waiting for the election,” he said, “because such cuts to agencies would be so draconian, he is trying to avoid that. He and the Administrative Board should have also waited until after the election” before making the judicial cuts, he said.

The governor’s office did not immediately respond to a request for comment about cutting the judiciary budget and whether Cuomo has been waiting to make other potential cuts with a watchful eye on what may happen in the national election.

Charles Ramos, a former longtime Manhattan Supreme Court Commercial Division justice, who himself received three certifications and re-certifications and stayed on the bench until age 76, said in an interview with the Law Journal on Thursday that he “can’t believe it’s [the cutting of the 46 judges] happening. It’s just so devastating for the state.”

“You are taking the cream of the crop [state judges] and you are throwing them away,” he said.

He added, “I am on Chief Judge DiFiore’s Advisory Council for the Commercial Division, and we have a number of judges who were coming up for certification who are on the Advisory Council and in the Appellate Division.”

He also said that “the impact” on the judges being asked to step down “on a personal level is devastating.”

State judges who still want to work as they reach age 70 and continue on to 76 “plan for it,” he said, “and you look forward to it.”

Still, said Ramos, as he thought about the 10% slash to the budget and the choices being faced by DiFiore and others, “I don’t think there is a good way to go. You can’t cut \$300 million from the court budget and not be cutting muscle (<https://www.law.com/newyorklawjournal/2020/10/08/citing-judicial-budget-cuts-manhattan-justice-denies-request-for-judicial-hearing-officer-to-oversee-discovery/>).”

Ramos also spoke of cases getting delayed as a result of the loss of the 46 judges and, in turn, “dying on the vine.” Lawyers involved in such cases won’t get paid, he said, and could have financial woes. And he urged ex-judges and lawyers across the state to volunteer for the state’s Judicial Hearing Officer program or in other roles in which ex-judges and lawyers can help move along cases but are not paid.

Ramos said he volunteers for the JHO program and as mediator for both the Appellate Division, Second Department and state Supreme Court.

“If we don’t step up and do this,” he said of veteran lawyers and former judges volunteering their time and expertise, “the practice of law will be seriously damaged.” He added, “Lawyers and the court system need to be able to move their cases.”

Meanwhile, Mark Zauderer, a member of the state's Commercial Division Advisory Council and a named partner at Ganfer Shore Leeds & Zauderer, said that, in his personal view, the "unprecedented state budget crunch [due to the pandemic] challenges judges and lawyers to come up with ways to keep the court system functioning up to speed." But he said he is "confident we [the court system's administration and the New York bar] are going to meet that challenge."

"I think that the court administration is responding to this crisis as well as can be expected, under these extraordinary circumstances," he said. "But there is no question that extraordinary talent on the bench will be lost in the process."

He also said that criticism of the governor's cut to the judiciary budget, or of Cuomo's timing in making the cut so close to election day, may not be warranted.

"Nobody knows what assistance may ultimately be coming from the federal government through to the states," he said, "and whether any strings would be attached to that state aid that would restrict the ability of the governor to aid the courts. We are really all beholden to the [U.S.] Congress to see what help our state can get."

"The problem is the governor is understandably faced with the problem of making the budget work under very difficult circumstances," said Zauderer, "and it is understandable that judges and lawyers will feel the significant effect of these budget cuts."

"It's a terrible crunch without an easy solution," he said.

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